

I/399085/2023

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/. 419 . . . / (LC-IR)/

Date: 25/05/ 2023

**ORDER**

—  
WHEREAS an industrial dispute existed between M/s. Simulia Samabay Krishi Unnayan Samity Limited, Bhimeswari Bazar, Purba Medinipur, Pin - 721458 and Sri Pradip Kumar Maity, S/o Basanta Maity, Vill. - Simulia, P.S. - Bhimeswari Bazar, Dist. - Purba Medinipur, Pin - 721458 regarding the issue, being a matter specified in the second schedule to the Industrial Dispute Act, 1947 (14 of 1947);

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

AND WHEREAS, Second Labour Court, Kolkata heard the parties under section 10(1B) (d) of the I.D. Act, 1947 (14 of 1947).

AND WHEREAS Second Labour Court, Kolkata has submitted to the State Government its Award under section 10(1B) (d) of the I.D. Act, 1947 (14 of 1947) on the said Industrial Dispute.

Now, THEREFORE, in pursuance of the provisions of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Governor is pleased hereby to publish the said Award dated 12/04/2023 as shown in the Annexure hereto vide memo no. 551 - L.T. dated - 11/05/2023.

**ANNEXURE**

( Attached herewith )

By order of the Governor,

Sd/-

Assistant Secretary  
to the Government of West Bengal

1/399085/2023

No. Labr/ 419/1(5) / (LC-IR)

Date: 25/05/ 2023

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

1. M/s. Simulia Samabay Krishi Unnayan Samity Limited, Bhimeswari Bazar, Purba Medinipur, Pin - 721458.
2. Sri Pradip Kumar Maity, S/o Basanta Maity, Vill. - Simulia, P.S. - Bhimeswari Bazar, Dist. - Purba Medinipur, Pin - 721458.
3. The Asstt. Labour Commissioner, W.B. In-Charge, Labour Gazette.
4. The O.S.D. & E.O. Labour Commissioner, W.B., New Secretariat Building, (11<sup>th</sup> Floor), 1, Kiran Sankar Roy Road, Kolkata - 700001.
- ✓ 5. The Sr. Deputy Secretary, IT Cell, Labour Department, with the request to cast the Award in the Department's website.

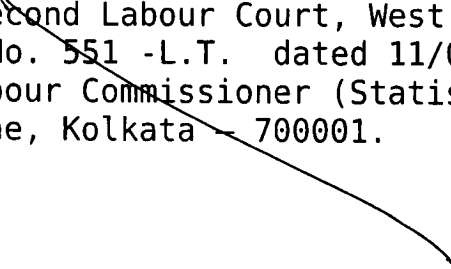
  
Assistant Secretary

No. Labr/ 419/2(2) / (LC-IR )

Date : 25/05/ 2023

Copy forwarded for information to: -

1. The Judge, Second Labour Court, West Bengal, with respect to his Memo No. 551 -L.T. dated 11/05/2023.
2. The Joint Labour Commissioner (Statistics), West Bengal, 6, Church Lane, Kolkata - 700001.

  
Assistant Secretary

4/11/22  
Amranda  
26/05/2023

In the matter of an application u/s. 10(1B)(d) of the Industrial Disputes Act, 1947 filed by Sri Pradip Kumar Maity, son of Late Basanta Maity, Village Simulia, P.S. Bhimeswari Bazar, District Purba Medinipur, PIN-721458 against M/s. Simuliya SamabayKrishi Unnayan Samity Limited, Bhimeswari Bazar, Purba Medinipur.721458.

**BEFORE THE JUDGE, SECOND LABOUR COURT, KOLKATA**

**Case No. 24/2022 U/s. 10(1B)(d)**

**Present: Shri Argha Banerjee, Judge**  
**Second Labour Court,**  
**Kolkata**

**Date: 12/04/2023**

**AWARD**

This Industrial Dispute between Sri Pradip Kumar Maity, son of Late Basanta Maity, Village Simulia, P.S. Bhimeswari Bazar, District Purba Medinipur, PIN-721458 against M/s. Simuliya SamabayKrishi Unnayan Samity Limited, Bhimeswari Bazar, Purba Medinipur.721458.in respect of the under mentioned issues.

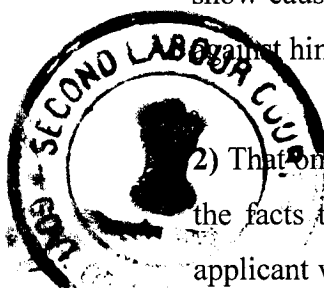
**ISSUES**

- 1) Is the application filed by the applicant u/s. 10(1B)(d) of the I.D. Act (W.B. Amendment) maintainable in Law & Facts?
- 2) Whether the applicant is entitled to get any relief as per Law & Equity?

**CASE OF THE APPLICANT**

1) That the applicant had contended the fact that the instant dispute had arose from an illegal, unjust and malafide dismissal from service on and from 06.11.2016 of the same who was serving as peon of M/s Simuliya Samabay Krishi Unnayan Samity Limited, Bhimeswari Bazar, Purba Medinipur since 2<sup>nd</sup> February, 2001. That, all of a sudden on about 29<sup>th</sup> July 2014 the applicant had received a letter issued by the Secretary of Simuliya Samabaya Krishi Unnayan Samity Limited alleging that on 27<sup>th</sup> July, 2014 during audit of the statement for the month of June, 2014 it was noticed that some amount was misappropriated from the office room and this applicant had been implicated and ashow cause was being issued. The applicant was directed to give his show-cause within 01.08.2014 by 4 P.M failing which appropriate legal action would be initiated against him.

2) That on 31.07.2014 the applicant had given his reply to the show cause notice stating interalia the facts that the same has been falsely implicated an all the allegations levelled against the applicant were false. The applicant had contended the fact that the same was never handling any amount of the said O.P and all the amount was been managed and handled by the Manager. of



*Sd/-*  
Judge  
Second Labour Court W.B.

