

I/398002/2023

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/. 404' . . . / (LC-IR)/

Date: 23/05/ 2023

**ORDER**

—  
WHEREAS an industrial dispute existed between M/s. R.D.B. Textiles Ltd. Licencees of Victoria Jute Works, P.O. – Telinipara, Dist. - Hooghly and Sri Ashok Kumar Mukherjee, S/o. – Pankaj Kumar Mukherjee, Barasat Benerjee Para, P.O. – Chandannagar, Dist. – Hooghly, Pin - 712136 regarding the issue, being a matter specified in the second schedule to the Industrial Dispute Act, 1947 (14 of 1947);

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

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

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

Now, THEREFORE, in pursuance of the provisions of Section 17 of the Industrial Dispute Act, 1947 (14of 1947), the Governor is pleased hereby to publish the said Award dated 28/04/2023 as shown in the Annexure hereto vide memo no. 555 - L.T. dated – 11/05/2023.

**ANNEXURE**

( Attached herewith )

By order of the Governor,

*sdv*

Assistant Secretary  
to the Government of West Beng

398002/2023

No. Labr/ 404/1(5) / (LC-IR)

Date: 23/05/ 2023

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

1. M/s. R.D.B. Textiles Ltd. Licencees of Victoria Jute Works, P.O. - Telinipara, Dist. - Hooghly.
2. Sri Ashok Kumar Mukherjee, S/o. - Pankaj Kumar Mukherjee, Barasat Benerjee Para, P.O. - Chandannagar, Dist. - Hooghly, Pin - 712136.
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.

No. Labr/ 404/2(2) / (LC-IR )

Date : 23/05/ 2023

Copy forwarded for information to: -

1. The Judge, First Labour Court, West Bengal, with respect to his Memo No. 555 -L.T. dated 11/05/2023.
2. The Joint Labour Commissioner (Statistics), West Bengal, 6, Church Lane, Kolkata - 700001.

Assistant Secretary

In the matter of an application under Section 10(1B)(d) of the Industrial Disputes Act 1947 filed by the applicant Sri **Ashok Kumar Mukherjee**, S/o- Pankaj Kumar Mukherjee, Barasat Banerjee Para, P.O.- Chandannagar, Dist.-Hooghly, Pin - 712136 against **M/s. R.D.B. Textiles Ltd.** Licencees of Victoria Jute Works, P.O.-Telinipara, Dist-Hooghly.

[ Case no. 30/2009; U/S 10(1B)(d) of The Industrial Disputes Act, 1947]

**Before The First Labour Court, West Bengal, Kolkata**

**Present : Shri Madhusudan Pal, Judge**

**First Labour Court, Kolkata**

**Dated : 28<sup>th</sup> Day of April, 2023**

**A W A R D**

Before I dig through the terrain of feud in between the O.P./Company and its workman culminating to such his, trimming out the maze of unnecessary details it must be stated at the very outset that factual ingredients hereunder to be scrutinized and analyzed on the altar of Logic and Law as provided by the Wisdom of Legislature under the Provision of **The Industrial Disputes Act, 1947** read with **The West Bengal Industrial Dispute Rules 1958** as this is an application under Section 10(1B)(d) of the Industrial Disputes Act, 1947.

The applicant after getting pendency certificate on 13.07.2009 from the Conciliation Officer files this application challenging his refusal of employment without assigning any reason thereof and prays for reinstatement with further consequential benefits.

The applicant/petitioner would contend that he is a regular status employee of the opposite party company since 05.06.1980 and covered under ESI Act under occupation no.-0812 and D.R.G.O.P.E.R.A. and Labour No.-1654/2/P.T. Due to intense physical labour performed by him, since 27.12.2001 he was promoted to "Special Badli" and was upgraded as semi permanent worker. He was transferred to Mill No.-2 with employment card no.-264/P.S. and Unique L.B. No. /P.F. No.-20402-02387, P.F. Account No.- 1019 NSSN 92205, Pension Account no.- 3798 along with semi permanent employment book.

