

I/403290/2023

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/. 461 / (LC-IR)

Date: . . . 07/06/. 2023.

**ORDER**

WHEREAS under the Government of West Bengal, Labour Department Order No. Labr/1061/(LC-IR)/7L-15/08(pt) dated 14/11/2012 the Industrial Dispute between M/s. Howrah Mills Co. Ltd., 493/C/A, G. T. Road(S), Howrah - 711102 and its workman Sri Motilal Goutam, 3, Raja Rajkrishna Street, Kolkata - 700006 regarding the issue mentioned in the said order, being a matter specified in the Second / Third Schedule to the Industrial Dispute Act, 1947 (14 of 1947), was referred for adjudication to the Judge, Fifth Industrial Tribunal, West Bengal.

AND WHEREAS the Fifth Industrial Tribunal, West Bengal, has submitted to the State Government its award dated 24/05/2023 on the said Industrial Dispute vide memo no. 629 - L.T. dated - 24/05/2023.

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

I/403290/2023

No. Labr/. 461/1(5) / (LC-IR)

Date: . . . 07/06 . /2023.

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

1. M/s. Howrah Mills Co. Ltd., 493/C/A, G. T. Road(S), Howrah - 711102.
2. Sri Motilal Goutam, 3, Raja Rajkrishna Street, Kolkata - 700006.
3. The Assistant Labour Commissioner, W.B. In-Charge, Labour Gazette.
4. The O.S.D. & E.O. Labour Commissioner, W.B. New Secretariate Building, 1, K. S. Roy Road, 11<sup>th</sup> Floor, Kolkata- 700001.
- ✓ 5. The Sr. Deputy Secretary, IT Cell, Labour Department, with the request to cast the Award in the Department's website.

*Z. Ali (A.S.)*  
*Matter related to IR.*  
*Please look into it.*  
*09/06/2023*

*3a*  
 Assistant Secretary

No. Labr/. 461/2(2) / (LC-IR)

Date: . . . 07/06 . . /2023.

Copy forwarded for information to:

1. The Judge, Fifth Industrial Tribunal, West Bengal with reference to his Memo No. 629- L.T. dated - 24/05/2023.
2. The Joint Labour Commissioner (Statistics), West Bengal, 6, Church Lane, Kolkata -700001.

Assistant Secretary

*H.A. (IT)*  
*For uploading in*  
*dept. website.*  
*09/06/2023*  
*Dipankar*  
*As*  
*09/06/2023*

**In the Fifth Industrial Tribunal, West Bengal**  
**New Secretariat Buildings, Kolkata.**

**Present: Shri Kamal Sarkar, Judge,  
Fifth Industrial Tribunal, Kolkata.**

**Case No. VIII-56/2012**

In the matter of an Industrial Disputes between M/s. Howrah Mills Co. Ltd., 493/C/A, G.T. Road (S), Howrah-711102 and Sri Motilal Goutam, 3, Raja Rajkrishna Street, Kolkata-700006 represented by Bengal Chatkal Mozdoor Morcha 297(360) Ali Haider Road, Rly. Gate No.11, P.O. & P.S. Titagarh, Kolkata-700019.

**A W A R D**

This case arose by way of order of reference vide No. 1061-I.R./IR/7L-15/08 dated 14/11/2012 by order of the Governor signed by the Assistant Secretary, to the Govt. of West Bengal, Labour Department, I.R. Branch, Writers' Buildings, Kolkata – 700 001, mentioning that an Industrial Dispute exists between between M/s. Howrah Mills Co. Ltd., 493/C/A, G.T. Road (S), Howrah-711102 and Sri Motilal Goutam, 3, Raja Rajkrishna Street, Kolkata-700006 represented by Bengal Chatkal Mozdoor Morcha 297(360) Ali Haider Road, Rly. Gate No.11, P.O. & P.S. Titagarh, Kolkata-700019 relating to the issues as mentioned in the order of reference stated to be being matters / matter specified in the Second / Third Schedule of the Industrial Disputes Act, 1947, further mentioning that it is expedient that the said dispute should be referred to an Industrial Tribunal constituted under section 7A of the Industrial Disputes Act, 1947 and therefore, in exercise of power conferred by Section 10 read with Section 2A of the Industrial Disputes Act, 1947, the Governor is pleased by this order of reference to refer this dispute to the Seventh Industrial Tribunal stated to be constituted under Notification No. 3115-IR/IR/3A-6/59, dated 21.06.1960 for adjudication requiring this Tribunal to submit Award to the State Govt. with a period of Three months from the receipt of this order of reference by the Tribunal in terms of Sub-Section 2(A) of Section 10 of the Industrial Disputes Act, 1947 subject to other provisions of the Act, the issues as have been framed in the above mentioned order of reference being.

