

I/183918/2022

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

No. Labr/. 333 . ./(LC-IR)/22015(12)/29/2018

Date : 28/03/2022

ORDER

WHEREAS an industrial dispute existed between M/s. Angus Jute Works & Anr., P.O.- Angus, P.S. Bhadreswar, Dist. – Hooghly, PIN – 712221 and Sri Lal Babu Prasad, Angus Line No.35/3, P.O. – Angus, P.S. Bhadreswar, Dist. – Hooghly, PIN - 712221 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 (14of 1947) to the Third Industrial Tribunal specified for this purpose under this Deptt.'s Notification No. 1085-IR/12L-9/95 dated 25.07.1997.

AND WHEREAS, the Third Industrial Tribunal heard the parties under section 10(1B)(d) of the I.D. Act, 1947 (14of 1947) and framed the following issue dismissal of the workman as the "issue" of the dispute.

AND WHEREAS the Third Industrial Tribunal has submitted to the State Government its Award dated 09/03/2022 under section 10(1B)(d) of the I.D. Act, 1947 (14of 1947) on the said Industrial Dispute vide memo no. 327 - L.T. dated 10/03/2022.

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 as shown in the Annexure hereto.

ANNEXURE

(Attached herewith)

By order of the Governor,

Sd/-

Joint Secretary
to the Government of West Bengal

I/183918/2022

: 2 :

No. Labr/333. . .1/(5)/(LC-IR)

Date 28/03/2022

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

1. M/S. Angus Jute Works & Anr., P.O.- Angus, P.S. Bhadreswar, Dist. – Hooghly, PIN – 712221.
2. Sri Lal Babu Prasad, Angus Line No.35/3, P.O. – Angus, P.S. Bhadreswar, Dist. – Hooghly, PIN - 712221.
3. The Asstt. Labour Commissioner, W.B. In-Charge, Labour Gazette.
4. The O.S.D. & E.O. Labour Commissioner, W.B., New Secretariat Buildings, (11th Floor), 1, Kiran Sankar Roy Road, Kolkata – 700001.
5. The Deputy Secretary, IT Cell, Labour Department, with the request to cast the Award in the Department's website.



Joint Secretary

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

Date/2022

Copy forwarded for information to :-

1. The Judge, Third Industrial Tribunal West Bengal, with respect to his Memo No. 327 - L.T. dated 10/03/2022.
2. The Joint Labour Commissioner (Statistics), West Bengal, 6, Church Lane, Kolkata – 700001.

Joint Secretary

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

Present: Shri Sanjeev Kumar Sharma, Judge,
Third Industrial Tribunal, Kolkata.

CASE NO. 07/2013

Under Section 10(1B) (d) of the Industrial Disputes Act, 1947

Sri Lal Babu Prasad ... Applicant
Angus Line No.35/3, P.O.-Angus, P.S. Bhadreswar,
Dist.-Hooghly, PIN-712221, West Bengal.

-Versus-

1. M/s. Angus Jute Works ... Opp. Parties
2. Mill Manager,
Angus Jute Works.
3. Chief Executive (Works)
Angus Jute Works.
P.O.- Angus, P.S. Bhadreswar,
Dist. – Hooghly, PIN – 712221.

A W A R D

Dated : 09-03-2022

The instant application under Section 10(1B)(d) of the Industrial Disputes Act, 1947 is filed by the applicant Lal Babu Prasad. The case of the applicant is that he had been working as special budli mazdoor bearing Ticket No.BS/292 in the Batching Department of Angus Jute Works since the year 1999, but his service was wrongfully terminated by the company through a punishment notice dated 30.01.2013 on the basis of vague allegation that he had assembled near the mill gate at around 5 p.m. on 27.01.2013 and had also held a gate meeting. Further case of the applicant is that no opportunity of hearing was given to him before the termination of his service. Against the order of punishment, the applicant submitted appeal before the Chief Executive (Works) through a letter dated 04.03.2013 stating that the allegations made against him were vague as per mill attendance register. The employer did not consider the appeal as a result the applicant raised industrial dispute before the Assistant Labour Commissioner, Chandannagar through his letter dated 16.04.2013. In the conciliation proceedings the management and the applicant presented their respective versions. As no settlement could be arrived at in the conciliation proceedings within a stipulated period of sixty days, the Conciliation

Contd.....

Officer issued a certificate as to pendency of the conciliation proceedings and thereafter the applicant filed the instant application.

According to the applicant his service has been terminated by the employer in violation of certified standing orders and the rules of natural justice. The applicant prayed for an Award in his favour holding termination of his service as illegal and awarding consequential relief to him.