The applicant would further add that since 12.12.1994, the petitioner due to his ailment was treated at ESI Hospital and medical certificate was issued to him advising light duties. Accordingly the production officer and manager entrusted him to operate only one machine since 12.12.1994 till 17.01.2009 in the said capacity of semi permanent worker as aforesaid. However, on 18.01.2009, the newly appointed Vice President during his inspection questioned him why he was operating on a single machine. The petitioner showed him medical certificate, but the Vice President concerned became furious and shouted that due to operation of single machine by the petitioner, production would go down resulting loss of the O.P./Company. He also threatened to terminate the

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service of the petitioner and pushed out the petitioner from the works. Thereafter on 19.01.2009 when the petitioner went to join his services, he was obstructed by the watchman of the opposite party from entering the works stating that the Vice President concerned directed him not to allow the petitioner to join the services. Thus the petitioner was retrenched from services.

On 20.01.2009, the petitioner/applicant wrote a letter to the Assistant Labour Commissioner, West Bengal, Chandannagar, Hooghly. On 26.08.2009, petitioner/applicant received a notice from opposite party directing him to join the work within three days and was also directed to show cause as to why the petitioner was absent from duty since 19.01.2009 till today i.e. 23.08.2009 without any leave obtained from the opposite party. Thereafter on 29.08.2009 he went to join his services but was prevented by the opposite party from resuming his duties in spite of his clarification and explanation for his absence to the Personal Manager of the O.P./Company. Thereafter on the same date on 29.08.2009, the petitioner addressed a letter to the General Manager of the O.P./Company alleging all the facts. Thereafter the O.P./Company again directed the petitioner to join his services but when he went to resume his duties again he was refused to join duties by the Personal Manager of the O.P./Company and was also obstructed by the watchman of the O.P./Company and industrial disputes was raised by him. When the disputes could not be settled before the Assistant Labour Commissioner, the applicant obtained pendency certificate and filed this petition before this Court.

On receiving summons, the O.P./Company made appearance and contested this proceedings by filing Written Statement denying and disputing all the material allegations labelled against it. O.P./Company inter alia challenged this proceedings on the ground of maintainability this application being filed at a belated stage, not within the schedule time period from the date of certificate of Conciliation Officer dated 13.07.2009, the applicant being a Badli was not in regular or permanent and continuous employment and was given job on leave vacancy of a vacant post / for permanent workman. O.P./Company also denied that after receiving notice of the O.P./Company the applicant ever went to join his employment and was refused by the O.P./Company again and again. As usual the Written Statements ends with prayer for dismissal of the application filed by the applicant.

After going through the pleadings of both sides with hearing argument at Bar, this Court hold the following **three issues** ought to be framed and answered in order to dispose of this Lis:

1. Is the present proceedings U/S 10(1B)(d) of I.D. Act maintainable ?
2. Is the termination of service of the applicant by way of refusal of employment with effect from 19.01.2009 legal and justified ?
3. To what relief, if any is the applicant entitled ?

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In support of his case, the applicant Shri Ashok Mukherjee would examine himself as P.W.-1. Copies of pay slips for the year 2003, 2004 and 2005 and copies of leave wages for the year 2003, 2004 and 2005 etc. were exhibited before this Court.

On the other hand O.P./Company examined Ashis Mukherjee as **O.P.W.-1** and Shib Kali Choubey as **O.P.W.-2**. The copy of written authorization given by General Manager to the witness Ashis Mukherjee to depose in this case was marked as **Exhibit-A**. In support of their contention O.P./Company Certified Standing Order duty to Special Budli, the copy of Certified Standing Order Duty to Special Budli comprising nine sheets were marked as **Exhibit B Collectively**. Copies of Attendance Register comprising 17 pages showing salary and ESI contribution of the applicant were marked as **Exhibit C collectively**. Copies of pay slips dt. 15.03.2007, 15.01.2009 and 29.01.2009 were marked as **Exhibit D**. Copies of P.F. deduction of the applicant for the period of 2006-07, 2007-08 and 2008-09 comprising 3 sheets were marked as **Exhibit E collectively**.