**ISSUE(S)**

1. Whether the termination of service of Shri Motilal Goutam by way of refusal of employment by M/s. Howrah Mills Co. Ltd. is justified?
2. What relief, if any, is he entitled to?

The case record shows that after receipt of the above noted order of reference, the Seventh Industrial Tribunal issued summons to both the parties as per order of reference and after receiving two summons; the workman and the management appeared before the Seventh Industrial Tribunal and thereafter date was fixed for filing their respective written statement. Thereafter both the parties have filed their respective written statement and also the list of documents before the Ld. Seventh Industrial Tribunal and finally Ld. Seventh Industrial Tribunal vide his order dated 01/08/2019 in reference with G. O. No. Labr./699/(LC-IR)/23099/15/2019, dated 26/07/2019 had transferred the present case before this Fifth Industrial Tribunal.

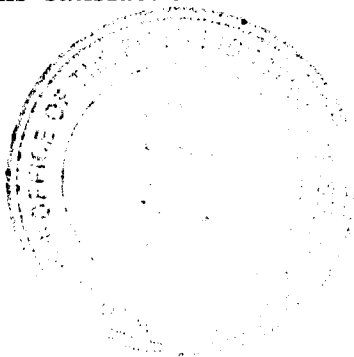
In the written statement filed by the workman, Sri Motilal Goutam there is no whisper of the representative Union that is Bengal Chatkal Mozdoor Morcha rather it reveals that Motilal Goutam has filed this case in his individual capacity.

Now it is the case of the workman Motilal Goutam that he was employed in the company's factory since 09/05/1981 as a general worker by designation machine man in the weaving section vide Relay-L, Loom No. 242/249, e.B. 20286 and became permanent with effect from 16/07/1986 when he became a member of Provident Fund. During the period 1993 and onwards he became vocal with regard to the manipulation of production by recording less production produced by the workman and he became eyesore and they evolved a scheme targeted to victimize the workman. A fake charge sheet was issued, an eyewash domestic enquiry was initiated but finally by the intervention of the Labour Department of the Government of West Bengal the dispute was then resolved. On 15/06/2011 when the workman went to resume with his normal duty one of the supervisor disallowed him to join but without assigning any person. He had requested to allow him to work but it was all in vein. So on the very next day he wrote a letter stating the nature of manipulation of production and also prayed to allow him to work but no reply of the letter was received by him. After a long period and alleged letter dated 29/11/2011 was received by him where one false allegation was made by the management alleging unauthorized absence which was denied by him and he stated that he was restraint to work. After his letter dated 19/09/2011 he also submitted another letter dated 16/12/2011 and for the first time the company gave him a letter without any date repeating the same false story of unauthorized absence and asked his to join within three days but once again he was not allowed to enter into the factory. Finding no other

alternative first of all the Union by their letter dated 20/01/2012 raised the concern dispute and during the process of conciliation the workman individually submitted his written representation by his letter dated 18/06/2012 . As there was no settlement between the parties the matter was referred by the Ld. Labour Department, Government of West Bengal before the Ld. Tribunal for adjudication. According to the workman the conduct of the management is illegal, unjust and violation of the acts and laws and also the violation of the principal of natural justice. The unauthorized absence is misconduct for which certain procedure are required to be complied with which was not complied by the management by way of refusal of employment with effect from 15/06/2011 and the same should be declared void, unjust and inoperative. Due to refusal of employment the workman becomes helpless to survive along with his family members and he tried to secure any type of employment but failed. Accordingly by filing this case the workman prays for passing an award holding that the refusal of employment with effect from 15/06/2011 is illegal and not justified and also prays for direction upon the company to reinstate the present workman in his service and to pay full back wages along with all other consequential benefits.