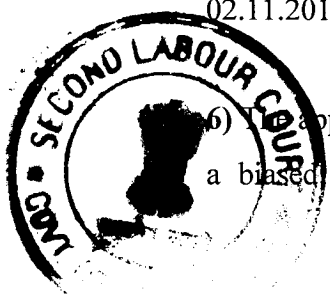
the O.P concern. The applicant had sent another reply to the A.R.C.S. Purba Medinipur-II with a prayer that the same intends to continue his job and a further prayer to continue his small monthly remuneration.

3) That, on or about 12.08.2014 the Secretary of O.P concern had again issued another notice to the applicant alleging some different allegations further stating the fact that the applicant had been suspended from the date of receipt of the letter for his misbehaviour, indiscipline as decided by the Managing Committee on 09.08.2014. That, in the said letter the applicant was also informed about the fact that a disciplinary proceeding had been initiated against him and for that Sri Partha Raj Mishra was appointed as Enquiry Officer. The applicant had given his reply to the said letter and had also sent a copy of his reply to the A.R.C.S Purba Medinipur-II on 18.08.2014 stating the fact that the same has been falsely implicated and all the allegations made by the Secretary were baseless.

4) That the O.P concern had issued a charge sheet to this workman dated 20.02.2015 which as alleged by the applicant was false, filmsy, motivated, unintelligible and fabricated allegations which were far from the truth. The charges were vague and had been framed with a closed mind and also with a view to victimise the applicant. That, the applicant had received the memorandum of charge sheet on 20/02/2015 in English version and upon his request the said charge-sheet was sent in the Bengali version as the applicant failed to understand the same. That, the opposite party company in the said charge sheet had suspended the workman from the service of the company. That the applicant states that he submitted his pertinent reply on 23.02.2015 denying all the allegations made in the said charge sheet.

5) That the applicant further submitted the fact that the same had submitted his pertinent reply on 23.02.2015 denying all the allegations made in the aforesaid charge sheet, yet the management of the company with ulterior motive and malafide intention had instituted a domestic enquiry and accordingly on 01.04.2015 Mr. Partha Raj Mishra, the Enquiry Officer had issued a notice for conducting the enquiry informing the date and time. That, on 17.09.2015 the Inspector of Co-operative Societies, Bhagwanpur-1 Dev. Block had also sent a letter addressing to Secretary, Simulia SKUS Ltd. informing that he would visit the society to conduct the enquiry as per instructions of the A.R.C.S.a Medinipur and a copy of such was also forwarded to the applicant requesting to remain present at the time of enquiry on 22.09.2015 at Office of the society. Accordingly he submitted relevant documents and his statement before the Inspector. The A.R.C.S, personally took a hearing of the secretary of Simulia S.K.U.S. Ltd and applicant on 02.11.2016 at his chamber.

6) The applicant had contended the fact that the company had conducted the domestic enquiry by a biased Enquiry Officer and the same had intentionally failed to record his prayer and



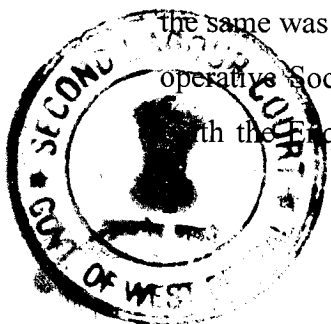
*Sd/-*  
Judge  
Second Labour Court W.B.

submissions at the proceeding of the enquiry which tantamounts to a violation of the principles of natural justice. The Enquiry Officer recorded the evidences as per dictation and sweet will of the management. The applicant further states that the Enquiry Officer has neither explained the procedure of the enquiry that was to be adopted by him nor any list of documents, list of witnesses of the management was supplied to him. The applicant states that he had requested the enquiry officer to conduct the enquiry in Bengali as because he does not know English and the enquiry officer had not also read over and explained the day today proceeding of the enquiry to the applicant.

7) That the applicant states that the purported enquiry was neither fair nor proper as the same was held according to the sweet will of the management and the same was not given proper and reasonable opportunities to defend his case. The alleged domestic enquiry was held in a manner wholly contrary to the principles of natural justice and could not be considered as fair at all for the following amongst other reasons:-

1. That the Enquiry Officer was not competent to hold the enquiry. He was fully biased. He has acted in excess of his jurisdiction and completely misdirected himself both in the matter of conducting the enquiry as well as giving the findings thereto.
2. The Enquiry Officer twisted the facts of the case in favour of the management denying natural justice and fair play to the workman.
3. No copies of documents were furnished to the charge sheeted workman before enquiry.
4. The Enquiry Officer acted as per sweet will of the management. The enquiries do not stand scrutiny and is nothing but an empty formality. He was not given proper, effective and reasonable opportunity to defend his case. The Enquiry Officer nakedly violated the principles of natural justice..
5. That there were infirmities also in conducting the domestic enquiry, which will be cited by the workman at the time of hearing.
6. The applicant states that he was not paid subsistence allowance during the period of suspension, which is mandatory and as such he could not properly and effectively contested the enquiry.

8) After long wait applicant was not informed about the decision of the authorities. He made several request to the concerned authority to let him know the final decision in regards to his service and paid his dues remuneration and also requested to withdraw the order of suspension dated 12.8.2014 and allow him to join his duty. The applicant had further contended the fact that the same was not supplied with any enquiry report of the Enquiry Officer and/or Inspector of Co-operative Societies. Ultimately, upon filing of several RTI Application the same was supplied with the enquiry report of Inspector of Co-operative Societies wherefrom it was clearly seen



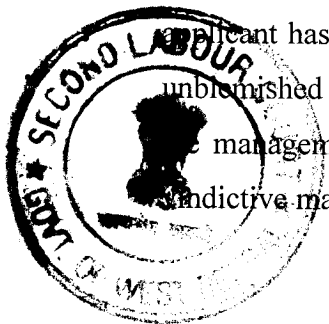
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that the said inspector had arrived at the conclusion that this applicant may be pardoned on condition and recommended for his service may not be terminated.