The management of Angus Jute Works / employer contested the application under Section 10(1B)(d) of the I. D. Act by filing a written statement. The employer challenged the maintainability of the application on various grounds stating that the Angus Jute Works was not a juristic person as such it could not be sued in its own name. It further stated that the application is not maintainable due to misjoinder and non-joinder of parties as the Special Officer appointed by the Hon'ble High Court under whose supervision and control the applicant had been working had not been made party in the application. The maintainability of the application has also been challenged on the ground that the applicant did not raise the dispute with the employer before raising the same with the Assistant Labour Commissioner, Chandannagar, Hooghly. On factual aspect, the employer stated that the applicant joined the company on 09.07.1999 as budli mazdoor in Batching Department and that on 27.01.2013 while he was on late shift duty from 11 a.m. to 2 p.m. and from 5 p.m. to 10 a.m. as softener feeder in the batching department, he absented himself from his duty illegally and unauthorisedly at 5 p.m. and at the same time he illegally allowed access to an unauthorized person to his machine with intention to disrupt the normal working of the mill. It is further alleged that the applicant and his associates formed an unlawful assembly at about 5 p.m. on 27.01.2013 and held a gate meeting. They wrongfully restrained and prevented the willing worker from entering into the mill and compelled them to leave the mill premises under threats of assault and dire consequences to resort to illegal strike. They held violent demonstrations and threatened the senior officers of the company with dire consequences. They forcibly stopped the working of the mill completely from 6 a.m. of 28.01.2013 and such situation continued till 01.02.2013. The applicant and his associates created a reign of terror and a dangerous situation resulting in huge loss to the establishment with damage to the quality of the raw jute lying on the floor of the mill. Despite knowing that the mill was being run under of the Hon'ble Court

through a Special Officer appointed by the Hon'ble Court, the applicant and his associates declared that they had formed an operating committee to run the jute mill. The act of the applicant interfered with the working of the mill and the declaration made by him and his associates was in utter disregard and in violation of the order of the Hon'ble Court. The applicant and his associates stopped the entry and exit of the workers, officers of the company and the goods vehicles to and from the mill gate. The acts of the applicant and his associates hampered the smooth cash flow position as the management was facing financial difficulties to honour its commitment of payments to the parties and the wages to the workers. The applicant and his associates completely stopped the movement of raw jute to the company and the finished goods from the company. As the applicant committed serious misconduct, the management removed his name from the register of the mill with effect from 30.01.2013 tendering him two weeks' wages in terms of the certified standing orders of the mill. The management denied all the allegations made by the applicant against it and defended their act of terminating the service of the applicant on the ground that the termination of his service was done in accordance with the certified standing orders as such there is no question of illegality or wrongful termination of service.

It is pertinent to mention that after the initial appearance the parties did not turn up as a result of which the application under Section 10(1B)(d) was disposed of on 11.12.2015 on the ground that there was no dispute between the parties. Subsequently, on the basis of a petition under Rule 27 of the West Bengal Industrial Dispute Rules, 1958 filed by the applicant, the application under Section 10(1B)(d) was restored on 13.07.2016 after hearing both the sides.

The following issues have been framed in this case :-

I S S U E S

1. Whether the application under Section 10(1B)(d) of the I. D. Act, 1947 is maintainable ?
2. Whether the termination of service of the applicant by the management of the company through their notice dated 30.01.2013 is justified ?
3. What relief / reliefs, if any, the applicant is entitled to ?

In support of his case the applicant examined himself as PW-1 and brought on record the following documents :-

1. A copy of letter addressed to the company by the representatives of six unions as Exhibit-1;
2. A copy of letter addressed to the company by the representatives of ten unions as Exhibit-2;
3. A copy of letter addressed to the Special Officer Mr. S.L. Hazra by representatives of ten unions as Exhibit-3;
4. A copy of letter addressed to the company regarding charter of demand by nine unions as Exhibit-4;
5. A copy of English translation of the representation made before the company along with the original letter in Hindi by the representatives of ten unions as Exhibit-5;
6. A copy of workman's letter dated 06.02.2013 to the company along with copies of cheque and postal A.D. card as Exhibit-6;
7. A copy of workman's letter dated 04.03.2013 addressed to the company along with copies of postal A.D. card as Exhibit-7;
8. A copy of workman's letter dated 16.04.2013 addressed to the Assistant Labour Commissioner, Chandannagar as Exhibit-8;
9. A copy of employment book for special budlis as Exhibit-9;
10. A copy of pay slip for the fortnight ended on 31.01.2013 as Exhibit-10;
11. A copy of ESI Card of the applicant as Exhibit-11; and
12. A copy of statement of P.F. Account of the applicant as Exhibit-12.

The company on the other hand examined its Personnel Manager Mr. Biswarup Sarkar as OPW-1, Security Supervisor of the Mill Mr. Ashok Bhagat as OPW-2, Darwan of the Mill Md. Hasim as OPW-3 and Assistant Manager (Personnel) of the company Mr. Sanjeev Kumar Singh as OPW-4.