To substantiate his case the Motilal Goutam has deposed himself as PW-1 and the documents marked Exhibits on his behalf are -1) photocopy of PF information slip (Ext-1), 2) photocopy of ESI card (Ext.-2), 3) photocopy of PF statement (Ext.-3) ,4) photocopy of letter dated 16/06/2011 written by the workman in Hindi (Ext.-4), 5) photocopy of letter dated 19/09/2011 duly written by the workman (Ext.-5), 6) photocopy of letter dated 20/01/2012 duly written by the union to the Labour Department (Ext.-6), 7) photocopy of letter dated 16/12/2011 of the workman to the company (Ext.-7) , 8) photocopy of letter dated nil of the company to the workman (Ext.-8), 9) photocopy of letter dated 18/06/2012 of the workman to the Labour Department (Ext-9), 10) photocopy of postal AD card and registration slip (Ext.-10 series), 11) original gate pass for the year 2009 (Ext.-11), 12) copy of pay slips (Ext.-12), and 12/1) copy of pay slip for the 1987 (Ext.-12/1).

The management of the Howrah Mills Company Ltd has contested this case by filing their written statement denying all material allegations of the petitioner case by submitting that the instant case is not maintainable as the instant reference is misconceived, erroneous and the purported union is neither operating in the Jute Mill of the company nor has representative character and the present case is not at all an industrial dispute and said union is not contesting case and also not filed the written statement, rather the same has filed by the workman Motilal Goutam who is nobody of that union. Prior to issuance of notice for conciliation proceedings the Conciliation Officer has failed to record his satisfaction about existence of any industrial dispute



between the parties and no valid conciliation has been initiated in the present case which is a mandatory requirement for making a reference.

It is also the case of the management that the concerned workman is a Budli worker and therefore he is not a workman within the meaning of Section-2(s) of the Industrial Disputes Act, 1947 and as such the present dispute cannot be termed as industrial dispute. The law is well settled now that the Budli workman are not entitled to any protection under the Industrial Disputes Act and the purported union under Order of reference cannot claim any benefit of this act and accordingly the present reference is liable to be rejected.

It further stated by the management that the service of the concerned workman who was never terminated by the employer rather he is remaining absent unauthorizedly with effect from 15/06/2011 and the company vide its letter dated 16/01/2012 addressed to the concerned workman and thereafter vide a letter dated 20/04/2012 addressed to the Conciliation Officer asked the concerned workman to report for his duty but he remained absent. The management further submitted that even assuming that the service of the concerned workman has been terminated in that case the workman also not completed the required number of days of continuous working as defined under Section -25B of Industrial Disputes Act to claim retrenchment compensation rather he had worked for one day in June, 2010, 0 day in July, 2010, 24 days in August, 2010, 12 days in September, 2010, 7 days in October, 2010, 0 day in November, 2010, 0 day in December, 2010, 18 days in January, 2011, 24 days in February, 2011, 23 days in March, 2011, 9 days in April, 2011, 21 days in May, 2011, and 12 days in June, 2011 total he worked for 170 days within a period of 12 months. It also contended by management that the workman has made out a case of refusal of employment which comes within the purview of 'Lock Out' within the meaning of Section-2(1) of the Industrial Disputes Act, 1947. The concerned workman was remained absent unauthorizedly.

According to the management the concerned workman had been enrolled in the employment in the company as "Budli" employee in Weaving Department and he worked intermittently with it in the same capacity as an when vacancy arose but he had never worked continuously for 240 days at a stretch. The Budli workman are required to report at the Labour Office window everyday from where they are sent to the departments against requisitions. The concerned workman did not report for duties since 15/06/2011 and the company had written time and asked him again to join him in his duty but he had declined of his own and even the offer of joining had given before the Conciliation Officer but the concerned workman was adamant to join his service. In response of his letter dated 16/12/2011 the company wrote a letter to him on 16/01/2012 asking him to report for his duty within three days of the receipt of the letter but he failed to report for

his duty till date despite of the fact that said letter was received by him on 18/01/2012. After receiving the memo from the Assistant Labour Commissioner, Government of West Bengal, Howrah, came to know that the workman had approached before the Assistant Labour Commissioner for resumption of his duty against which the management vide their letter dated 20/04/2012 inform the Conciliation Officer about the facts of unauthorized absent and also requested the Conciliation Officer to ask the concerned workman to join his duty forthwith but he failed to do so till date and finally the management by filing this written statement submitted that the company has no objection if the concerned workman joins his duty on any day. Accordingly the O.P./Company prays for rejection of this instant application of the workman and also prays for passing an order in favour of the company holding that the service of the concerned workman Sri Motilal Goutam has not been terminated and he is not entitled to get any relief to prove in support of the management case one Basant Kumar Mishra, the then Personnel Officer of the company has deposed as OPW-1 and the documents marked Exhibits on behalf of the company are- a) photocopy of letter dated 16/12/2011 (Ext.-A), b) photocopy of letter dated 16/01/2012 (Ext.-B), c) photocopy of letter dated 20/04/2012 (Ext.-C), and d) photocopy of month wise details of working of the workman concerned since 2005 till 2011 (Ext.-D).