9) That, the A.R.C.S. by his letter dated 11.11.2016 had informed the Additional Registrar of Co-operative Societies (St. Credit), W.B. that final decision regards to service of Mr. Maity would be taken on next B.O.D meeting schedule to be held on 06.12.2016. In the said letter it was also observed that the decision in regard to the service of applicant (Mr. Maity) should not be kept pending. That on several request and representation made by the applicant to the samity a copy of the enquiry report of the enquiry officer was not supplied to the applicant and order of dismissal was sent to the applicant. That the applicant states that the management has not issued any second show cause notice to the workman before dismissed him from service. The company has not also sent the findings of the Enquiry Officer to applicant inviting his representation on the findings of the Enquiry Officer and as such he could not make his representation. However the findings in whose basis he was dismissed from the service of the company is perverse and not supported by any evidences on record or not in conformity with the alleged charges. In short, the entire proceedings are achieved by malafide, malice and amounts to victimization.

10) That the applicant states that in view of the said improper and invalid enquiry the management through The Secretary of Simuliya Samabay Krishi Unnayan Samity Limited intimated the final decision and dismissed the applicant from service w.e.f. 06.11.2016 by its letter dated 23.02.2017 in violations of all norms of natural justice and also in violation of law. After receiving the dismissal letter the applicant demanded for supply of the Enquiry Report in respect of alleged charge sheet dated 21.02.2015 but the same was not supplied to him. That the applicant had vehemently objected to the arbitrary and illegal action of the management verbally as well as in writing and requested the management for reinstatement him in service with full back wages and other benefits but the management of the said company clung to an unfair instance in the matter. That the management had indulged in an unfair labour practice and administers discipline arbitrarily and vindictively. That the applicant made several calls at the office of the management with demands for restoration of his service as well as the due salaries, but the company refused to act upon.

11) That the applicant states that the said uncalled-for, illegal, unjustified and arbitrary action of the company threw the workman into prolonged unemployment and starvation with the members of the family. The applicant further submits that he is still unemployed. The applicant tried his level best to secure new employment but could not get employment till today. That the applicant has given a skilful service with high precision and untiring zeal which earned him an unblemished record of service and clear carrier to the complete satisfaction of all concerns. That the management of the Samity had indulged in an unfair labour practice and had acted in a vindictive manner. That the applicant sent a demand notice dated 01.03.2017 through his learned



*Sd/-*  
Judge  
Second Labour Court, W.B.

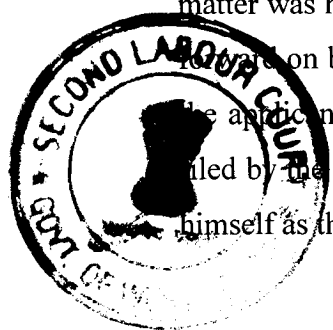
advocate to withdraw the order of dismissal dated 06.11.2016 communicated by letter dated 23.02.2017 and allow him to join his duty within 7 days from the date of received of these presents but the Samity did not care to reply the same nor revoke the dismissal order.

12) That when all persuasions, approaches and demands fell flat because of the most unfair and unjust attitude of the management the applicant by his letter dated 23.03.2017 sponsored an industrial dispute in this respect before the Assistant Labour Commissioner, Government of West Bengal, Contai, Purba Midnapur to intervene into the matter. That the Assistant Labour Commissioner convened a number of joint meetings on several dates but due to adamant attitude of the management the matter could not be settled. Therefore the applicant has no other way but to seek relief before the authority as provided in section 2A(2) of the Industrial Disputes Act, 1947. Thereafter the applicant filed an application under Section 2A(2) of Industrial Disputes Act, 1947 before the learned 2<sup>nd</sup> Labour Tribunal, Kolkata which was registered as Case No. 6/2A(2) of 2017 but the said section was repealed. Therefore the applicant filed an application for withdrawing the said application inter alia praying for liberty to file afresh at the same self cause of action on 05.03.2021. The said application was taken up for hearing by the Learned 2<sup>nd</sup> Labour Court and allowed the same with liberty to file afresh in a self same cause of action on 04.10.2021. Thereafter the applicant by his letter dated 08.10.2021 sponsored an industrial dispute in this respect before the Assistant Labour Commissioner, Government of West Bengal, Contai, Purba Midnapur to intervene into the matter. That the Assistant Labour Commissioner could not be settled the matter. Therefore the applicant has no other way but to seek relief before the authority as provided in section 10 (1)(B) of the Industrial Disputes Act, 1947. That the dismissal of service of the applicant workman is if so fact bad in law, unfair and malafide amounting to shocking injustice to the poor workman.

13) That the applicant had contended the fact that at the material time his salary stood at Rs. 2,500/- month and further submitted that after his illegal dismissal he had mentally suffered a lot and there is no means of earning to maintain his family. That the above is the short history of the dispute and how came up for adjudication. The applicant craves leave to add to, alter, modify, rescind and submit additional or supplementary statement as and when necessary in course of the present proceeding.

#### **EVIDENCE AND EXHIBITS ON THE RECORD**

In the present case the O.P. had not filed any written statement and accordingly the matter was heard ex-parte. The testimony of the P.W.-1 as well as the documentary evidence put on behalf of the applicant has remained uncontroverted and unchallenged. Nevertheless, the applicant is required to prove this case. This Computation case is based on the application filed by the applicants. In the instant application the applicant Pradip Kumar Maity had adduced himself as the sole witness.



Sd/-  
 Secretary, Labour Court, U.B.

That the documents were marked in the following manner: -

**Exhibit – 1** copy of interview letter dated 25.08.2002 issued to Shri Pradip Kumar Maity by Simuliya Samabay Krishi Unnayan Samity Ltd.

