

LABR-22015(16)/43/2021-IR SEC-Dept. of LABOUR

I/434579/2023

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

N.S. Building, 12<sup>th</sup> Floor, 1, K.S. Roy Road, Kolkata – 700001

No. Labr/ 843 /LC-IR)/7L- 04/13

Date : 14/09/2023

ORDER

WHEREAS under reference of Labour Department's Order No. Labr./1083/(LC-IR)/7L-04/13 dated 21.10.16 the Industrial Dispute between M/s Aditya Translink Pvt. Ltd. (Unit : Samnuggur Jute Factory North Mill), Bhadreswar, Hooghly, Pin – 712124 and its workman Shri Somnath Das, Sukh Sanatantala, P.O. Bishalaxmi Beniapukur, P.S.- Chandannagar, Hooghly, Pin – 712136 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 Third Industrial Tribunal, Kolkata.


AND WHEREAS the said Third Industrial Tribunal, Kolkata, has submitted to the State Government its Award dated 05.09.2023 in case No. VIII – 31 of 2016 on the said Industrial Dispute vide Memo No. 1148 - L.T. dated 05.09.2023.

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,

  
Assistant Secretary

to the Government of West Bengal

No. Labr/ 843 /1(5)/(LC-IR)

Date : 14/09/2023

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

1. M/s Aditya Translink Pvt. Ltd. (Unit : Samnuggur Jute Factory North Mill), Bhadreswar, Hooghly, Pin – 712124.
2. Shri Somnath Das, Sukh Sanatantala, P.O. Bishalaxmi Beniapukur, P.S.- Chandannagar, Hooghly, Pin – 712136.
3. The Assistant Labour Commissioner, W.B. In-Charge, Labour Gazette.
4. The O.S.D. & E.O. Labour Commissioner, W.B. New Secretariat Building, 1, K. S. Roy Road, 11<sup>th</sup> Floor, Kolkata- 700001.
- ✓ 5. The Deputy Secretary, IT Cell, Labour Department, with the request to cast the Award in the Department's website.

  
Assistant Secretary

Date : 14/09/2023

No. Labr/ 843 /2(3)/(LC-IR)

Copy forwarded for information to :

1. The Judge, Third Industrial Tribunal, Kolkata, N.S. Building, 2nd Floor, 1, K.S. Roy Road, Kolkata-700001 with reference to his Memo No. 1148 - L.T. dated 05.09.2023.
2. The Joint Labour Commissioner (Statistics), West Bengal, 6, Church Lane, Kolkata -700001.
3. Office Copy.

Assistant Secretary



**IN THE THIRD INDUSTRIAL TRIBUNAL,  
NEW SECRETARIAT BUILDINGS, KOLKATA-700 001**

**Case No. VIII-31 of 2016**

Present: Sri Mihir Kumar Mondal  
Judge, 3<sup>rd</sup> Industrial Tribunal  
Kolkata.

**A W A R D**

**Dated: 5<sup>th</sup> 2023**

The Government of West Bengal, Labour Department has referred an Industrial Dispute between M/s. Aditya Translink Pvt. Ltd. (Unit: Samnuggur Jute Factory North Mill), Bhadreswar, Hooghly-712124 having registered office at 9, India Exchange Place, Kolkata-700001 and their Workman Sri Somnath Das of Sukh Sanatantala, P.O.- Bishalaxmi Beniapukur, P.S.-Chandannagar, Hooghly-712136 to this Tribunal vide G.O. No. Labr./1083/(LC-IR)/IR/7L-04/13 dated 21.10.16 on the following issue(s) for adjudication:

**I S S U E S**

- 1) Whether the dismissal of the workman, Sri Somnath Das by way at long term refusal of employment w.e.f. 25.07.2015 **injustified**?
- 2) To what relief, if any, is he entitled?

On receiving the 'Order' of the appropriate Government containing 'Reference of Disputes', this Tribunal on 27.12.2016 by its Order No. 1 issued Notice upon both the parties. On receiving notice, both the parties entered their appearance in this case complying the statutory provision. Subsequently, M/s. Aditya Translink Pvt. Ltd. and the workman Sri Somnath Das submitted their respective Written Statement.

The case of the workman, in a nutshell, is that he was appointed as **Supervisor** of Samnuggur Jute Factory (North Mill) under Aditya Translink Pvt. Ltd. w.e.f. 01.08.2010 on the strength of Appointment Letter Dated 29.07.2010 issued by the Director of Aditya Translink Pvt. Ltd. and he started to work there in terms of the conditions as laid down in the said appointment letter. It is mentioned in the said written statement that he (workman) had to perform the duty as 'Time Keeper' and no financial duty was entrusted upon him. It is noted in the written statement that according to the policy of the Company, although he was appointed as 'Supervisor', actually he was supposed to look after and supervise the quality and quantity of the product as produced by the workmen and also to implement the Management's policy. Apart from that, since he was entrusted with the duty of 'Time Keeper', it was his duty to take attendance of the workmen attached to various departments maintaining time. It is mentioned in the WS that he had been working regularly in the Samnuggur Jute Factory North Mill, Bhadreswar, Hooghly and suddenly on 25.07.2015, the 'Mill' Authority i.e. Sr. Personnel Manager, served a letter upon him and the subject matter of the said letter was the allegation of cheating of Rs.9,00,000/- (Rupees nine lakhs) against him by way of 'tampering false attendance' and he was directed to