It has already been discussed earlier that the Order of reference contents only two issues, such as-

### **ISSUE (S)**

1. Whether the termination of service of Shri Motilal Goutam by way of refusal of employment by M/s. Howrah Mills Co. Ltd. is justified?
2. What relief, if any, is he entitled to?

### **DECISION WITH REASONS**

#### **Issues Nos. 1 & 2:-**

Both the issues are taken up together for proper adjudication of the case.

Ld. Advocate of the management did not turn up before this Tribunal after completion of their evidence and also not appeared to participate the proceeding of argument.

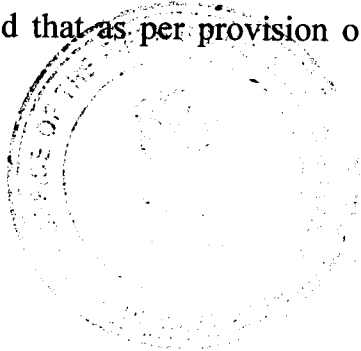
Ld. Advocate for the workman concerned has participated in the argument and also filed his written notes of argument.

According to the Ld. Advocate for the workman that as per available documents the present workman joined in the factory on 09/05/1981 as a general worker and designated as machine man in weaving department and rendered continuous service and he became permanent with effect from 16/07/1986 and became a member of Provident Fund and ESI and rendered continuous service. On 15/06/2011 when the workman went to resume his normal duty then one of the supervisor disallowed him to join his duty without assigning any reason. The workman requested to the Labour Officer of the company by letter dated 16/06/2011 and also appealed repeatedly to the General Manager of the O.P/Company through letters but the management did not pay any heed. Thereafter the workman informed the union for which the union lodged an Industrial dispute before the Deputy Labour Commissioner by letter dated 20/01/2012. The workman also wrote a letter on 18/06/2012 addressing to the Assistant Labour Commissioner but no settlement took place and thereafter the matter has been sent before the Tribunal for adjudication.

It also argued by the Ld. Advocate for the workman that as per definition of Section-2(s) of the Industrial Dispute Act, the term "Workman" means any person (including an apprentice) employed in any industry to do any manual unskilled, skilled, technical operational, clerical or supervisory work for higher or lower, whether the terms of employment be express or imply, and for the purposes of any proceeding under this act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with or as a consequence of that dispute or whose dismissal, discharge or retrenchment has led to the dispute but does not include any such person-

- (i) .....
- (ii) .....
- (iii) .....
- (iv) ..... etc.

It further argued by the Ld. Advocate for the workman that the reference made in the name of the union under Section -10A of the Industrial Dispute Act and the O.P/Company never challenged the Order of reference in any higher forum. He also argued that the settle position of law that the statutory position of Section-2A that the individual workman took up the dispute already became the party of the dispute and as per provision of Section-2A that where any employer discharges, dismisses, retrenches or otherwise terminates the services of an individual workman, any dispute or difference between that workman and his employer connected with, or arising out of, such discharge, dismissal, retrenchment or termination shall be deemed to be an industrial dispute notwithstanding that no other workman nor any union of workmen is a party to the dispute. He further stated that as per provision of Section-10(1) any workman can