**Exhibit – 2** copy of appointment letter dated 26.12.2000 of Shri Pradip Kumar Maity.

**Exhibit – 3** copy of joining letter dated 02.01.2001 of Shri Pradip Kumar Maity in the post of Peon in Simuliya Samabay Krishi Unnayan Samity Ltd.

**Exhibit – 4** copy of show cause notice dated 29.07.2014 to Shri Pradip Kumar Maity by Secretary of Simuliya Samabay Krishi Unnayan Samity Ltd.

**Exhibit – 5** copy of reply dated 31.07.2014 to the show cause notice issued to Shri Pradip Kumar Maity.

**Exhibit – 6** copy of letter dated 01.08.2014 to A.R.C.S. Purba Medinipur-II Contai by Shri Pradip Kumar Maity requesting for continuing his duty as Peon and release his salary.

**Exhibit – 7** copy of second show cause notice and suspension letter dated 12.08.2014 issued to Shri Pradip Kumar Maity.

**Exhibit – 8** copy of letter dated 18.08.2014 addressed to A.R.C.S. Purba Medinipur II Contai issued by Shri Pradip Kumar Maity.

**Exhibit – 9** copy of Memorandum of Charge Sheet dated 20.02.2015 issued by The Secretary of the Samity to Shri Pradip Kumar Maity.

**Exhibit – 10** copy of reply letter dated 23.02.2015 to the Charge Sheet to the A.R.C.S., Purba Medinipur, Contai.

**Exhibit – 11** copy of reply letter dated 02.03.2015 addressed to the Secretary, Simuliya Samabay Krishi Unnayan Samity Ltd.

**Exhibit – 12** I have filed a copy of letter dated 03.03.2015 addressed to the Co-Operative Inspector Bhagwanpur-I Block.

**Exhibit – 13** copy of Notice dated 01.04.2015 issued by Enquiry Officer to Shri Pradip Kumar Maity intimating date, place and time for enquiry.

**Exhibit – 14** copy of letter dated 17.09.2015 addressed to the Secretary, Simuliya Samabay Krishi Unnayan Samity Ltd. by the Inspector of Co operative societies for enquiry in affairs of Shri Pradip Kumar Maity.

**Exhibit – 15** copy of Notice dated 25.10.2016 issued to the Secretary, Simuliya Samabay Krishi Unnayan Samity Ltd by Assistant Registrar of Co-operative Societies, Purba Medinipur-II Range, Contai.

**Exhibit – 16** copy of application dated 25.11.2016 under RTI to Appellate Authority and Assistant Registrar of Co Operative Societies issued by Shri Pradip Kumar Maity.

**Exhibit – 17** copy of application dated 05.12.2016 addressed to The State Public Information Officer of the Co-operation Directorate of Co-operative Audit Midnapur, Contai under RTI Act.

**Exhibit – 18** copy of application dated 27.12.2016 addressed to State Public Information Officer & C.O., Purba Medinipur-II, Contai issued by Shri Pradip Kumar Maity.



Sd/—  
Judge  
Second Labour Court W.B.



**Exhibit – 19** copy of reply dated 04.01.17 of application dated 25.11.2016 under RTI Act.

**Exhibit – 20** copy of Dismissal letter dated 23.02.2017 of Shri Pradip Kumar Maity by Secretary of Simuliya Samabay Krishi Unnayan Samity Ltd.

**Exhibit – 21** copy of Demand Notice dated 01.03.2017 through Ld. Advocate to the Secretary of the Simuliya Samabay Krishi Unnayan Samity Ltd.

**Exhibit – 22** copy of letter dated 23.03.2017 addressed to the Assistant Labour Commissioner, Contai.

**Exhibit – 23** copies of Notices dated 22.05.2017, 28.06.2017 and 19.07.2017 issued by the Assistant Labour Commissioner.

**Exhibit – 24** I have filed copy of pending certificate dated 22.09.2017 issued by conciliation Officer & Assistant Labour Commissioner, Contai.

**Exhibit – 25** I have filed Order Sheets dated 28.11.2017 of an application under section 2A(2) of Industrial Disputes Act, 1947 before the Ld. 2<sup>nd</sup> Labour Court, Kolkata which was registered as Case No. 6/2a(2) of 2017.

**Exhibit – 26** order sheet dated 05.03.2021 for withdrawing the said application under section 2A(2) of Industrial Disputes Act, 1947 interalia praying for liberty to file afresh at the same self cause of action because the section 2A(2) of The Industrial Disputes Act, 1947 was repealed.

**Exhibit – 27** copy of order sheets dated 04.10.2021 of the Ld. 2<sup>nd</sup> Labour allowing the said withdrawal application with liberty to file afresh in a self same cause of action.

**Exhibit – 28** copy of letter dated 08.10.2021 addressed to the Assistant Labour Commissioner, Contai by Shri Pradip Kumar Maity.

**Exhibit – 29** copies of notices dated 16.12.2021, 03.01.2022 & 10.01.2022 issued by Assistant Labour Commissioner.

**Exhibit – 30** copy of Memo dated 03.01.2022 addressed to The Inspector of Cooperative Societies issued by Assistant Registrar of Co-operative Societies.

**Exhibit – 31** copy of letter dated 07.03.2022 before the Assistant Labour Commissioner, Contai.

**Exhibit – 32** copy of letter dated 29.03.2022 issued by Conciliation Officer & The Assistant Labour Commissioner, Contai.

**Exhibit – 33** copy of meeting resolution dated 18.09.2014. It is the said copy.

#### **EVIDENCE ON THE RECORD**

From the ex-parte evidence of the applicant **Sri Pradip Kumar Maity** son of Late Basanta Kumar Maity it is clear that: -

- a) The same was appointed as peon on 2<sup>nd</sup> February, 2001 at Simuliya Samabay Krishi Samati Bazar, Phimeswari Bazar Purba Medinipur and had been serving diligently. The applicant was illegally unjust and malafide dismissed from service on and from 06.11.2016.