deposit the said sum in the Company's Cash Office within seven days from the receipt of the said letter, otherwise, the Management would take 'criminal proceedings against him'. On receiving the said letter containing allegation, he (workman) approached the Management of the Company seeking clarification of the subject matter of the letter dated 25.07.2015 because he thought that there might have been some misunderstanding between him and the Management of the Company, but the Management of the Company denied his entry into the factory premises violating the terms and conditions of the appointment letter. He has further mentioned that he specifically denied the 'charge' by way of sending letter dated 27.07.2015, which was duly served upon the Company. He has mentioned that on receiving the letter dated 27.07.2015 issued by him, the Management of the Company did not send any response along with documents to substantiate the charge leveled against him. He has categorically mentioned that since 25.07.2015 after issuance of the letter containing allegation of cheating of Rs.9,00,000/-, the Management of the Company never issued any formal show cause letter or suspension letter to him although the Management of the Company willfully, intentionally and with some ulterior motive, terminated him from his service. Apart from that, it has been mentioned in the Written Statement that on and from 25.07.2015, the Company denied his (workman) entry into the factory premises. It is also mentioned that on 03.08.2015, he (workman) was compelled to raise industrial dispute in writing before the Deputy Labour Commissioner, Chandannagar Labour Office, Dist. Hooghly and requested the competent authority to intervene into the matter and to take necessary action so that his 'service' under the Company would be restored with immediate effect. Apart from that, he through his engaged Advocate sent letter dated 10.08.2015 to the Deputy Labour Commissioner, Chandannagar Labour Office, Dist. Hooghly requesting him to take necessary action against the Company over the matter of unlawfully preventing him (workman) from entering into the factory premises without assigning valid reason. It is mentioned that save and except the letter dated 31.08.2015 issued by the Assistant Labour Commissioner, Chandannagar to the Company requesting them to look into the grievance of the workman, no other lawful action was taken against the Company. The Company did not attend the conciliation proceeding taken up by the Assistant Labour Commissioner, Chandannagar. Lastly, the Labour Department, Government of West Bengal by order dated 21.10.2016 referred the industrial dispute to this Industrial Tribunal. It is revealed from the written statement that the workman filed writ petition being WP No. 24403 (W) of 2015 before the Hon'ble High Court, Calcutta and by order dated 11.02.2016, the Hon'ble Court had been pleased to dispose of the said Writ Petition with the liberty to the petitioner (workman) to make a representation before the competent authorities ventilating the grievances and accordingly, he made a representation before the Deputy Labour Commissioner, Chandannagar Labour Office, Dist. Hooghly on 24.04.2016.

He (workman) has prayed for allowing the written statement and for redressal of his grievance.

The Company i.e. M/s. Aditya Translink Pvt. Ltd. has contested this case by filing Written Statement. M/s. Aditya Translink Pvt. Ltd. (hereinafter referred to as the 'Company') by its Written Statement has denied all the material allegations leveled against it by the Workman. The Company has claimed that the Reference is not maintainable in the eye of the law. It has



been claimed in the Written Statement that the issues which have already been framed, particularly, the issue no.1 for proper adjudication of the dispute, is found as self defeating, contradictory and the same is not fit for adjudication. It has been mentioned that the concept of 'dismissal of service' and 'refusal of employment' are two different concepts and thus, no relief can be granted over those two concepts bundled up together. In the Written Statement, it has been admitted that the workman Sri Somnath Das was appointed as 'Supervisor' w.e.f. 01.08.2010 and he had been working under the Company as 'Supervisor' but not as a 'workman' and thus, this instant industrial dispute is not a subject of adjudication of this Tribunal. It has been claimed that the petitioner Sri Somnath Das was entrusted with the job of 'Supervisor', which means to look after and supervise the quantity and quality of the products made by the workers under him and also to implement the proper planning of the Company apart from supervising the attendance of the workmen of various departments and that, his designation of 'Supervisor' keeps him outside the definition of 'workman' as provided in Section 2(s) of the Industrial Disputes Act, 1947. It has been stated in the Written Statement that the workman in his Written Statement has admitted that he had been working in the Company as 'Supervisor' and thus, the present Reference is not maintainable in the eye of the law. It is mentioned in the Written Statement that on 25.07.2015, the said Supervisor Somnath Das was informed in writing that he committed the offence of cheating amounting to Rs.9,00,000/- (Rupees nine lakhs) only from the Company's Cash Office by way of 'tampering false attendance' and thus, the story of dismissal of the petitioner Sri Somnath Das due to long term refusal of the employment w.e.f. 25.07.2015 is a false and fabricated story. It is claimed in the Written Statement that since the Company has denied the story of dismissal of the Petitioner Sri Somnath Das, the question of show cause and holding enquiry had not arisen at all. It is stated in the Written Statement that the applicant/petitioner Sri Somnath Das made several false statements in his Written Statement. The Company, by his Written Statement has denied all such false and fabricated statements made by the petitioner Sri Somnath Das. It is mentioned in the Written Statement that the Supervisor Sri Somnath Das entered into the factory premises on 25.07.2015 as usual and received the letter dated 25.07.2015 and he left the factory premises, but thereafter he did not turn up to the factory premises to perform his duty as well as he did not deposit cash of Rs.9,00,000/- (Rupees nine lakhs) only as mentioned in letter dated 25.07.2015. It has been confirmed in the Written Statement that petitioner Sri Somnath Das was neither dismissed from his job nor his employment was refused by the Company. It is confirmed that there was no question of issuance of show cause notice or suspension and further there was no question of holding any domestic enquiry against him. The 'Company' has prayed for hearing the case on preliminary points and for dismissal of the claim of Sri Somnath Das *in limine* since Sri Das is not entitled to get any relief whatsoever.

After submission of Written Statements and list of documents by the parties, exchange of documents took place. Thereafter, the matter was fixed for hearing on merit.

During evidence stage, the petitioner Sri Somnath Das filed his examination-in-chief on affidavit and he was examined-in-chief before this Tribunal in continuation of his examination-in-chief on affidavit and thereafter his cross-examination took place in full.

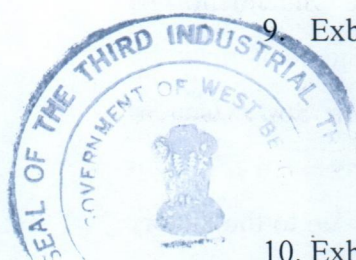


It is seen that the Company adduced three witnesses such as Sri Subrata Mukherjee, Sri Bhaskar Bandyopadhyay and Sri Anil Kumar Das as OPW 1, OPW 2 and OPW 3 respectively in support of the case of the Company.