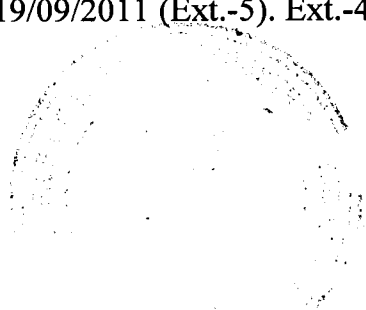
able to make an application direct to the Labour Court or Tribunal for adjudication of the after the expiry of 45 days from the date he has made application to the Conciliation Officer for conciliation of the dispute and in such case the Labour Court or the Tribunal shall have powers and jurisdiction to adjudicate upon the dispute as if it were a dispute referred by the appropriate Government. The present application referred in Sub-Section 2 shall be made before the Labour Court or Tribunal prior to expiry of three years from the date of discharge, dismissal, retrenchment or otherwise termination of service as specified in Sub-section 1. He also submitted that the O.P./Company has violated the golden rule of the principal of natural justice and also violated the provision of Section-25F and 25N (7) and also violated Section-2(ra). The management has refused the employment of the workman which has been defined in Section-2(OO) as retrenchment. The gate pass issued by the company shows that the workman is a permanent employee and during cross-examination of the workman no suggestion was put to him that said document was not authentic and the company also not adduced any evidence to defy the same. The applicant relied upon the ESI card to show that he joined on 09/05/1981 and Provident Fund slip shows that his Provident Fund was deducted from 31/03/1994 and the Government had referred the dispute in reference only workman and not a Budli workman. Finally Ld. Advocate prays for passing an award to reinstate the applicant with a direction to O.P./Company to pay full back wages with other consequential reliefs. In his written notes of argument Ld. Advocate for the workman has mentioned about various case references but not a single scrap of paper regarding those case reference has been submitted by him before this Tribunal.

This Tribunal has gone through the referral order of the Government as well as the written statements filed by both the parties in support of their respective cases, the evidences on record, both oral and documentary and other materials on record.

The gist of the applicant's case is that he has been wrongly terminated from his service on and from 15/06/2011 and he had written letter to the concerned Labour Officer of the company on 16/06/2011 and also repeatedly appealed before the General Manager of the O.P./Company but the management of the company did not pay any heed upon his prayer and even the workman tried to solve the dispute by way of settlement before the Labour Commissioner of the Government of West Bengal but no settlement took place. It is also the case of the workman that he is a permanent worker of the O.P./Company and he has been illegally terminated from his service.

Now let this Tribunal consider that whether the present workman has been successfully able to prove his case by adducing cogent evidences.

Admittedly the basis of claim of the workman are of two letters that is letter dated 16/06/2011 (Ext.-4) and letter dated 19/09/2011 (Ext.-5). Ext.-4 is a letter duly written by



the workman Motilal Goutam in Hindi addressing to the Labour Officer of Howrah Mills Company Ltd and Ext-5 is also a letter dated 19/09/2011 duly written by the workman Motilal Goutam in English addressing to the then General Manager of Howrah Mills Company Ltd. in which he had mentioned about the letter dated 16/06/2011 and prayed for resumption of his duty with immediate effect and also with full back wages. This Tribunal also gone through Ext.-8 that is a letter dated nil and that is the reply of the letter dated 16/12/2011 duly written by the workman Motilal Goutam (Ext.-7). Now from Ext.-8 it reveals that the management has denied the allegation of the workman and also alleged that inspite of receiving the company's letter dated 29/11/2011 the workman did not make any attempt to join his service and by virtue of that letter (Ext.-8) the company also asked him to join within three days of the receipt of that letter (Ext.-8). Further it reveals from a letter dated 20/04/2012 (Ext.-C) duly written by the Factory Manager of Howrah Mills Company Ltd. addressing to the then Assistant Labour Commissioner, Government of West Bengal, that the concerned workman remained absent unauthorizedly since October,2010 and failed to resume his duty in spite of issuance of various notices where the workman was asked to report for his duty within three days but he failed to comply the direction. In spite of that the management has submitted to the Assistant Labour Commissioner to ask the concerned disputant to report for his duty immediately and close the issue fully and finally but in spite of that the concerned workman did not join in his duty. This Tribunal has gone through the entire written statement and the evidences of the workman and finds that nowhere the workman has mentioned any reason that what has precluded him to join his duty.

Further the workman in his written statement also stated about a fake charge sheet and one eye wash domestic enquiry initiated against him but surprisingly the workman failed to submit any scrap of paper before this Tribunal either of that fake charge sheet or any of such domestic enquiry even when PW-1 was cross-examined he categorically stated that he did not file the copy of the charge sheet or any document regarding the enquiry which was allegedly initiated against him or any document regarding of alleged settlement arrived at the office of the Labour Commissioner before this Tribunal. Therefore, the content of the workman that he was victimized by the management has not been proved at all.