Heard argument of both sides.

### Decision with reasons

#### Issue no. 1 & 2

As these two issues are inextricably inter-winded to each other, I have chosen path of conjoint discussion for the sake of lucid exposition.

In our jurisprudence which factum are admitted by opposite party the same needs no proof unless opposed to public policy. Here it is admitted by the O.P./Company that Ashok Kumar Mukerjee, applicant entered into service of the O.P./Company on 05.06.1980 in preparing department as machine operator. It is also admitted by O.P./Company that he was promoted to Special Badli on 27.10.2001. It is also admitted by both sides that due to ailment of the applicant, he was doing since 12.12.1994 till 17.01.2009 in a single machine.

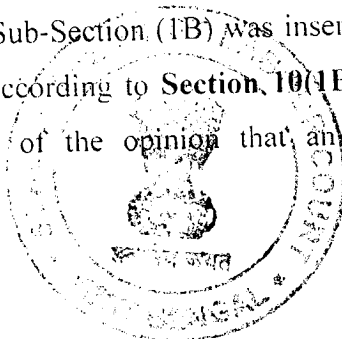
The O.P./Company submitted that the applicant obtained pendency certificate in form S from the conciliation Officer on 13.07.2009 but did not file this application within 60 days as provided in the statute but filed the same on 14.12.2009.

Now let in have a glimpse into provision covered of the Industrial Disputes Act, 1947.

According to **Section 2(K)** of the Industrial Disputes Act, 1947 is "any dispute of difference between employers and employers or between employers and workmen; or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour of any person."

**Judge** In its application to the State of West Bengal in Section 10 of the Industrial Disputes Act 1947, after Sub- (1A), Sub-Section (1B) was inserted by the West Bengal Act (33 of 1989), Section 4. Thus according to **Section 10(1B)(d)** envisages that where the appropriate Government is of the opinion that an industrial dispute exists or is

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apprehended. it may at any time. by order in writing refer such a dispute for adjudication to a Labour Court or Tribunal."

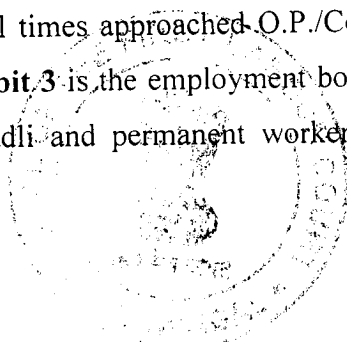
This Court is of the view that regarding delay in filing this application U/S 10(1B)(d) of the I.D.Act,1947 pedantic view should not be taken. Industrial Disputes Act is a beneficial legislation for the poor workmen and it is an uneven struggle in between weak and mighty person. For proper adjudication of this application on merit this Court is of view that delay in filing this application by the rustic workman should be condoned and the same accordingly stands condoned by this Court.

Now, let me begin my exegesis by drawing attention to evidences on record.

**P.W.-1 Shri Ashok Mukherjee** would depose that he joined the O.P./Company in the year 1980 as Badli Worker. His service was promoted to Special Badli Worker on and from 27.12.01 and since then he was a permanent worker of the O.P./Company. His employment card no. was 264/P.S. P.F. no.- 20402-02387. Pension account no. was 3798. He was also possessing semi permanent employment book. On 12/12/1994 he fell ill and was treated at ESI Hospital by Dr. K.M. Das and after examining the condition of his health, he was advised to perform light duty. However, the company refused his service with effect from 20.11.2006 and 18.01.2009. He applied before the Labour Commissioner, Chandannagar, Hooghly on 20.11.2006 for his intervention in the matter of such refusal of employment by the company from his service. However, the matter was not settled before the said Labour and on 06.07.2009, he applied in Form no. P-4 and the Labour Commissioner issued the Form "S" and he filed this application before Labour Commissioner. He served the company for 240 days and received the payment for service of extra 15 days per year.