In course of evidence, both the parties proved documents during examination of witnesses.

The petitioner Sri Somnath Das has identified and proved the following documents in course of his examination as witness:-

1. Exbt.-1 : Photo copy of the letter of appointment dated 29.07.2010;
2. Exbt.-1/1 : Photo copy of Pay Slip for the month of May, 2015;
3. Exbt.-1/2 : Photo copy of Pay Slip for the month of June, 2015;
4. Exbt.-1/3 : Photo copy of Pay Slip for the month of February, 2015;
5. Exbt.-1/4 : Photo copy of Pay Slip for the month of December, 2014;
6. Exbt.-2 : Photo copy of letter dated 25.07.2015 addressed by the Personnel Manager, M/s. Aditya Translink Pvt. Ltd. to the applicant;
7. Exbt.-3 : Photo copy of letter dated 27.07.2015 addressed by the applicant to the Senior Personnel Manager, Samnuggur Jute Factory (North Mill), Bhadreswar, Hooghly;
8. Exbt.-4 : Photo copy of letter dated 03.08.2015 addressed by the applicant to the Dy. Labour Commissioner, Chandannagar Labour Office, Hooghly;
9. Exbt.-5 : Photo copy of letter dated 10.08.2015 addressed by the applicant's advocate to the Principal Secretary, Labour Deptt., Govt. of W.B. and Dy. Labour Commissioner, Chandannagar Labour Office, Hooghly (2 sheets);
10. Exbt.-6 : Photo copy of letter addressed by the Asst. Labour Commissioner, Chandannagar, Hooghly to the Personnel Manager, Samnuggur Jute Factory (North Mill), Bhadreswar, Hooghly with its Memo. Dated 31.08.2015;
11. Exbt.-7 : Photo copy of the order passed in connection with W.P. No. 24403(W) of 2015 passed by the Hon'ble High Court at Calcutta (2 sheets);
12. Exbt.-8 : Photo copy of letter addressed by the applicant to the Dy. Labour Commissioner, Chandannagar Labour Office, Hooghly (3 sheets);
13. Exbt.-9 : Photo copy of the order of the reference of Govt. of West Bengal, Labour Department dated 21.10.2016 (2 sheets).



In course of examination of witnesses on behalf of the Company, the following documents were identified and proved. It is to be mentioned here that in course of examination



of PW1 three separate documents of the Company were identified and proved by the PW1. The exhibited are as follows:-

1. Exbt.-A: Xerox copy of the certified standing orders of the Company (proved by PW1);
2. Exbt.-B: Xerox copy of the Appointment letter of the worker Sri Somnath Das issued by the Company dated 29.07.2010 (proved by PW1);
3. Exbt.-C: Xerox copy of the letter dt. 25.07.2015 issued by the Company addressed to the worker Sri Somnath Das (proved by PW1);
4. Exbt.-D series: Copies of daily labour requisitions & employment;
5. Exbt.-E series: Copies of departmental hazira reports dated 07.06.2014 & 04.01.2015;
6. Exbt.-F: Copy of document regarding gratuity sick leave;
7. Exbt.-G: Copy of leave granting document dt. 05.05.2011;
8. Exbt.-H series: Copies of working notice dated 13.11.2013 & 10.02.2014;
9. Exbt.-I: Copy of daily labour charge-sheet dt. 27.02.2014.

#### **Decisions with reasons**

##### **Issue Number – 1**

In this case, Ld. Advocates of both the parties made argument in support of their respective case. Apart from making oral argument, Ld. Advocates for the parties to this case submitted their written argument.

I would like to note down the Issue No. 1 which was framed by the appropriate Government in the referral order.

*"Whether the dismissal of the workman, Sri Somnath Das by way at long term refusal of employment w.e.f. 25.07.2015 **injustified**?"*

It is fact that the appropriate Government has used the word 'injustified' in the Issue No.1 but it is certain that there is no such word 'injustified' in the English Dictionary. Due to use of the word 'injustified', it can be said that the said Issue No.1 has lost its purpose and intended meaning in the light of the facts and circumstances of this case. As a general rule, while framing issues, the appropriate Government takes into consideration the facts and circumstances of the case as well as pleadings of both the parties. So, in this case also, it is to be supposed reasonably that as a general rule the appropriate Government applied its mind while framing the issues taking into consideration the pleadings of the parties as well as attending circumstances. But unfortunately, in view of use of the word 'injustified' in the Issue No.1 of the Reference, it can be safely said that there was quite non-application of mind by the State Government in making the Reference. However, keeping in mind the negligence due to non-application of mind on the part of the referral authority, it would be most befitting to suppose that the word 'justified' was intended to be used by the State Government, prefixing the word 'is' in the said Issue No.1 and thus ignoring the spelling mistake, the Issue No.1 reads as follows:-



**1. Whether the dismissal of the workman, Sri Somnath Das by way of long term refusal of employment with effect from 25.07.2015 is justified.**

The Issue No. 2 as it appears on the referral Order remains same.

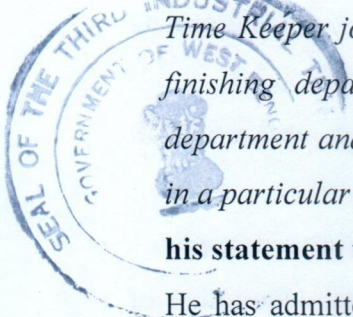
According to the established procedure for the convenience, discussion is made Issue-wise to come to the conclusion and also for making decision on such issues, so framed.

So, it is understood that by way of referring the industrial dispute to this Tribunal, the State Government intended that this Industrial Tribunal would make decision on Issue No.1, by answering whether the dismissal of the workman Sri Somnath Das w.e.f. 25.07.2015 on the ground of long term refusal of employment is justified.

For the sake of making appropriate decision on Issue No.1, we are required to scan the evidence on record.