The company brought the following documents on record :-

1. Copy of photograph and signature of the applicant on a copy of budli register of Angus Jute Works relating to the applicant as Exhibit-A;
2. Copy of budli register of Angus Jute Works relating to applicant as Exhibit-A/1;
3. A copy of letter dated 04.05.2014 of the applicant addressed to the Chief Executive (Works) Shamnagar Jute Factory (North Mill), Bhadreswar, Hooghly as Exhibit-B;
4. A copy of letter dated 30.01.2013 of the company addressed to the applicant along with copies of cheque No.908293 dated 30.01.2013 for Rs.4229.04, postal receipt and A.D. card as Exhibit-C;
5. Copy of letter dated 28.01.2013 of the company addressed to the I.C., Bhadreswar P.S. as Exhibit-D;
6. Copy of letter dated 29.01.2013 of the company addressed to the Superintendent of Police, Chinsurah, Hooghly as Exhibit-E;
7. Copy of letter dated 29.01.2013 of the company addressed to the S.D.P.O., Chandannagar, Hooghly as Exhibit-F;
8. Copy of letter dated 29.01.2013 of the company addressed to the C.I. of Police, Chandannagar, Hooghly as Exhibit-G;
9. Copy of letter dated 29.01.2013 of the company addressed to the Deputy Labour Commissioner, Chandannagar, Hooghly as Exhibit-H;
10. Copy of letter dated 29.01.2013 of the company addressed to the Hon'ble Labour Minister, Writers' Buildings, Kolkata as Exhibit-I;
11. Copy of letter dated 29.01.2013 of the company addressed to the Labour Secretary, Writers' Buildings, Kolkata as Exhibit-J;
12. Copy of letter dated 29.01.2013 of the company addressed to the District Magistrate, Chinsurah, Hooghly as Exhibit-K;
13. Copy of report of ESI of Police, Bhadreswar P.S. in Case No.S/429/13 of S.D.E.M., Chandannagar as Exhibit-L;

14. Copy of letter dated 30.01.2013 of the company addressed to the S.P. of Police, Chinsurah, Hooghly as Exhibit-M;
15. Copy of order-sheet in Case No.S/429/13 of SDEM., Chandannagar as Exhibit-N;
16. Copy of certified standing orders as Exhibit-O;
17. Copy of letter dated 30.05.2013 of the Mill Manager, Angus Jute Works addressed to the Asstt. Labour Commissioner, Chandannagar submitting his comments as Exhibit-P;
18. Copy of letter dated 21.04.2014 of Chief Executive (Works), Aditya Translink Pvt. Ltd. addressed to the H.O.D., Department of Jute & Fiber Technology, Institute of Jute Technology, University of Calcutta as Exhibit-Q;
19. Copy of staff salary sheet of Samnagar Jute Factory, North Mill, Bhadreswar for the months of March, April and May, 2015 as Exhibit-R; and
20. Letter of authority issued by General Manager (Personnel) of Angus Jute Works in favour of OPW-4, Sanjeev Kumar Singh as Exhibit-S.

All the three issues are taken up together for the sake of brevity of discussions.

The issue of maintainability has not been pressed in the course of arguments. Evidently, the applicant used to work in the mill of the company and it is also admitted that the service of the applicant was terminated through a letter dated 30.01.2013 by the company. It appears from the record that after the termination of his service the applicant submitted representation before his employer through his letter dated 04.03.2013 (Exhibit-7) denying all the material allegations on the basis of which he was terminated. It is also found that the cheque remitted to the applicant by the company along with the letter of dismissal (Exhibit-C) was returned by the applicant to the Manager of Angus Jute Works through his letter dated 06.02.2013 where also he denied all the charges against him and demanded reinstatement. Obviously, the applicant was not reinstated and thereafter he raised dispute with the Assistant Labour Commissioner, Chandannagar through his letter dated 16.04.2013 (Exhibit-8). It is found from the record that the certificate in Form-S was issued by the Conciliation Officer on 02.07.2013 and the application under Section 10(1B)(d) of the I. D. Act was filed on 29.08.2013. Therefore, we find that the application

under Section 10(1B)(d) has been filed well within the prescribed period and before proceeding to raise the dispute with the Labour Authorities the applicant raised demand of reinstatement with the company. Considering the facts and circumstances there appears no impediment as to the maintainability of the application under Section 10(1B)(d) of the Industrial Disputes Act, 1947 and therefore the same is held to be maintainable. The company's plea that it is not a juristic person is completely irrelevant in the present nature of the case as what is material in this case is the employer-employee relationship between the parties and the same is found to be an admitted fact. The question of non-joinder of necessary party raised in the written statement of the company also does not appear plausible as the service of the applicant was terminated by the Mill Manager and not by the Special Officer appointed by the Hon'ble High Court. There is nothing in the termination letter, Exhibit-C, to show that the decision to remove the applicant's name from the budli register of the mill was taken by the Mill Manager in consultation or under the instruction of the Special Officer. Thus, I find no force in the plea that the application under Section 10(1B)(d) suffers from non-joinder of necessary party.