**From cross examination of P.W. Ashok Kumar Mukherjee** it is found that he was forcibly terminated by refusing his employment and as such he filed this case. He was promoted to Special Badli in the year 2000-2001. **Exhibit 3** shows that he was semi permanent workers. Employment book was not issued to Badli workers but it was issued to Special Badli. **Exhibit 4** was the letter sent to the Assistant Labour Commissioner, Hooghly. As his service was terminated he approached Assistant Labour Commissioner at Chandannagar, Hooghly. He was removed from the factory premises forcibly by the security guard. He was not given any termination letter. He communicated his forceful removal to the company and the Assistant Labour Commissioner. He did not lodge any complaint before the P.S. It was the fact that previously he filed another case in the year 2006 and on the basis of settlement there in, he continued to work in the company after 2006. Conciliation Officer issued Pendency Dispute Certificate in his favour. The copy of Pendency dated 13.07.2009 was marked as **Exhibit 10**. He several times approached O.P./Company to grant him employment but he was refused. **Exhibit 3** is the employment book which was issued in his favour are issued to Special Badli and permanent workers only. He was employed in the

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preparing department but O.P./Company never issued any appointment letter, it issued only employment book to permanent workers.

During his evidence on 20.11.2017 Shri **Ashish Mukherjee O.P.W.-1** submitted that it was not a fact that on 20.11.2006 and 18.01.2009 the applicant was refused employment. Since he was Badli, he received work only if some one was absent. The applicant worked in 2006- 2007, 2008 and 2009. At that time there were 15-16 Badli Workers. During evidence **O.P.W.-2 Mr. Shib Kali Choubey** admitted that they supplied employment book to the Special Badli Worker of the O.P./Company and identified the **Exhibit 3**, (the copy of the employment book supplied to the applicant). He also identified copy of certified standing order which already marked as Exhibit B.

**From cross examination of O.P.W.-1 Ashis Kumar Mukherjee** it is found that the witness concerned first joint company in the year 1983. He left the job in 2005 and rejoined there in 2012. It was a fact that regarding events relating to 2006-2009 he had no personal knowledge. He acquired knowledge only from records. He admitted that the company appeared before Labour Commissioner on receiving notices but he was not aware of the events which took place in the office of the Labour Commissioner. The Special Badli Workers were given preference over other Badli workers. The O.P./Company functioned in accordance with the standing order of the company.

**From cross examination of O.P.W.-2 Mr. Shib Kali Choubey** it is found that for the period from 2007 to 2009 he was personal officer of the O.P./Company. For the period from 2010-2012 he was Senior Personnel Officer of the O.P./Company. He knew Ashok Kumar Mukherjee since 2007-2009. He had no knowledge about Ashok Kumar Mukherjee after his resignation from the company in the year 2009 till he joined for the 2<sup>nd</sup> time to the O.P./Company. He saw Ashok Kumar Mukherjee in the O.P./Company from 2007-2009 but did not see him when he joined O.P./Company for the 2<sup>nd</sup> time. The 2<sup>nd</sup> time of his period of working was 2010 to 2012 and 3<sup>rd</sup> time he was from 2017 till his date of depositions before Court. For the first time he worked in the O.P./Company for the period from 2007-2009.

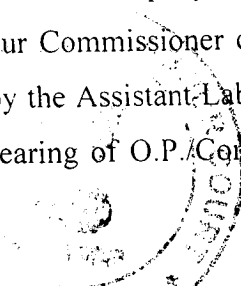
In his argument Ld. Lawyer for the O.P./Company not admitting but assuming that workman concerned was refused employment on and from 19.01.2009, argued that workman concerned never raised any industrial dispute after 17.01.2009 for obtaining pendency certificate for such alleged incident from the Assistant Labour Commissioner and the same has not been filed before this court to authenticate contention of the applicant/workman.