The workman examined himself as PW1. The witness Sri Somnath Das (PW1) filed his examination-in-chief on affidavit before this Tribunal and he was examined in chief on dock in continuation of his examination-in-chief on affidavit and thereafter he was cross-examined.

PW1 in his examination-in-chief on affidavit has practically reproduced his contention as described in his Written Statement submitted before this Tribunal on 01.03.2017. In the cross examination, he has disclosed that he was working as 'Supervisor' in Somnuggur North Jute Mill since 29.07.2010. He has stated that during the tenure of his service, he drew salary of Rs.4500/- (approx.) and he used to supervise the production and damaged goods of the Company, but virtually his job was that of 'Time Keeper'. It is observed that the PW1 in course of his cross examination has made variation in his statement since he has disclosed that - '*Company used to force me to supervise the work of the production and damaged goods in place and instead of the Time Keeper job*'. Again he has made self contradictory statement - '*I was a Supervisor of the finishing department of the Company where 300 to 400 workmen were in the finishing department and they were working under my supervision as of the Supervisor of the department in a particular shift of working hour*'. He has admitted that **he has no document to substantiate his statement to the effect that 'Darwan' of the Company did not allow him to join his duty.** He has admitted that he did not lodge any complaint or General Diary with the local Police Station over the incident of not allowing him to join his duty by the 'Darwan' of the Company on 25.07.2015. **In the examination in chief** on affidavit (Paras 4 & 5), he has stated that suddenly the Company served a letter on him on 25.07.2015 and immediately on receipt of the said letter dated 25.07.2015, he approached the OP/Company to clarify the matter but unfortunately, **the Company/OP denied his entry into the factory premises in utter violation of terms and conditions** of the appointment letter. He has disclosed that he submitted the document to show that he was a permanent employee of the Company and his date of birth is 07.09.1964. He has admitted that neither the Company asked him to deposit the amount equivalent to the alleged misappropriated sum of Rs.9,00,000/- nor he deposited such amount. He has again admitted that neither the Company terminated him nor dismissed him from service. He has disclosed that on 25.07.2015, the Company refused him to continue with the employment. He has **admitted** that he has not filed any document to that effect in this case. He has disclosed that Company refused him employment by way of not allowing him to enter into the premises of the Company and





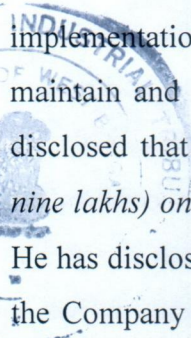
further he has stated that 'Darwan' stopped him from entering into the premises of the Company. He has failed to disclose the name of the said 'Darwan' of the Company. He has reiterated that on 25.07.2015 at about 5.30 a.m. he went to the premises of the Company in connection with his employment, but he was not allowed to do so. He has admitted that he did not lodge any General Diary with the Police against the Company in the matter of refusal of his employment.

The Company i.e. Aditya Translink Pvt. Ltd. (Unit - Samnuggur Jute Factory North Mill), Bhadreswar has adduced three witnesses in support of its contention as disclosed in the Written Statement.

OPW 1 Sri Subrata Mukherjee, Personnel Officer, of the Company M/s. Aditya Translink Pvt. Ltd. He has stated that his nature of work is to look after the labour related matters, Provident Fund, ESI and Administration etc. He has disclosed that he knows the applicant Sri Somnath Das, who was working as a 'Supervisor' under the Company and that applicant was appointed by way of issuance of appointment letter. He has proved the photo copy of the appointment letter dated 29.07.2010 issued by M/s. Aditya Translink Pvt. Ltd. in favour of Sri Somnath Das. He has proved the photo copy of the Certified Standing Order of the Company. He has disclosed in his Examination-in-Chief on Affidavit that at all material time, applicant Sri Somnath Das was working as 'Supervisor' under the Company and according to his job, he was entrusted to look after and supervise the quantity and quality of the products produced by the workers under him. It is also mentioned that Sri Somnath Das used to look after the implementation of proper planning of the Company. It is stated by him that the applicant Sri Somnath Das used to maintain and supervise the attendance of the workers in the department under him. He has stated that applicant Sri Somnath Das committed offence of cheating in respect of amount of Rs.9,00,000/- (Rupees nine lakh) by way of 'tampering false attendance of the Company.' He has disclosed that the applicant i.e. the said 'Supervisor' was directed on 25.07.2015, in writing by the Company to deposit said amount of Rs.9,00,000/- to the Cash Office of the Company but he did not deposit such sum of Rs.9,00,000/-. He has confirmed that the Company never refused the employment of the applicant Sri Somnath Das. It is also stated that the applicant refrained from attending duty on and from 25.07.2015 and still he has been absenting from his duty. During cross-examination he has disclosed that jute products are manufactured in their Company. He has reiterated that the applicant used to maintain attendance register of the workman as he was a 'Time-Keeper'. He has **admitted** that in page no. 3 of his examination-in-chief on affidavit, he did not mention the process through which the applicant Sri Somnath Das committed cheating and thereby misappropriated cash of Rs.9,00,000/- by 'tampering false attendance'. He has again admitted that no complaint was lodged at any Police Station over the said allegation of cheating and misappropriation of amount of Rs.9,00,000/- by the applicant Sri Somnath Das. He has given confirmation that he can produce documents from which it can be proved that the said Somnath Das misappropriated an amount of Rs.9,00,000/- by way of cheating. He has admitted that actually no document had been filed by the Company before this Tribunal till the date of his evidence. He has disclosed that he joined in the Company in the year 2016 and he gathered knowledge about the fact of the instant industrial dispute after going through the documents of the case record but he has no personal knowledge beyond the case record. Upon going through Exbt.-3 he has disclosed that Sri Somnath Das gave reply to the



letter dated 25.07.2015 (Exbt.-C), but he cannot say whether the Company sent reply to the letter (Exbt.-3). **He has categorically disclosed that since the workman was not terminated**, there is no question of issuance of any letter from the Company to the workman requesting him to join the duty. **Again he has categorically disclosed that since the workman was not terminated, he is still in service till today** (the date of his deposition) and if the said workman intends to come to the Company to join duty, the Management is ready to allow him to join in the Company for the purpose of performing duty. In the cross-examination he has admitted that he has not brought document to prove the factum of misappropriation of Rs.9,00,000/- by the applicant Sri Somnath Das. He has admitted that the Company did not file any document regarding the duties assigned to Sri Somnath Das. He has admitted that they have not filed any document to show that Sri Somnath Das was assigned the duty to supervise the quality and quantity of the products of the Company and also to look after the implementation of the planning of the Company. He has admitted that they have not filed any document regarding assignment of duty upon Sri Somnath Das for maintaining and supervising the attendance of the workers of the department under him. He has disclosed that – *“Letter of termination of service as per Clause 13 of the Standing Order of our Company was served upon Sri Somnath Das by our Company probably on 25<sup>th</sup> July, 2015”*.