Forwarding arguments the learned advocate for the company contends that the applicant being a budli worker is not entitled to get the protection of the I. D. Act like a permanent worker. He submits that the mandatory provision of Section 25F of the I. D. Act does not apply in case of termination of service of the applicant. He also highlights that the applicant since after his termination has been employed in the Samnagar Jute Factory. According to him the failure of the applicant to disclose that he was gainfully employed at Samnagar Jute Factory amounts to suppression of material facts which in fact is a fraud upon the Court. On this score he cites the decision of the Hon'ble Supreme Court in *M/s. Prestige Lights Ltd. vs. SBI*, reported in (2007) 8 SCC 449 (2007 AIR SCW 5350). The ld. advocate relies upon the decision of the Hon'ble Supreme Court in *KSRTC vs. S.G. Koturappa* reported in 2005 (II) LLJ 161, in support of his contention that the applicant being a budli worker is not entitled to the protections under I.D. Act. The learned advocate for the company submits that the applicant committed gross misconduct, therefore his service was terminated rightly in accordance with the certified standing orders of the company. The termination letter, Exhibit-C, speaks of the reasons of termination in details. The charges against the applicant were so grievous and

serious that his continuation in service was not feasible. He submits that the non-holding of any domestic enquiry is not at all fatal as the company has proved the misconduct of the applicant by tendering evidence in Court to support his contention the ld. advocate cites the decision of the Hon'ble Supreme Court in **Delhi Cloth & General Mills Company vs. Ludh Budh Singh** reported in **AIR 1972 SC 1031**. Opposing the applicant's claim of full back wages ld. advocate cites the decision of the Hon'ble Supreme Court in **Novartis India Ltd. vs. State of West Bengal** reported in **2009 LLR 113 SC**. Concluding his arguments learned advocate for the company submits that the termination of service of the applicant has been done in accordance with the certified standing orders of the company and the applicant being a special budli worker he is not entitled to get any relief in this case.

Learned advocate for the applicant on the contrary, submits that the applicant has been working in the company since 1999. Pointing at the cross-examination of the OPW-1 he submits that the witness admitted that the applicant worked in the company since 1999 to 30.01.2013 and therefore he cannot be treated as a budli worker only. He contends that employing the workmen as budlis, casuals or temporaries and to continue them as such for years in order to deprive them of the status and privileges of a permanent workman amounts to unfair labour practice in terms of Item No.10 of the 5th Schedule to the Industrial Disputes Act, 1947. He argues that the date of joining of the applicant being 09.07.1993 and the date of his dismissal being 30.01.2013 it cannot be said that the applicant did not work for 240 days. He further submits that the allegations of creating a ruckus and commotion in the factory premises has been made against the applicant, one Md. Mustakin and others, but in his cross-examination OPW-1 admitted that the said Md. Mustakin was allowed to join and thereafter he was superannuated. The learned advocate contends that the act of the company to single out the applicant is contrary to the principles of natural justice as the company cannot treat the persons accused of the same offence differently. In support of his contention he cites the decisions of the Hon'ble Supreme Court in **Man Singh vs. State of Hariyana** reported in **LAWS (SC) 2008 5 148** and in **Tata Engineering & Locomotive Company Ltd. vs. Jitendra Pratap Singh** reported in **(2001) 10 SCC 530**. He further submits that no warning or show-cause notice was issued against the applicant and the company has not made out any case to the effect that the applicant was a habitual trouble maker. He further contends that there is no pleading of the company to explain that why the

domestic enquiry was not held and what necessitated the summary dismissal of the applicant. Citing the decision of the Hon'ble Supreme Court in ***Amar Chakraborty vs. Maruti Suzuki India Ltd.*** reported in ***LAWS (SC) 2010 11 57*** he submits that the onus to prove that holding of domestic enquiry was not possible and that the termination of service of the applicant was justified lie upon the management. He further submits that there is nothing in the written statement of the company that they would prove the charges against the applicant by adducing evidence in Court. On this point he cites the decision of the Hon'ble Supreme Court in ***Shankar Chakraborty vs. Britannia Biscuit Company Limited*** reported in ***LAWS (SC) 1979 5 8***. He contends that the allegations on the basis of which the applicant has been terminated are stigmatic in nature and therefore he could not be terminated summarily without causing a proper enquiry and on this score he cites the decisions of the Hon'ble Supreme Court in ***Vijay Kumaran C.P.V. vs. Central University of Kerala*** reported in ***(2020) 12 SCC 426*** and ***Union of India vs. Ram Bahadur Yadav*** ***(2021 SCC Online SC 1134)***. He further submits that the allegation against the applicant that he allowed another person to operate his machine is not substantiated as there is no evidence to that effect. He further submits that there were about 4000 employees in the company as such it was not possible for the applicant and few others who were certainly not armed, to prevent so many workers and moreover there were number of security guards in the company premises. He further submits that the plea of gainful employment of the applicant raised by the company has no force as the applicant started work as a trainee in Samnagar Jute Factory at a very meagre salary compared to what he was getting from Angus Jute Works. He further submits that the company raised much cry about the alleged losses suffered by them due to the alleged acts of the applicant and others but no quantum of loss has been specified. The learned advocate submits that the termination of service of the applicant is illegal and contrary to the provisions of the Industrial Dispute Act and the certified standing orders of the company as such the applicant is entitled to be reinstated with full back wages. In support of his claim of full back wages he cites the decisions of the Hon'ble Supreme Court in ***Harjinder Singh vs. Punjab State Warehousing Corporation*** reported in ***(2010) 3 SCC 192***, ***Deepali Gundu Surwase vs. Kranti Junior Adhyapaka Mahavidyalaya*** reported in ***(2013) 10 SCC 324***, ***Sobharam Raturi vs. Hariyana Vidyut Prasaran Nigam Ltd.*** reported in ***(2016) 16***

SCC 663. Summing up his arguments he submits that the applicant is entitled to get an award of reinstatement with full back wages and consequential reliefs.