From materials on record evidences and exhibited document, this Court is of the view that refusal of employment took place by firstly in the year 2006. There after, after

settlement he continued to work at O.P./Company and secondly in the year 2009, Workman approached to the Labour Commissioner concerned at Hooghly. Pendency certificate was accordingly issued by the Assistant Labour Commissioner in Form S on 13.07.2009 after appearance and hearing of O.P./Company therein and consequent to

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failure of conciliation attempt. So, the argument of the Ld. Lawyer for the O.P. Company in this regards bears no merit.

In this context Ld. Lawyer for the O.P./Company also argued that the applicant did not raise any dispute with the Company as such the same cannot be entertained under Industrial Disputes Act. Here this Court is of the view that from evidences on record there is no room for doubt that the applicant/workman again and again send letter to the O.P./Company regarding his refusal of employment. Thus it can never be hold that this poor workman never raised any dispute before company as per spirit of Law.

From the admission of O.P./Company and Exhibit E employment card it is proved that the applicant was a special Badli till he last worked at the company on 18.01.2009.

Ld. Lawyer for the applicant/workman citing kind observations of the Hon'ble Court in :-

1. **Karnataka State Road Transport Corporation VS S.G. Kotturappa – AIR 2005 SC 1933**
2. **Bangalore Metropolitan Transport Corpn. VS T.V. Anandappa 2009 LLR659**

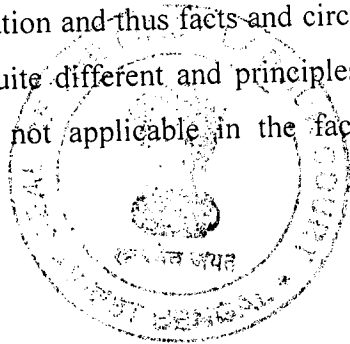
Submitted that being a Badli worker applicant/workman cannot get any protection under Industrial Disputes Act, 1947 and cannot claim reinstatement or regularization.

Here, this Court is of exclusive opinion that the facts and circumstances of this case and that of the cited case Laws by the O.P./Company are quite different and are not applicable in the facts and circumstances of this case. In **Bangalore Metropolitan Transport Case** Hon'ble Apex Court considered the facts whether Award was passed by the Labour court setting aside the order of removal by management and directing his reinstatement with continuity of seniority in the line of Badli contractors but without back wages. However here in this case it is admitted case of the O.P./Company that the applicant /workman was never removed from work by the O.P./Company and never any disciplinary enquiry was conducted against him to terminate him.

Again in **Karnataka State Road Transport Case** Hon'ble Supreme Court considered the facts of repeated acts of misconduct by the workman, discontinuation of work for his unsatisfactory work. However in this case in the Written Statement O.P./Company nowhere there is any reference of any alleged misconduct or discontinuation of work of workman for his unsatisfactory work leading to his termination by the O.P./Company.

Besides, Ld. Lawyer for O.P./Company though referred **Prakash Cotton Mills Vs. Rastriya Mill Mazdoor Sangha SACL 1980-90 Vol. I, P.342** in the short note of

Argument but did not pressed the same while arguing before the Court yet on perusal of the same this court is of exclusive view that there in Hon'ble Court considered facts of present proceedings, closure compensation and thus facts and circumstances therein and that of this present proceedings are quite different and principles of kind observation of Hon'ble Apex Court therein are not applicable in the facts and circumstances of present proceedings.



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Regarding **back wages** Ld. Lawyer for the O.P./Company cited rulings in :-

1. **UP Brassware Corporation Ltd. Vs Udaynarayan Pundey 2006 (I) CLR 39.**
2. **Metropolitan Transport Corporation Vs V Venkatesan Hon'ble Supreme Court.**

Perused both. On perusal of both this Court finds that Hon'ble Court therein observed that payment of back wages depends on the facts and circumstances of each case and not automatic one. Hon'ble Court also observed whether back wages should be awarded fully or only partially (and if so percentage) and that depends upon the facts and circumstances of each case.