OPW 2, Sri Bhaskar Bandyopadhyay has stated that he has been working as ‘Supervisor’ under M/s. Aditya Translink Pvt. Ltd. since November, 2009. He has disclosed that he knows Somnath Das, Supervisor of the Company, who was appointed on 01.08.2010. He has disclosed that Somnath Das all along worked as ‘Supervisor’ under the Company and he was also entrusted with the duty of Planner. He has disclosed that Somnath Das used to look after the implementation of proper planning of the Company. He has disclosed that Somnath Das used to maintain and supervise the attendance of the workmen in the Department under him. He has disclosed that – *“Somnath Das forfeited and cheated funds of a sum of Rs.9,00,000/- (Rupees nine lakhs) only in the Company Cash Office by tampering false attendance maintained by him”*. He has disclosed that on 25.07.2015, while Somnath Das was entering into the factory premises, the Company asked him to deposit a sum of Rs.9,00,000/- (Rupees nine lakhs) only within 7 (seven) days by a letter dated 25.07.2015 but he did not deposit such sum of Rs.9,00,000/- (Rupees nine lakhs) to the Company’s account and also Somnath Das did not turn up to the factory to perform duty on his own volition. He has disclosed that the Company follows the certified Standing Orders. He has disclosed that the Company did not refuse the employment of Somnath Das. He has disclosed that Somnath Das skipped attending to his duty after 25.07.2025.

The OPW 2 has disclosed that Somnath Das used to prepare “daily labour requisition and employment note.” He has proved copies of daily labour requisition and employment note dated 08.06.2014. He has proved the copies of ‘Departmental Hazira Reports’ dated 07.06.2014 and 04.01.2015. He has proved some other documents in course of his examination in chief before this Tribunal on dock.

During cross-examination, he has admitted that he cannot recollect the salary of Somnath Das at the time of his ‘termination’ but after delivering such statement he *voluntarily disclosed*



that Company did not terminate Somnath Das. He has disclosed that he is also a Supervisor of the Company and he looks after the implementation of planning of the Company.

The OPW 2 after going through the Exbt.-B has admitted that according to the appointment letter of Somnath Das, he was not appointed as 'Planner'. He has admitted that they did not file any document to show that Somnath Das used to perform the task of planner.

He has admitted that the Company did not file any document to show that Somnath Das tampered 'attendance' falsely. He has further admitted that there was no mention in the Notice dated 25.07.2015 about the workers, whose attendance were falsified. He has admitted that the Company used to pay the wages to the workers in cash and payment of wages to the workers was being done by Somnath Das. He has admitted that the Company has not filed any document to show that Somnath Das used to make payment of wages to the workers. He has denied his knowledge whether Company had allotted duty to Somnath Das to make payment of wages to the workers.

He has admitted that no complaint was lodged with local P.S. over the allegation of cheating of Rs.9,00,000/- against Somnath Das. He has admitted that no case was filed against Somnath Das for recovery of such amount of Rs.9,00,000/-. He has admitted that no Charge Sheet was issued against Somnath Das.

The OPW 3 Sri Anil Kumar Das has deposed that he has been working under M/s. Aditya Translink Pvt. Ltd. as Security Personnel of the Mill since 1990 and his duty is to look after the Company's property and security at the entrance and exit gates of the Mill. He has deposed that he knows Somnath Das, who was a Supervisor and Time Keeper of the Company. He has disclosed that Somnath Das forfeited funds of Rs.9,00,000/- only from the Company's Cash Office 'by tampering false attendance/wages maintained by him.'

He has disclosed that he was on duty at the gate of the Mill on 25.07.2015 and on that date Somnath Das came at the Mill during B shift duty at about 5.00 p.m. and also entered into the factory premises for his duty. He has disclosed that so far his knowledge goes, Somnath Das was served a letter by the Management and Somnath Das received the said letter after 5.00 p.m. and thereafter Somnath Das did not go to perform his duty but left the Mill premises along with the said letter on his own volition. He has deposed that Somnath Das had skipped to attend his duty from 25.07.2015 on his own volition and thereafter he did not turn up to the factory premises.

During cross-examination, he has admitted that he attended the Tribunal to depose on behalf of the Company in the official capacity. During cross examination, he has admitted that there are several departments of the factory for different types of works. He has disclosed that working hours of the factory is round the clock and there are three shifts of duty for the workers of the factory. He has disclosed that there are separate 'Time Keepers' for each and every department of the factory to maintain duty registers of the workers for each and every shift. He has divulged that Somnath Das was the Time Keeper of the 'Finishing Department' of the factory. He has divulged that Somnath Das had performed his duty as 'Time Keeper' of Finishing Department for 5/6 years before cession/cessation of employment. He has admitted his paucity of knowledge regarding how many workers were at the Finishing Department while Somnath Das was engaged there as Time Keeper. He has admitted that he has no idea about the



contents of the Exbt.-C. He has again admitted that he has no personal knowledge about the allegation against Somnath Das regarding forfeiture of funds of Rs.9,00,000/- from Cash Office by way of tampering false attendance of the wages maintained by him. He has admitted that he did not make any enquiry personally to ascertain the truth behind the allegation that Somnath Das tampered false attendance/wages maintained by him.