The applicant deposing as PW-1 stated that he joined the company on 09.07.1999 as budli mazdoor in the batching department and while working in the said capacity he was promoted to special budli and since 02.07.2007 he had been working in the company as special budli worker. This fact finds support from Exhibit-9. Evidently the service of the applicant was terminated through the company's letter dated 30.01.2013. There is nothing in the pleading and evidence of the applicant to the effect that he worked in the company for 240 days in twelve months preceding the date of termination of his service as per Section 25B of the I. D. Act. Therefore, the applicant is not found to be a permanent worker of the company and consequently he is not entitled to the protection of Section 25F of the I. D. Act in view of the proposition of law as appearing in the case of **KSRTC vs. S. G. Kotturappa**, referred to by the ld. advocate for the company. During arguments ld. advocate for the workman made reference of Item No.10 in the 5th Schedule to the I. D. Act but as a matter of fact nothing to that effect has been pleaded and the matter is not in issue in this case. Since the applicant is admittedly a special budli worker and not a permanent employee, I find no need to delve into the matter any further. Although the applicant is not protected under Section 25F of the I. D. Act, he has got the protection of the certified standing orders of the company. Exhibit-O is the copy of certified standing orders of the company. Item No.13(a) under the heading "termination or employment" lays down that for terminating employment a notice in writing shall be given either by the employer or by the workman for the period noted below :-

In the case of monthly paid permanent workmen, probationers and apprentices one month's notice shall be necessary. In the case of permanent workmen probationers and apprentices paid on any other basis two weeks' notice shall be necessary. Subject to the provisions of the Industrial Disputes Act in the case of special or registered budli whose period of employment for the time being has exceeded fourteen days continuously, seven days' notice shall be necessary; if the unexpired period of the present employment of a special or registered budli be less than seven days, the notice shall be for such unexpired period only. It will be optional for the employer to pay the wages for the notice period in lieu of notice.

No notice shall be necessary in case of temporary or casual workman. Item No.14 (b) of the standing orders under the heading "disciplinary action for misconduct" states that a workman may be suspended for a period not exceeding four days at a time or dismissed without notice or any compensation in lieu of notice if he is found to be guilty of misconduct. Clause (c) of the Item No.14 gives a list of acts and omissions those are to be treated as misconducts. The list includes riotous or disorderly behavior during working hours at the establishment or any act subversive of discipline, striking work or inciting others to strike work in contravention of the provisions of any law or rule having the force of law and allowing an unauthorized person to operate his machine. The clause (e) of Item No.14 lays down that no order of dismissal shall be made unless the workman concerned is informed in writing of the alleged misconduct and is given an opportunity to explain the circumstances against him. The approval of the manager of the establishment and where there is no manager, of the employer, is required in any case of dismissal and when circumstances appear to warrant it, the manager or the employer may, whether an appeal has or has not been preferred institute independent enquiries before dealing with the charge against a workman. Exhibit-C is the copy of the letter dated 30.01.2013 of the company addressed to the applicant which speaks of a number of serious allegations against the applicant and his associates including one Md. Mustakin and further records that in view of the violent act and attitude of the applicant it is not practicable and possible for the management to hold domestic enquiry and the same would not serve any meaningful purpose in view of the circumstances mentioned in the letter.

Evidently, no domestic enquiry was held in this case over the alleged misconduct in accordance with the certified standing orders of the company. The defence of the company is that the acts and conduct of the applicant was so violent and aggressive that no domestic enquiry was possible.

In *Delhi Cloth & General Mills* case, referred to by the company, the Hon'ble Supreme Court, after considering various decisions including the decision in *Workmen of Motipur Sugar Factory Private Ltd. Vs Motipur Sugar Factory Private Ltd. (AIR 1965 SC 1803)*, observed that the following principles broadly emerge:-