*sd/-*  
Second Labour Court, Contai.

b) That, on about 29<sup>th</sup> July 2014 the same had received a letter from the Secretary of Simuliya Samabay Krishi Unnayan Samity Limited alleging that on 27<sup>th</sup> July, 2014 during audit of the statement for the month of June, 2014 it was noticed that some amount had been lost from the office room and for that the same was implicated and was directed to show cause within 01.08.2014 by 16:00 hours otherwise appropriate legal action was to be initiated.

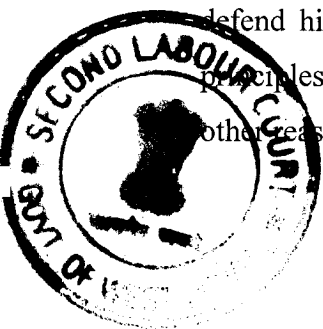
c) That on 31.07.2014 the same had given reply to the show cause notice denying the allegations brought against him and had further submitted that cash was being handled by the Manager of the Samity. The applicant had also sent another reply to the A.R.C.S. Purba Medinipur- II with the prayer that same had wished to continue his job and entitled to his monthly remuneration.

d) That, on or about 12.08.2014 the Secretary of said Samity had issued another notice to this applicant alleging a different allegation that same had been suspended from the date of receipt of the letter for his misbehaviour, indiscipline as decision taken by the Managing Committee on 09.08.2014. In the aforesaid letter the applicant was also informed that a disciplinary proceeding had been initiated against him and for that Sri Partha Raj Mishra was appointed as Enquiry Officer. The applicant had not only given reply to the said letter but had also sent a similar reply to the A.R.C.S. Purba Medinipur- II on 18.08.2014 stating interalia the facts that he has been falsely implicated by the Secretary.

e) That the Management issued a charge sheet dated 20.02.2015 with some false, flimsy, motivated, unintelligible and fabricated allegations and the charges were vague and have been framed with an intention to victimize the applicant. The applicant had received the memorandum of Charge sheet on 20.02.2015 that was in English version, and had requested to translate the charge sheet in Bengali version as the same was not well acquainted with English language. However, the same the same was not supplied to him.

f) That the applicant had sent a reply on 23/02/2015 denying all the allegations made out against him yet such reply was turned down by the O.P management. That, on 01/04/2015 the Enquiry Office Mr. Partha Raj Mishra had issued a notice informing the date and time when the enquiry shall be conducted. The enquiry officer was biased and had not recorded the prayer and submissions during the entire proceeding and had acted in favour of the O.P concern.

g) That the purported enquiry was neither fair nor proper as the same was held according to the sweet will of the management and the same was not given proper and reasonable opportunities to defend his case. The alleged domestic enquiry was held in a manner wholly contrary to the principles of natural justice and could not be considered as fair at all for the following amongst other reasons:-



*Sd/-*  
Judge  
Second Labour Court W.B.

*i) That the Enquiry Officer was not competent to hold the enquiry. He was fully biased. He has acted in excess of his jurisdiction and completely misdirected himself both in the matter of conducting the enquiry as well as giving the findings thereto.*

*ii) The Enquiry Officer twisted the facts of the case in favour of the management denying natural justice and fair play to the workman.*

*iii) No copies of documents were furnished to the charge sheeted workman before enquiry.*

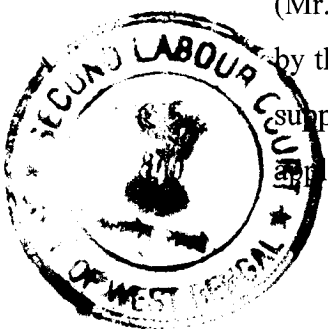
*iv) The Enquiry Officer acted as per sweet will of the management. The enquiries do not stand scrutiny and is nothing but an empty formality. He was not given proper, effective and reasonable opportunity to defend his case. The Enquiry Officer nakedly violated the principles of natural justice.*

*v) That there were infirmities also in conducting the domestic enquiry, which will be cited by the workman at the time of hearing.*

*vi) The applicant states that he was not paid subsistence allowance during the period of suspension, which is mandatory and as such he could not properly and effectively contested the enquiry.*

**h)** That the applicant was not informed about the decision of the authorities and the same had made several request to the concerned authority to let him know the final decision in regards to his service and paid his dues remuneration and also requested to withdraw the order of suspension dated 12.8.2014 and allow him to resume his duties. The applicant had further sated that the same was not supplied with any enquiry report of the Enquiry Officer and/or Inspector of Co-operative Societies. Ultimately, upon filing of several RTI Application the same was supplied \with the Enquiry report of Inspector of Co-operative Societies wherefrom it was clearly seen that the said inspector had arrived at the conclusion that this applicant may be pardoned on condition and recommended for his service may not be terminated.

**i)** That, the A.R.C.S. by his letter dated 11.11.2016 had informed the Additional Registrar of Co-operative Societies (St. Credit), W.B. that final decision regards to service of Mr. Maity would be taken on next B.O.D meeting schedule to be held on 06.12.2016. In the said letter it was also observed that the decision in regard to the service of applicant (Mr.Maity) should not be kept pending. That on several request and representation made by the applicant to the samity a copy of the enquiry report of the enquiry officer was not supplied to the applicant and order of dismissal was sent to the applicant. That the applicant states that the management has not issued any second show cause notice to the

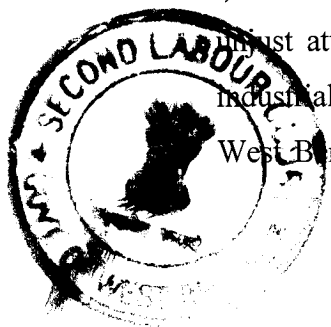


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workman before dismissed him from service. The company has not also sent the findings of the Enquiry Officer to applicant inviting his representation on the findings of the Enquiry Officer and as such he could not make his representation. However the findings in whose basis he was dismissed from the service of the company is perverse and not supported by any evidences on record or not in conformity with the alleged charges. In short, the entire proceedings are achieved by malafide, malice and amounts to victimization.