This is a referred industrial dispute by the appropriate Government u/s 10 read with section 2A of the Industrial Disputes Act, 1947. The instant industrial dispute has been referred to this Industrial Tribunal for proper adjudication of the 'Issues', which have already been framed by the appropriate Government in the 'Order of Reference'.

After careful scrutiny of the evidence of PW1 as contained in his examination in chief on affidavit as well as his examination in chief before the Tribunal on dock, it is surfaced that he (Somnath Das) was a permanent employee of M/s. Aditya Translink Pvt. Ltd. (Unit: Somnuggur Jute Factory, North Mill), Bhadreswar, Dist. Hooghly as he was appointed there as 'Supervisor' w.e.f. 01.08.2010 [vide Appointment Letter dated 29.07.2010 (Exbt.-B)] and he had been working there in terms of the Appointment Letter (Exbt.-B) but suddenly the Company served a letter dated 25.07.2015 (Exbt.-C) upon him by the Management of the Company asking him to deposit an amount of Rs.9,00,000/- to the Company's Cash Office within 7 days of the receipt of the said letter otherwise the Management would take criminal proceeding against him on the allegation that he cheated Rs.9,00,000/- by tampering false attendance. It is surfaced from the evidence in chief on affidavit that he (PW1) has disclosed that on receiving the letter dated 25.07.2015, he approached the OP/Company to clarify the matter but it denied him entry into the factory premises in utter violation of terms and conditions of the appointment letter. The PW1 time and again has reiterated that on and from 25.07.2015, the OP/Company has denied his entry into the factory premises unauthorizedly and illegally since the OP/Company never issued any formal show cause notice or suspension letter to him. It is surfaced from his evidence that he actually has made allegation against the OP/Company regarding denial of his employment by the Management of the OP/Company on and from 25.07.2015.

From the trend of the cross-examination of PW1 by the OP/Company it is revealed that the OP/Company has outrightly denied the allegation of refusal of employment of PW1 by it. It is also revealed from the trend of the cross-examination of PW1 that the OP/Company has outrightly denied the allegation of 'termination' of PW1 from his service of the Company.

On perusal of the cross-examination of PW1, it is evident that the OP/Company has become successful to extract from PW1 that he has little bit knowledge of English and he has knowledge about the contents of the Written Statement filed by him in this case. It is found from the cross-examination of PW1 that he has made statement to the effect – *'Not a fact that the Company asked me to repay the said amount of Rs.9 lakhs.'* **He has denied the suggestion** of the OP/Company that show cause notice was served upon him and/or the Company sought his clarification in the matter of return of money amounting to Rs.9 lakhs which was allegedly misappropriated/cheated. In course of cross-examination, the PW1 has admitted that he has no document to substantiate his statement to the effect that Darwan of the Company did not allow him to join his service. It has been extracted from the PW1 by cross examination that **neither the Company asked him to deposit the alleged misappropriated fund of Rs.9 lakhs nor he**



**deposited such amount.** He has admitted in his cross examination that Company neither terminated him from his service nor was he dismissed from his service. The PW1 in an unequivocal language has admitted that he wrote in the letter addressed to the Deputy Labour Commissioner, Chandannagar (Exbt.-1) that as per the policy of the Company his main duty as a 'Supervisor' was to look after and supervise the quality and quantity of the product produced by the workmen and to implement the Management's policy. He has disclosed clearly that he did not file any document to establish that on 25.07.2015, the Company refused him to continue with his employment. The PW1 in course of his cross-examination has failed to disclose the name of the Darwan of the Company as well as he has admitted that he did not lodge any General Diary against the Company before the nearest Police Station over the allegation that the Company refused his employment.

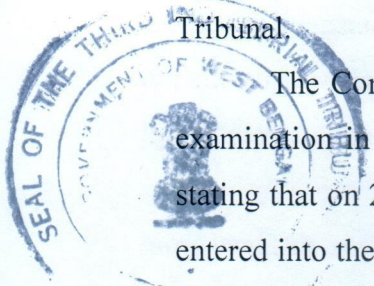
The OPW1 in his examination in chief on affidavit **has corroborated the version** of the PW1 that he (PW1) was working as Supervisor of the Company as well as he used to look after the implementation of the proper planning of the Company. The OPW1 in his examination in chief on affidavit has supported the case of the Company that *'Somnath Das cheated and forfeited by tampering false attendance Rs.9,00,000/- (Rupees nine lacs) of the Company.'* During cross examination, the OPW1 has divulged that no complaint was lodged at any Police Station over the matter of alleged cheating and misappropriation of money of Rs.9 lacs by Sri Somnath Das. He has also admitted that the Company did not file document to establish that Somnath Das misappropriated cash of Rs.9 lacs of the Company by way of cheating. **In course of the cross examination the OPW1** has divulged that **since the workman was not terminated, there was no question of issuance of any letter** from the Management of the Company with the request to Somnath Das to join his duty. Again he **in the cross-examination** in an unequivocal language has given confirmation that since the workman was not terminated, it is deemed that the workman is still in service and if the said workman intends to join his duty under the Company, the Management is ready to allow him to join his duty. It is surfaced from the evidence of OPW1 that during cross-examination the Ld. Advocate for the workman has extracted some statements/versions, which directly go against the case of the workman i.e. all those statements cause damage to the case of the workman. The OPW1 in course of his cross-examination has divulged that the workman was not at all terminated and thus, there was no question of issuance of any letter from the Company to the workman asking him to join his assignment as well as it is deemed that the workman is still in service of the Company and thus, the workman is free to join his duty etc. So, all those statements of OPW1 extracted by the Ld. Advocate for the workman in course of the cross-examination have got strong evidential value and all those statements cause severe damage to the case of the workman.