Secondly, it is also the case of the workman that he became permanent with effect from 16/07/1986 but in his cross-examination he categorically stated that he did not file any document to substantiate the same. Further the workman in his cross-examination as PW-1 has admitted that he has received the letter of the O.P/Company dated 29/11/2011 but he did not file the same. Admittedly the letter dated 29/11/2011 did not come forward before this Tribunal either by any of the parties of this case but facts admitted need not be

proved. The workman in his cross-examination has admitted that he had received the letter dated 29/11/2011 on which he was asked to join his duty but surprisingly he did not join. Even by virtue of letter dated nil (Ext.-8 and Ext.-B) the company also asked him to join his service within three days but he did not join. From his cross-examination the workman replied as PW-1 that he is not ready and willing to join in his duty until he got his full back wages.

Further it reveals from the cross-examination of OPW-1 Basant Kumar Mishra that the name of the incumbent Motilal Goutam was not struck down from the list of Budli Register and if Motilal Goutam appeared to join then the management are ready to allow him to join.

From the above piece of evidences of PW-1 and OPW-1 it is clearly reveals before this Tribunal that the petitioner workman has palpably failed to establish his case that the O.P./Management has illegally terminated him from his service. It is also evident from the oral evidence as well as from the documentary evidence (Ext.-8, Ext.-B, and Ext.-C) that the management had several occasions asked the present petitioner/workman to join his duty and even at the time of adducing evident the OPW-1 in his cross-examination dated 20/12/2016 has categorically stated that the management is ready to allow him to join.

It also the positive case of the workman that he was a permanent worker of the O.P./Company which has been denied by the O.P./Company. To substantiate his claim save and except a printed copy of gate pass for the year 2009 stands in the name Motilal Goutam no other documents has filed by the workman. Now from said printed gate pass (Ext.-11) it reveals that there is no seal of the O.P./Company upon the same and it bears nearly one signature of a person and when PW-1 was cross-examined to that effect then he submitted that he could not state the name of the persons who had signed that gate pass (Ext.-11). He also stated that he could not able to produce any such gate pass for the year 2010 or any subsequent year.

It is the settled principle of law that the Courts and the Tribunals having plenary jurisdiction and also have discretionary power to grant an appropriate relief to the parties of the case. The aim and object of the Industrial Disputes Act may be to impart social justice to the workman, but the same by itself could not mean that irrespective of his conduct a workman would automatically be entitled to get relief. A person in certain situation may be held to be bound by the doctrine of "Acceptance Sub-Silentio".

The present applicant has failed to produce any cogent evidence before this Tribunal to substantiate his case that he was illegally terminated by the O.P./Company, rather it is evident from the various evidences both oral and documentary that the O.P./Management

has several occasion asked him to join his duty. The workman also failed to prove that he was forcibly precluded to enter/join his duty on 15/06/2011 by the authority of the factory, even he failed to say any specific name to substantiate his claim. Though the case was initiated by the union namely Bengal Chatkal Mozdoor Morcha but surprisingly no representative of the union has come forward before this Tribunal to corroborate the workman's case.

In view of the forgoing discussions and above findings this Tribunal has no hesitation to hold that the petitioner/workman has palpably failed to prove his case that he was illegally terminated by the O.P/Company rather the preponderance of probability is in the favour of the O.P/Company that from the very beginning that is from the year 2011 they are ready to accept the workman to join his duty in their company. Accordingly, the reference made under Section-10 of the Industrial Disputes Act has got no merit.

In the light of the above discussion, this Tribunal finds and holds that the applicant workman has failed to prove that there is any dispute between the parties of this case and the case is liable to be finally disposed off on contest.

Hence,

### **ORDERED**

that the Industrial dispute under Order of reference vide G.O. No. 1061-I.R./IR/7L-15/08 dated 14/11/2012 is disposed off on contest against M/S. Howrah Mills Company Ltd. but without cost as the applicant workman Motilal Goutam has failed to prove any dispute between the parties as prayed for and the applicant workman is not entitled to get any relief and no award can be passed on the Order of reference in the instant case in favour of the applicant workman Motilal Goutam.

Accordingly, this case is disposed off on contest and this order is to be treated as an Award of this Tribunal.

Dictated and Corrected by me.

*Sd/-*

Judge  
5<sup>th</sup> Industrial Tribunal  
24/05/2023

*Sd/-*

Judge  
5<sup>th</sup> Industrial Tribunal  
24/05/2023