- j) That applicant stated that in view of the said improper and invalid enquiry the management through The Secretary of Simuliya Samabay Krishi Unnayan Samity Limited intimated the final decision and dismissed the applicant from service w.e.f. 06.11.2016 by its letter dated 23.02.2017 in violations of all norms of natural justice and also in violation of law. After receiving the dismissal letter the applicant had demanded for the supply of the Enquiry Report in respect of alleged charge sheet dated 21.02.2015 but the same was not supplied to him. That the applicant had vehemently objected to the arbitrary and illegal action of the management verbally as well as in writing and requested the management for reinstatement him in service with full back wages and other benefits but the management of the said company clung to an unfair instance in the matter. That the management had indulged in an unfair labour practice and administers discipline arbitrarily and vindictively. That the applicant made several calls at the office of the management with demands for restoration of his service as well as the due salaries, but the company refused to act upon.
- k) That the applicant states that the said uncalled-for, illegal, unjustified and arbitrary action of the company threw the workman into prolonged unemployment and starvation with the members of the family. The applicant further submits that he is still unemployed. The applicant tried his level best to secure new employment but could not get employment till today. That the applicant has given a skilful service with high precision and untiring zeal which earned him an unblemished record of service and clear carrier to the complete satisfaction of all concerns. That, the management of the Samity had indulged in an unfair labour practice and had acted in a vindictive manner. That the applicant sent a demand notice dated 01.03.2017 through his learned advocate to withdraw the order of dismissal dated 06.11.2016 communicated by letter dated 23.02.2017 and allow him to join his duty within 7 days from the date of received of these presents but the Samity did not care to reply the same nor revoke the dismissal order.

- l) That when all persuasions, approaches and demands fell flat because of the most unfair and unjust attitude of the management the applicant by his letter dated 23.03.2017 sponsored an industrial dispute in this respect before the Assistant Labour Commissioner, Government of West Bengal, Contai, Purba Midnapur to intervene into the matter. That the Assistant Labour



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Commissioner convened a number of joint meetings on several dates but due to adamant attitude of the management the matter could not be settled. Therefore the applicant had no other way but to seek relief before the authority as provided in section 2A(2) of the Industrial Disputes Act, 1947. Thereafter the applicant had filed an application under Section 2A(2) of Industrial Disputes Act, 1947 before the learned 2<sup>nd</sup> Labour Tribunal, Kolkata which was registered as Case No. 6/2A(2) of 2017 but the said section was repealed. Therefore the applicant filed an application for withdrawing the said application inter alia praying for liberty to file afresh at the same self cause of action on 05.03.2021. The said application was taken up for hearing by the Learned 2<sup>nd</sup> Labour Court and allowed the same with liberty to file afresh in a self same cause of action on 04.10.2021. Thereafter the applicant by his letter dated 08.10.2021 sponsored an industrial dispute in this respect before the Assistant Labour Commissioner, Government of West Bengal, Contai, Purba Midnapur to intervene into the matter. That the Assistant Labour Commissioner could not be settled the matter. Therefore the applicant has no other way but to seek relief before the authority as provided in section 10 (1)(B) of the Industrial Disputes Act, 1947. That the dismissal of service of the applicant workman is if so facto bad in law, unfair and malafide amounting to shocking injustice to the poor workman.

m) That the applicant had contended the fact that at the material time his salary stood at Rs. 2,500/- month and further submitted that after his illegal dismissal he had mentally suffered a lot and there is no means of earning to maintain his family. That the above is the short history of the dispute and how came up for adjudication. The applicant craves leave to add to, alter, modify, rescind and submit additional or supplementary statement as and when necessary in course of the present proceeding.

### **DECISION WITH REASONS**

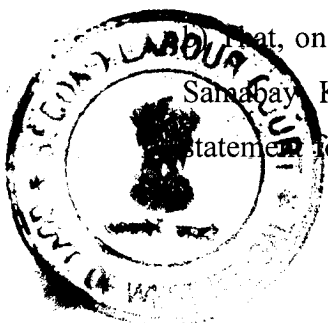
#### **1) Is the application filed by the applicant u/s. 10(1B)(d) of the I.D. Act (W.B. Amendment) maintainable in Law & Facts?**

#### **2) Whether the applicant is entitled to get any relief as per Law & Equity?**

All the issues are taken up together for discussion. From the ex-parte evidence of the applicant it is clear that: -

a) The same was appointed as peon on 2<sup>nd</sup> February, 2001 at Simuliya Samabay Krishi Samati Limited Bhimeswari Bazar Purba Medinipur and had been serving diligently. The applicant was illegally, unjust and malafide dismissed from service on and from 06.11.2016.

b) That, on about 29<sup>th</sup> July 2014 the same had received a letter from the Secretary of Simuliya Samabay Krishi Unnayan Samity Limited alleging that on 27<sup>th</sup> July, 2014 during audit of the statement for the month of June, 2014 it was noticed that some amount had been lost from the



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office room and for that the same was implicated and was directed to show cause within 01.08.2014 by 16:00 hours otherwise appropriate legal action was to be initiated.

c) That on 31.07.2014 the same had given reply to the show cause notice denying the allegations brought against him and had further submitted that cash was being handled by the Manager of the Samity. The applicant had also sent another reply to the A.R.C.S. Purba Medinipur- II with the prayer that same had wished to continue his job and entitled to his monthly remuneration.