- (1) If no domestic enquiry had been held by the management, or if the management makes it clear that it does not rely upon any domestic enquiry that may have been held by it, it is entitled to straightaway adduce evidence before the Tribunal justifying its action. The Tribunal is bound to consider that evidence so adduced before it, on merits, and give a decision thereon. In such a case, it is not necessary for the Tribunal to consider the validity of the domestic enquiry as the employer himself does not rely on it.
- (2) If a domestic enquiry had been held, it is open to the management to rely upon the domestic enquiry held by it, in the first instance, and alternatively and without prejudice to its plea that the enquiry is proper and binding, simultaneously adduce additional evidence before the Tribunal justifying its action. In such a case no inference can be drawn, without anything more, that the management has given up the enquiry conducted by it.
- (3) When the management relies on the enquiry conducted by it, and also simultaneously adduces evidence before the Tribunal, without prejudice to its plea that the enquiry proceedings are proper, it is the duty of the Tribunal, in the first instance, to consider whether the enquiry proceedings conducted by the management, are valid and proper. If the Tribunal is satisfied that the enquiry proceedings have been held properly and are valid, the question of considering the evidence adduced before it on merits, no longer survives. It is only when the Tribunal holds that the enquiry proceedings have not been properly held, that it derives jurisdiction to deal with the merits of the dispute and in such a case it has to consider the evidence adduced before it by the management and decide the matter on the basis of such evidence.
- (4) When a domestic enquiry has been held by the management and the management relies on the same, it is open to the latter to request the Tribunal to try the validity of the domestic enquiry as a preliminary issue and also ask for an opportunity to adduce evidence before the Tribunal, if the finding on the preliminary issue is against the management. However, elaborate and cumbersome the procedure may be, under such circumstances, it is open to the Tribunal to deal, in the first instance, as a preliminary issue the validity of the domestic enquiry. If its finding on the preliminary issue is in favour of the management, then no additional evidence need be cited by the management. But, if the finding on the preliminary issue is against

the management, the Tribunal will have to give the employer an opportunity to cite additional evidence and also give a similar opportunity to the employee to lead evidence contra, as the request to adduce evidence had been made by the management to the Tribunal during the course of the proceedings and before the trial has come to an end. When the preliminary issue is decided against the management and the latter leads evidence before the Tribunal, the position, under such circumstances, will be that the management is deprived of the benefit of having the finding of the domestic Tribunal being accepted as prima facie proof of the alleged misconduct. On the other hand, the management will have to prove, by adducing proper evidence, that the workman is guilty of misconduct and that the action taken by it is proper. It will not be just and fair either to the management or to the workman that the Tribunal should refuse to take evidence and thereby ask the management to make a further application, after holding a proper enquiry, and deprive the workman of the benefit of the Tribunal itself being satisfied, on evidence adduced before it, that he was or was not guilty of the alleged misconduct.

(5) The management has got a right to attempt to sustain its order by adducing independent evidence before the Tribunal. But the management should avail itself of the said opportunity by making a suitable request to the Tribunal before the proceedings are closed. If no such opportunity has been availed of, or asked for by the management, before the proceedings are closed, the employer can make no grievance that the Tribunal did not provide such an opportunity. The Tribunal will have before it only the enquiry proceedings and it has to decide whether the proceedings have been held properly and the findings recorded therein are also proper.

(6) If the employer relies only on the domestic enquiry and does not simultaneously lead additional evidence or ask for an opportunity during the pendency of the proceedings to adduce such evidence, the duty of the Tribunal is only to consider the validity of the domestic enquiry as well as the finding recorded therein and decide the matter. If the Tribunal decided that the domestic enquiry has not been held properly it is not its function to invite suo motu the employer to adduce evidence before it to justify the action taken by it.

(7) The above principles apply to the proceedings before the Tribunal, which have come before it either on a reference under Section 10 or by way of an application under Section 33 of the Act.

This legal principle has been reiterated in the case of *Shankar Chakravarty*, referred to by the applicant.

In view of the legal position it is clear that the applicant is not entitled to get the relief prayed for merely because of the fact that no domestic enquiry was held. It is certainly for the company to establish by evidence that the order of termination of service of the applicant without affording opportunity of being heard was justified. In this case the applicant filed application u/s 10 (1B) (d) of the I. D. Act and the company filed its written statement. The record shows that the applicant first adduced evidence in this case and thereafter the company adduced evidence. There is no specific averment in the written statement of the company that they wish to prove the allegations of misconduct against the applicant in tribunal nor any leave to adduce evidence is sought but the fact remains that both the parties adduced evidence in support of their respective cases. The applicant did not raise the point at the time of commencement of and during the recording of evidence in the case therefore the questions that who should adduce evidence first and that the company should have sought leave of the tribunal before adducing evidence no longer survives. Thus, the applicant at this stage cannot get any benefit by citing the decisions in the cases of *Amar Chakravarty* and *Shankar Chakravarty*. The decision in the case of *Vijay Kumaran C.P.V.* is concerned with service matters in educational institutions and that in the case of *Ram Bahadur Yadav* related to the matters RPF Rules 1987. Moreover, this case does not relate to the allegations of sexual harassment at workplace or commission of theft. The allegations in this case are of the nature of industrial unrest and discord between the management and a section of workers. It is alleged that the applicant with the aid of his associates resorted to violence causing the stoppage of the work of the company. Such allegation though serious but cannot be said to be stigmatic as the allegation of theft or sexual harassment. In view of the facts, circumstances and nature of this case and the legal position that the employer can prove the charge against workman by leading evidence before the tribunal, the decisions in the cases of *Vijay Kumaran C.P.V.* and *Ram Bahadur Yadav* cannot be applied.