From concatenation of facts and events on record it is possible to deduce that the contesting O.P./Company was in a dilemma at the initial stage as to how to deal with or controvert the applicant's case. From plain reading of its pleading it is discernible that at the beginning O.P./Company took the plea of non-maintainability and thereafter alternatively if the application was maintainable, then the plea was that O.P./Company never caused any refusal of employment.

Be that as it may when it is an application U/S 10(1B)(d), the O.P./Company was on the right tract when it took plea of non refusal of employment of the applicant in service. However, when placed in juxtaposition to the marked evasiveness exhibited documents and evidence by applicant, the contesting O.P./Company fails to negate the averment of P.W.-1 – Ashok Kumar Mukherjee that O.P./Company caused refusal of employment without any just reason by not allowing him to work on 19.01.2009 and on subsequent events. From evidences and exhibited documents this Court is of view that plea of O.P./Company that the applicant/workman in spite of repeated notices the applicant/workman did not join his duty cannot be sustained. rather from materials on record and exhibited document this Court holds that applicant/workman in spite of repeated attempts could not join his duties which amounts to refusal of employment by the O.P./Company without any just or cogent reason.

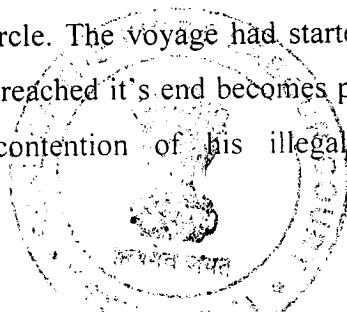
Thus **issue no. 1 and 2** are decided in favour of the applicant – Ashok Kumar Mukherjee.

### **Issue no. 3**

The applicant claimed that he remained unemployed since 19.01.2009 due to refusal of employment by the O.P./Company. From evidences on record there is nothing to hold that the applicant was employed elsewhere since then.

Facts, laws and precedent much like the Holy Triumvirate have uphold the applicant's case and claim.

My judgment has run the circle. The voyage had started with glimpses of success of applicant and as the journey reached it's end becomes positive. The applicant has been successful to prove his contention of his illegal refusal of employment by



O.P./Company and the applicant must get order in his favour in view of my discussion in earlier paragraphs. This Court is of view that the applicant/workman is entitled to get relief of reinstatement in the role of Special Badli along with all consequential benefits since 19.01.2009 till date of his superannuation as per employment card with full back wages.

and this **issue** is also decided in favour of the applicant/workman.

Besides, considering pains, agonies and languishments of this applicant/workman for long this Court also holds that he is also entitled to get compensatory cost from the O.P./Company.

Hence **It is**

**Ordered**

That the Case no. 30/2009 filed by applicant Sri Ashok Kumar Mukherjee against O.P./Company M/s. R.D.B. Textiles Ltd. is allowed on contest with cost of Rs.5,000/- (Rupees five thousand) only to be paid to the applicant Ashok Kumar Mukherjee by the O.P./Company – M/s. R.D.B. Textiles Ltd.

The applicant is entitled to get relief by way of reinstatement in the role of Special Budli along with full back-wages and all consequential benefits since 19.01.2009 till the date of his superannuation as per employment card.

Payment, if any, received by the applicant Ashok Kumar Mukherjee regarding his claim be duly adjusted at the time of final payment by the O.P./Company – M/s. R.D.B. Textiles Ltd.

The O.P./Company is directed to act accordingly within next 30 days failing which the applicant is given liberty to take proper legal steps for execution of this Award.

**This is my Award.**

Dictated & Corrected by me.

**M.S. Pal** 28.4.23

Judge

First Labour Court, Kolkata

28.04.2023

**Judge**

First Labour Court  
Kolkata, W.B.

**M.S. Pal** 28.4.23

Judge

First Labour Court, Kolkata

28.04.2023

**Judge**

First Labour Court  
Kolkata, W.B.