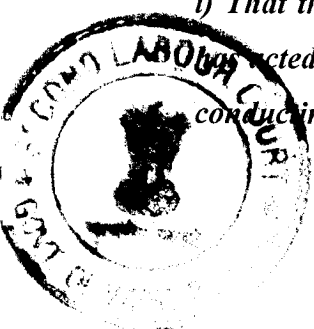
d) That, on or about 12.08.2014 the Secretary of said Samity had issued another notice to this applicant alleging a different allegation that same had been suspended from the date of receipt of the letter for his misbehaviour, indiscipline as decision taken by the Managing Committee on 09.08.2014. In the aforesaid letter the applicant was also informed that a disciplinary proceeding had been initiated against him and for that Sri Partha Raj Mishra was appointed as Enquiry Officer. The applicant had not only given reply to the said letter but had also sent a similar reply to the A.R.C.S. Purba Medinipur- II on 18.08.2014 stating interalia the facts that he has been falsely implicated by the Secretary.

e) That the Management issued a charge sheet dated 20.02.2015 with some false, flimsy, motivated, unintelligible and fabricated allegations and the charges were vague and have been framed with an intention to victimize the applicant. The applicant had received the memorandum of Charge sheet on 20.02.2015 that was in English version, and had requested to translate the charge sheet in Bengali version as the same was not well acquainted with English language.

f) That the applicant had sent a reply on 23/02/2015 denying all the allegations made out against him yet such reply was turned down by the O.P management. That, on 01/04/2015 the Enquiry Office Mr. Partha Raj Mishra had issued a notice informing the date and time when the enquiry shall be conducted. The enquiry officer was biased and had not recorded the prayer and submissions during the entire proceeding and had acted in favour of the O.P concern.

g) That the purported enquiry was neither fair nor proper as the same was held according to the sweet will of the management and the same was not given proper and reasonable opportunities to defend his case. The alleged domestic enquiry was held in a manner wholly contrary to the principles of natural justice and could not be considered as fair at all for the following amongst other reasons:-

i) *That the Enquiry Officer was not competent to hold the enquiry. He was fully biased. He acted in excess of his jurisdiction and completely misdirected himself both in the matter of conducting the enquiry as well as giving the findings thereto.*



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Labour Commission

*ii) The Enquiry Officer twisted the facts of the case in favour of the management denying natural justice and fair play to the workman.*

*iii) No copies of documents were furnished to the charge sheeted workman before enquiry.*

*iv) The Enquiry Officer acted as per sweet will of the management. The enquiries do not stand scrutiny and is nothing but an empty formality. He was not given proper, effective and reasonable opportunity to defend his case. The Enquiry Officer nakedly violated the principles of natural justice.*

*v) That there were infirmities also in conducting the domestic enquiry, which will be cited by the workman at the time of hearing.*

*vi) The applicant states that he was not paid subsistence allowance during the period of suspension, which is mandatory and as such he could not properly and effectively contested the enquiry.*

**h)** That the applicant was not informed about the decision of the authorities and the same had made several request to the concerned authority to let him know the final decision in regards to his service and paid his dues remuneration and also requested to withdraw the order of suspension dated 12.8.2014 and allow him to resume his duties. The applicant had further sated that the same was not supplied with any enquiry report of the Enquiry Officer and/or Inspector of Co-operative Societies. Ultimately, upon filing of several RTI Application the same was supplied \with the Enquiry report of Inspector of Co-operative Societies wherefrom it was clearly seen that the said inspector had arrived at the conclusion that this applicant may be pardoned on condition and recommended for his service may not be terminated.

**i)** That, the A.R.C.S. by his letter dated 11.11.2016 had informed the Additional Registrar of Co-operative Societies (St. Credit), W.B. that final decision regards to service of Mr. Maity would be taken on next B.O.D meeting schedule to be held on 06.12.2016. In the said letter it was also observed that the decision in regard to the service of applicant (Mr.Maity) should not be kept pending. That on several request and representation made by the applicant to the samity a copy of the enquiry report of the enquiry officer was not supplied to the applicant and order of dismissal was sent to the applicant. That the applicant states that the management has not issued any second show cause notice to the workman before dismissed him from service. The company has not also sent the findings of the Enquiry Officer to applicant inviting his representation on the findings of the Enquiry Officer and as such he could not make his representation. However the findings



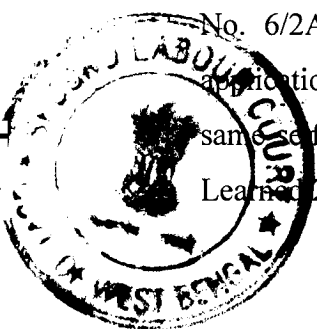
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in whose basis he was dismissed from the service of the company is perverse and not supported by any evidences on record or not inconformity with the alleged charges.

j) That applicant stated that in view of the said improper and invalid enquiry the management through The Secretary of Simuliya Samabay Krishi Unnayan Samity Limited intimated the final decision and dismissed the applicant from service w.e.f. 06.11.2016 by its letter dated 23.02.2017 in violations of all norms of natural justice and also in violation of law. After receiving the dismissal letter the applicant had demanded for the supply of the Enquiry Report in respect of alleged charge sheet dated 21.02.2015 but the same was not supplied to him. That the management had indulged in an unfair labour practice and administers discipline arbitrarily and vindictively. That the applicant made several calls at the office of the management with demands for restoration of his service as well as the due salaries, but the company refused to act upon.

k) That the applicant states that the said uncalled-for, illegal, unjustified and arbitrary action of the company threw the workman into prolonged unemployment and starvation with the members of the family. The applicant further submits that he is still unemployed. The applicant tried his level best to secure new employment but could not get employment till today. That the applicant has given a skilful service with high precision and untiring zeal which earned him an unblemished record of service and clear carrier to the complete satisfaction of all concerns. That the management of the O.P had indulged in an unfair labour practice and had acted in a vindictive manner. That the applicant sent a demand notice dated 01.03.2017 through his Learned Advocate to withdraw the order of dismissal dated 06.11.2016 communicated by letter dated 23.02.2017 and allow him to join his duty within 7 days from the date of received of these presents but the O.P did not care to reply the same nor revoke the dismissal order.