Let us now see whether the company has been able to prove the charge against the applicant and also to justify the departure from the provisions of clause (e) of Item No.14 of the certified standing orders.

The first allegation against the applicant is that on 27.01.2013 he did not perform his duty in the second shift and allowed unauthorized person to operate his machine. Firstly, we find from the evidence of OPW-2 the security supervisor in the mill that there were 30/32 security personnel employed in the company. When there were so many security personnel the entry of unauthorized persons in the mill as alleged does not appear to be very convincing. It is no case of the company that such unauthorized person was seen operating the machine nor there is anything to suggest that the security personnel or the other workers of the mill caught any unauthorized person and evicted him from the mill premises. It is found from the evidence of OPW-1 Biswarup Sarkar, Manager (Personnel) of the company that on 27.01.2013 the applicant was allotted duties from 11 a.m. to 2 p.m. and from 5 p.m. to 10 p.m. There is nothing to show that the non-joining of duty by the applicant in the second shift of his duty was reported by any staff or officer of the company on the contrary exhibit-10, the wage slip, filed by the applicant shows that he was paid for working for 64 hours. There is nothing to indicate that wages of the applicant were deducted for his not performing duty in the second shift on 27.01.2013. The applicant (PW-1) in his evidence has denied the allegations made against him and has asserted that he worked in both the shifts on 27.01.2013. OPW-3 is the darwan (Watchman) of the mill. His evidence is that the applicant and his associates did not allow the workers and staff to enter into the mill and they did not allow the lorries carrying raw jute to enter into the mill and the lorries loaded with finished goods from going out of the mill. The witness did not make any written report to the management regarding the incident. It is found from the evidence of OPW-2 that the strike continued for 3/4 days and the entire mill was closed. He also did not make any written report to the management. It is also found from his evidence that on 27.01.2013 he found that the workers were preparing a stage for holding a meeting. According to him the applicant and Md. Mustakin were present there. The witness did not hear the applicant to speak about the names of the persons of the operating committee proposed to run the mill. In his examination-in-chief the witness stated that the applicant and some workers of the mill had prepared a stage outside Girja gate, but in his cross-examination he once stated that there was no obstruction at the

Girja gate and the workers could freely enter and exit through the said gate. The evidence of OPW-1 shows that about four thousand workers of the company were stopped from entering into the company on 28.01.2013 by the applicant and his associates. It is no case of the company that the applicant and his associates were armed with deadly weapons. The number of the associates of the applicant is also not disclosed. In view of the circumstances it is very hard to swallow that a handful of persons along with the applicant stopped such a huge number of workers from entering into the mill. The company did not bring a single worker in the tribunal who was allegedly stopped by the applicant and his associates. OPW-4 stated that the applicant and his associates obstructed him from entering in to the mill and also obstructed the entry and exit of vehicle into and from the mill on 28.01.2013 but he did not make any written complaint to his superiors. He also stated that no workman, transport company, owner or driver of trucks made written complaint to the management. The witness could say the quantum of loss allegedly suffered by the company. OPW-1 and OPW-4 are the officials of the management while OPW-2 and OPW-3 are the security personnel under the general control of the company therefore their evidence cannot be said to be fully reliable. It is found from the evidence of OPW-1 that the associate of the applicant namely Md. Mustakin was allowed to join his service and subsequently he superannuated from the company. It is found from Exhibits-C, D, E, F, G, H, I, J, K, L, M, N & P that the said Md. Mustakin and the applicant were equally accused of resorting to violence in the mill premises. The reinstatement of a similarly placed worker by the company itself indicates that the acts alleged against the applicant and Md. Mustakin were not so serious as projected because had he been really engaged in disruptive activities; the company would never had reinstated him. Moreover, in view of the spirit of the decisions in *Man Singh* and in *Tata Engineering & Locomotive Company Ltd.* the reinstatement of equally accused worker namely Md. Mustakin by the company amounts to discrimination which is not permissible. Looking at the entire gamut of the evidence and materials appearing on record, it appears to be a case of general resentment and commotion of the workers of the company against the management which led to the total stoppage of work for few days. Thus, the charge against the applicant is not found established convincingly. It is also found from Exhibits-1, 2, 3, 4 & 5 that the applicant as representative of one of the labour unions had been quite vocal against the management of the company in connection with the various

demands of the workers. In that view of the matter it appears highly probable that the applicant has been targeted and victimized over the incident of the general resentment of the workers by canvassing a picture as if the applicant was solely responsible for the incident. The magnitude of the incident as depicted by the company could not be possible at the hands of the applicant and his few associates named in Exhibits-D, E, F, G, H, I, J & K without the participation of a big section of the workers. In that view of the matter it appears that the incident was a consequence of general disharmony between the workers and the management. In the circumstances inflicting punishment upon the applicant straightaway without affording opportunity to him to defend himself in terms of clause (e) of Item No.14 of their certified standing orders appears to be in contravention of the principle of natural justice that no one should be condemned unheard. In the circumstances the proper course was to afford opportunity of being heard to the applicant before proceeding to inflict the highest punishment upon him.