It is revealed from the evidence of the OPW2 Sri Bhaskar Bandyopadhyay that he has been working under the Company i.e. M/s. Aditya Translink Pvt. Ltd. as Supervisor but he has been promoted to the post of Senior Assistant. In his examination in chief, he has corroborated the case of the Company that Somnath Das was a 'Supervisor' of the Company. He has divulged that his job is to look after the production, quality control, planning, labour related matters and matter relating to PF and Gratuity. According to his version, Somnath Das was entrusted with the duty of Supervisor as well as Planner. It has been revealed from the evidence of the OPW2 that



the duty of Somnath Das was to some extent similar to his duty. He has supported the case of the Company by stating that Somnath Das on 25.07.2015 entered into the premises of the Company and received one letter dated 25.07.2015 issued by the Company and thereafter Somnath Das did not turn up to attend his duty. In the examination in chief on affidavit, the OPW2 has corroborated the case of the Company by stating that the employment of Somnath Das was not refused by the Company but Somnath Das on his own volition did not attend his duty.

During cross-examination, the OPW2 made voluntary statement that Company did not terminate Somnath Das and further he has divulged that Somnath Das was not given duty in the Cash Office. In the cross-examination, he has supported the version of the OPW1 by stating that no complaint was lodged with any Police Station against Somnath Das for cheating of Rs.9 lacs. It is found that the Ld. Advocate for the workman has failed to demolish the version of the OPW2 which he made in his examination in chief on affidavit corroborating the case of the Company. Consequently, the version of the OPW2 has corroborated the case of the Company that the workman voluntarily skipped to attend his duty after receiving the letter dated 25.07.2015 issued by the Management to him. It is very much surfaced that the OPW2 in his deposition has stated that the Company did not refuse the employment of Somnath Das as well as the Company did not terminate him from his service but such evidence of OPW2 remains unassailed as well as unchallenged after being cross-examined by the Ld. Advocate for the workman. It is clear that the workman by way of cross-examining the OPW2 has failed to shake the credibility of the OPW2 because the workman has miserably failed to impeach the credibility of OPW2. Thus, it can be said that the evidence of OPW2 emerges as reliable in the eye of the Tribunal.



The Company adduced the 'Darwan' Sri Anil Kumar Das as OPW3. The OPW3 in his examination in chief on affidavit has supported the version of PW1 and other two OPWs by stating that on 25.07.2015 while he was on duty at the Mill gate the workman Sri Somnath Das entered into the factory for attending duty and a letter was served upon him by the Management. He has supported the case of the Company as well as the version of other two OPWs by stating that Somnath Das skipped to attend duty on and from 25.07.2015 on his own will. During cross-examination he has divulged that Somnath Das was engaged in B-shift duty like him and he has denied the suggestion of the workman that Somnath Das was engaged in A-shift duty on 25.07.2015. He has reiterated during cross-examination that on 25.07.2015 just before 5 p.m. he had seen Somnath Das enter into the factory premises through the main gate. On perusal of the evidence of the OPW3, it is revealed that the Ld. Advocate for the applicant Sri Somnath Das has failed to demolish the version of the OPW3 that on 25.07.2015, the applicant Sri Somnath Das came to factory through Mill gate to attend to his B-shift duty. It is clear that the workman by way of cross-examining the OPW3 has failed to shake the credibility of the OPW3. The OPW3 is a Darwan and naturally it is not expected from him to have knowledge about the activities happening inside the workplace of the factory as well as other official matters including administrative matters.

Upon considering the Written Statement of the applicant Sri Somnath Das and the evidence of PW1, it is churned out that Sri Somnath Das was appointed by Aditya Translink Pvt. Ltd. on 29.07.2010 as 'Supervisor' with effect from 01.08.2010 on certain terms and conditions.



Accordingly the applicant Sri Somnath Das had been working under the said Company as Supervisor. It is revealed from the Written Statement submitted by Sri Somnath Das that he used to work as 'Time Keeper' but no financial duty was entrusted upon him. Further he has mentioned that according to the policy of the Company he had to supervise the quality and quantity of the products produced by the workman and to implement the policy of the Management. The applicant being the PW1 has corroborated the Written Statement by stating that he used to work as Time Keeper as well as to supervise the quality and quantity of the products produced by the workmen and to implement the policy of the Management. His grievance is that after serving a letter on 25.07.2015 on him, his entry to the factory premises was denied and thus, he was terminated from his service with some ulterior motive. On the other hand, it is revealed from the Written Statement submitted by the Company that Somnath Das was working as Supervisor of the Company and he was not a workman. The Management of the Company served a 'Notice' upon the applicant Somnath Das but that Supervisor was neither dismissed from his service nor his employment was refused. It has been categorically stated that after receiving letter/notice dated 25.07.2015, the applicant Sri Somnath Das did not turn up to attend his duty on his own volition.

On scrutiny of the evidence of the PW1 it is evident that he has admitted about the lack of having any document to substantiate his statement to the effect that Darwan of the Company disallowed him to join his duty as well as it has been admitted that he did not lodge any complaint or diary with the local Police Station against the Darwan on the allegation that he was not allowed to join duty on 25.07.2015. It is surfaced from his evidence that he has admitted the fact that the Company did not ask him to deposit the alleged misappropriated fund amounting to Rs.9 lacs and also he did not deposit such amount. It is to be noted here that the PW1 during his cross-examination in an unequivocal language had admitted that **Company neither terminated him nor dismissed him from his service.**

So, it is now crystal clear that PW1 in his cross-examination has corroborated the version of the Company that he (Somnath Das) was not terminated from his service and it is deemed that he is still in service. Further, the version of the Company (as it surfaced from the Written Statement submitted on behalf of it as well as from the evidence of the OPW1 and OPW2) that the workman was never terminated from his service of the company at any point of time and if the workman intends to join his duty the Management is ready to allow him to join in his duty. So, without hesitation it can be said that the PW1 by his admission has given a death blow to his case that he was terminated from his service as well as the Company refused his employment.