l) That when all persuasions, approaches and demands fell flat because of the most unfair and unjust attitude of the management the applicant by his letter dated 23.03.2017 sponsored an industrial dispute in this respect before the Assistant Labour Commissioner, Government of West Bengal, Contai, Purba Midnapur to intervene into the matter. That the Assistant Labour Commissioner convened a number of joint meetings on several dates but due to adamant attitude of the management the matter could not be settled. Therefore the applicant had no other way but to seek relief before the authority as provided in section 2A(2) of the Industrial Disputes Act, 1947. Thereafter the applicant had filed an application under Section 2A(2) of Industrial Disputes Act, 1947 before the learned 2<sup>nd</sup> Labour Tribunal, Kolkata which was registered as Case No. 6/2A(2) of 2017 but the said section was repealed. Therefore the applicant filed an application for withdrawing the said application inter alia praying for liberty to file afresh at the same self cause of action on 05.03.2021. The said application was taken up for hearing by the Learned 2<sup>nd</sup> Labour Court and allowed the same with liberty to file afresh in a self same cause of



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Judge  
Second Labour Court W.B.



action on 04.10.2021. Thereafter the applicant by his letter dated 08.10.2021 sponsored an industrial dispute in this respect before the Assistant Labour Commissioner, Government of West Bengal, Contai, Purba Midnapur to intervene into the matter. That the Assistant Labour Commissioner could not be settled the matter. Therefore the applicant has no other way but to seek relief before the authority as provided in section 10 (1)(B) of the Industrial Disputes Act, 1947. That the dismissal of service of the applicant workman is if so facto bad in law, unfair and malafide amounting to shocking injustice to the poor workman.

m) That the applicant had contended the fact that at the material time his salary stood at Rs. 2,500/- month and further submitted that after his illegal dismissal he had mentally suffered a lot and there is no means of earning to maintain his family.

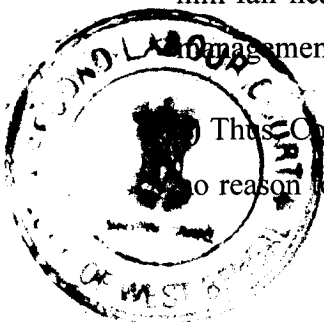
n) Thus, on arriving at a conclusion it is clear that the termination of the applicant is illegal and unjustified and this is in violation of Section 25F of Industrial Disputes Act read with Section 2(OO) of the said Act. The enquiry initiated was not proper and the charge sheet was issued without giving a proper opportunity to the workman to defend his case. That the applicant since the date of termination which effected upon him is unemployed and without gainfully employed anywhere and still he is without any employment and passing days with his family member with severe financial hardship.

o) The O.P. Company has failed to appear before this Court and necessary order was passed for showing cause to the O.P. Company as to why the matter shall not be heard ex-parte. It transpires from the record that several chances had been given to the O.P. Company for filing written statement and show cause but the same has neither filed any show cause petition nor has appeared before this Court in compliance of Court's order. Consequently, the instant case was taken up ex-parte against the same.

p) The documentary evidence, as filed by the applicant, shows that he was an employee under the Opposite Party concern. All the documentary evidence as well as the oral evidence adduced by the applicant shows that the employment of the applicant was refused by the Opposite Party Company without assigning any proper or cogent reason which is absolutely unjustified and illegal.

q) From the unchallenged testimony of the applicant it appears that his service was refused by the Opposite Party Company without giving him any chance to raise his defence and without giving him fair hearing. The applicant was not given any opportunity to submit his defence before the management and his service was terminated without following the provision of law.

Thus, Considering the entire facts and circumstances of this case I am of the view that there is no reason to disbelieve the case of the applicant that he was an employee of the Opposite Party



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Company and his service was terminated by the Opposite Party Company on and from 06.11.2016 as claim. That, after taking into consideration all the facts and circumstances of this case I am of the view that the applicant has been able to prove his case ex-parte. The termination of service of the applicant by way of refusal of employment w.e.f. 06.11.2016 is illegal and unjustified and as such the applicant is deemed to be in service and he has to be reinstated in service with immediate effect by the Opposite Party Company and the Opposite Party Company is directed to reinstate the applicant with immediate effect and to pay him full back-wages along with other consequential benefits from the date of termination of service till the date of actual reinstatement. Accordingly, **the application filed by the applicant u/s. 10(1B)(d) of the I.D. Act (W.B. Amendment) is maintainable in Law & Facts.**

**The applicant as stated earlier is entitled to get the following reliefs: -**

- 1) The applicant has to be reinstated in service with immediate effect by the Opposite Party Company.
- 2) The Opposite Party Company is further directed to pay him full back-wages along with other consequential benefits from the date of termination of service till the date of actual reinstatement

Hence, it is

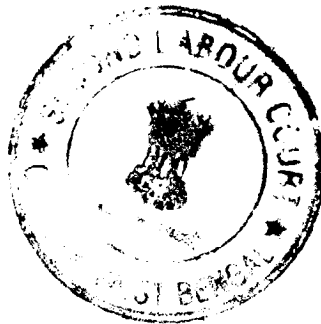
### ORDERED

That this case is disposed of on ex-parte hearing. The Opposite Party Company is directed to reinstate the applicant with immediate effect and to pay him full back-wages along with other consequential benefits from the date of termination of service till the date of actual reinstatement i.d. the applicant will be given liberty to take proper legal steps for execution of this award.

This is my award.

Let the copies of this award be sent to the concerned authority of the Government of West Bengal.

Dictated & Corrected by me,



Sd/—  
Judge,  
Second Labour Court  
Judge  
Second Labour Court W.B.

Sd/—  
(Argha Banerjee)  
Judge,  
Second Labour Court,  
Kolkata

Judge  
Second Labour Court W.B.