In the case of *M/s. Prestige Lights Ltd.*, referred to by the learned advocate for the company, the Hon'ble Supreme Court held, "A prerogative remedy is not a matter of course. In exercising extraordinary power, therefore, a Writ Court will indeed bear in mind the conduct of the party who is invoking such jurisdiction. The very basis of the writ jurisdiction rests in disclosure of true, complete and correct facts. If the material facts are not candidly stated or are suppressed or are distorted, the very functioning of the writ Courts would become impossible. A party, whose hands are soiled, cannot hold the writ of the Court." In the instant case the no doubt the applicant did not disclose in his application that after termination of his service by the company he took up employment with another company. The fact of gainful employment is relevant for the purpose of grant of back wages. We find that the applicant has not claimed full back wages in his application nor he has pleaded that he was unemployed after the termination of his service by the company. The remedy under section 10 (1B) (d) of the Industrial Disputes Act is a statutory remedy and not prerogative remedy. In the facts and circumstances, the decision in *M/s. Prestige Lights Ltd* cannot not be applied in this case.

The company tried to defend their action on the ground that they remitted cheque of Rs. 4299.04 equivalent to two weeks' wages along with the termination notice (Exhibit-C) as per their certified standing orders but we find that the applicant

through his letter dated 06.02.2013 (Exhibit-6) sent the cheque back to the company denying all the charges levelled against him. In this case the applicant has been dismissed on the ground of alleged misconduct and clause (e) of Item No.14 of the certified standing orders reads that no order of dismissal shall be made unless the workman concerned is informed in writing of the alleged misconduct and is given an opportunity to explain the circumstances against him. In view of the language used in the clause (e) it is found to have overriding effect over the other provisions. Therefore, the company cannot defend the termination on the ground of misconduct on the basis of clause (a) of item No. 13 of the certified standing orders

In view of the facts and circumstances of the case, I find that the company failed to justify their act of termination of service of the applicant and therefore he is entitled to be reinstated in the company in his original position.

Coming to the aspect of back wages we find that the applicant did not plead in his application that he was not gainfully employed anywhere after termination of his service but in his examination-in-chief dated 11.07.2017 he stated that he was not gainfully employed. In the cases of *Harjinder Singh*, *Deepali Gundu Surwase* and *Sobharam Raturi*, referred to by the learned advocate for the applicant, the employees were the permanent employees and their services were terminated violating the mandatory provisions of I. D. Act. In the case of *Novartis India Ltd.*, referred to by the learned advocate for the company, the Hon'ble Supreme Court held, "There can, however, be no doubt whatsoever that there has been a shift in the approach of this Court in regard to payment of back wages. Back wages cannot be granted almost automatically upon setting aside an order of termination inter alia on the premises that the burden to show that the workman was gainfully employed during interregnum period was on the employer. This Court, in a number of decisions opined that grant of back wages is not automatic." In the present case, the applicant is admittedly a special budli worker only and not a permanent worker. As a special budli the applicant has no right to regular employment as such he has to take some other job on the remaining days of the year. The applicant not being a permanent employee is not entitled to the protection of Section 25F of the I. D. Act. It is further found to an admitted position that after termination of his service by the company he took up job with another jute mill namely Aditya Translink Pvt. Ltd. mills: Samnuggar Jute Factory (North Mill). We find from exhibit-Q, letter dated

21.04.2014 of Aditya Translink Pvt. Ltd. that the applicant had preliminary working experience in the said jute mill for one year. Thus, the applicant found new job almost soon after termination of his service by the company and was gainfully employed there. Exhibit-R is the salary sheet of Samnuggur Jute Factory (North Mill) which shows that the applicant received salary of Rs 1455/-, 3860/- and 1945/- for the months March, April and May 2015 respectively. It is found from the evidence on recall of the applicant that he is no longer in the service of the Samnuggur Jute Factory (North Mill).

Having considered the entire facts and circumstances of the case and the evidence and materials appearing on record, I find that reinstatement of the applicant in the company in his original position as special budli worker with back wages at the rate of 15% from the date of his termination till the date of his reinstatement will meet the ends of justice.

All the issues are disposed of accordingly.

Hence, it is,

Ordered

that the applicant is entitled to reinstatement in the mill of the company as special budli with back wages applicable to special budli at the rate of 15 per cent from 31.01.2013 till his reinstatement.

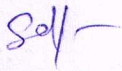
Messers Angus Jute Works, P.O.- Angus, P.S. Bhadreswar, Dist.- Hooghly, Pin-712221 is directed to reinstate the applicant Lal Babu Prasad as special budli and pay 15% of back wages applicable to him from 30.01.2013 till his reinstatement as special budli within 60 days from the date of publication of this award.

Let, the copies of the award be sent to the Labour Department, Government of West Bengal in accordance with the usual rules and norms.

This is my award.

Dictated & corrected by me


Judge


(Sanjeev Kumar Sharma)
Judge,
Third Industrial Tribunal,
Kolkata
09/03/2022