Now, after travelling through the pleadings of the parties i.e. the version and/or contention of the parties as it is disclosed from the Written Statements of the parties, it is realized undoubtedly that the workman has claimed that his service was 'terminated' by the Company with some ulterior motive on and from 25.07.2015 by way of denying his entry to the factory premises of the Company and the workman also alleged that no formal show cause notice or termination letter was issued by the Company, whereas the Company raised question about the maintainability of the instant case started on the basis of 'Reference' by the State Government on the ground that the said applicant was appointed as Supervisor and accordingly the said applicant is supposed not to be qualified as a 'Workman' according to the provision of Section 2(s) of the



Industrial Disputes Act, 1947. Moreover, the Company has specifically averred that the applicant Somnath Das was never dismissed from his service as well as his employment was never refused by the Company but the applicant voluntarily did not turn up at the factory to attend his duty after 25.07.2015 although the said applicant Somnath Das was served a letter on that date asking him to deposit a sum of Rs.9 lakhs within 7 days in the Company's Cash Office. Parties to this case adduced evidence in support of their respective case. It is needless to mention here that it was the incumbent duty of the applicant Somnath Das to prove its case of industrial dispute since onus of proving the case was on his shoulder. The applicant Somnath Das examined himself as PW1. Thus, he deposed in support of his case with a view to prove the allegation leveled by him against the Company. He did not adduce any other witness in support of his case i.e. he did not adduce any corroborative evidence on his behalf. On scrutiny of evidence, both oral and documentary, on record, it is surfaced that the foundation of the instant industrial dispute raised by the applicant Somnath Das i.e. the main issue of alleged 'dismissal' of the applicant Somnath Das from his service by the Company w.e.f. 25.07.2015 on the ground of long term refusal of employment, has not been admitted or corroborated by the witnesses adduced on behalf of the Company i.e. by OPW1, OPW2 and OPW3, apart from the fact that the Company in its Written Statement has categorically denied such allegation of 'dismissal'. It is crystal clear that Exbt.-2 is **not** a dismissal letter issued by the Management of the Company to the applicant. There is no averment in the Written Statement of the workman that he took shelter of the law enforcing agency i.e. he lodged complaint with the local police station against the alleged act of denial of his entry to the factory premises by the management of the Company. During cross-examination, the PW1 categorically stated that he did not lodge any diary against the company with police station concerned with the matter of refusal of his employment. Moreover, the PW1 in his cross examination has categorically disclosed that he has not filed any document to show that on 25.07.2015, the company refused to allow him to continue with his employment. Moreover, as mentioned in the above that in course of cross examination, the PW1 has divulged in an unequivocal language that the Company neither terminated nor dismissed his service. Also he disclosed that Company never asked him to deposit a sum of Rs.9 lakhs as well as he did not deposit such amount. The specific case of the Company that the Management never dismissed the applicant Somnath Das from his service as well as the Management of the company never refused the employment of the applicant Somnath Das, is well transpired from the Written Statement submitted on behalf of the Company and the contention of the Company is practically established from the statements of the witnesses of the Company, particularly from the statements of OPW1 and OPW2 which they divulged during their cross-examination by the Ld. Advocate for the applicant Somnath Das.

The Hon'ble Justice Anjani Kumar of Allahabad High Court in the Civil Misc. Writ Petition No. 35156 of 1996, reported in [2002 (95) FLR 1058] has been pleased to observe that –  
*"But in view of the admitted facts that the employer themselves have admitted that they have not terminated the services of the concerned workman and his names is still continuing on the rolls of the employer, in my opinion, the labour Court has travelled beyond the pleadings of the parties and arrived at the conclusion referred to above. Once the employer have admitted that they have not terminated the services of the concerned workman, the labour Court should*



*have stopped there and answered the reference that since it is the employers' own case that they have not terminated the services of the concerned workman, therefore, there is no necessity of adjudicating whether his services were terminated or not and whether termination is legal and justified or not?"*

The above referred observation of the Hon'ble Allahabad High Court is found as a most befitting observation in the matter of making decision of this instant case since the facts and circumstances of this instant case has most conspicuous similarity with the decision made by the Hon'ble Allahabad High Court in the matter of Civil Misc. Writ Petition 35156 of 1996.

Ld. Advocates for both the parties made detailed argument and they submitted respective written argument. Both the Ld. Advocates have relied upon various 'Decisions' in support of their contentions. In fact, I have carefully read all those valuable 'Decisions' as supplied by the Ld. Advocates but in view of the facts and circumstances of this case and in view of the trend of finding of this Tribunal and in view of the Decision of Hon'ble Allahabad High Court, as cited above, my humble opinion is that the Decisions so far cited by the Ld. Advocates of the parties to this case are not directly on the point and thus, those Decisions would have no application in the facts of the present case. Accordingly, my humble submission is that the authorities cited by the parties to this case are not found as material for making decision in this case.

In view of the above discussion and in view of the Decision of Hon'ble Allahabad High Court, on which reliance is placed, there is no necessity for adjudicating whether the service of the employee (Supervisor) Somnath Das was dismissed or not on the alleged ground of refusal of employment on the ground that the Company's/Employer's own case is that they never dismissed their employee (Supervisor) Somnath Das from his service as well as they never refused employment of the applicant Somnath Das and accordingly this Tribunal is required to stop here. In view of the Issue No.1 so framed on the Referral Order, it can be safely said that the State Government made the Referral Order and framed such Issue No.1 mechanically, without considering the documents placed before it earlier as well as without going into the merits of such documents and contention of the applicant and the company. Thus, the Issues so framed by the State Government in the Reference are disposed of accordingly. In view of the above discussion, it is evident that the 'Reference' made by the appropriate Government is not maintainable.

Hence,

it is

### ORDERED

that the instant case of industrial dispute arising out of 'Reference' by the appropriate Government is not maintainable.

This is the award of this Industrial Tribunal in this case.

Copies of this Award be sent to the Labour Department, Government of West Bengal in accordance with usual norms and rules.

Sd/-

Dictated & corrected

Judge

Judge

3rd Industrial Tribunal  
Govt. of West Bengal

Sd/-

Judge

Third Industrial Tribunal

Kolkata - 1

Judge

3rd Industrial Tribunal  
Govt. of West Bengal