

I/189218/2022

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

No. Labr/419/(LC-IR)/22015(15)/27/2018 Date: 22/04/2022.

ORDER

WHEREAS under the Government of West Bengal, Labour Department Order No. Labr/110-IR/I.R./10L-14/2003 dated 01.02.2010 the Industrial Dispute between M/s. Kesoram Industries Ltd, 9/1, R. N. Mukherjee Road, Kolkata - 700001 and its workman Sri Sukhdham Pandey, A/7 Bajrangbali, RIC- 2, Banhooghly, Kolkata - 700108 regarding the issue mentioned in the said order, being a matter specified in the Second Schedule to the Industrial Dispute Act, 1947 (14 of 1947), was referred for adjudication to the Judge, First Industrial Tribunal, West Bengal.

AND WHEREAS the First Industrial Tribunal, West Bengal, has submitted to the State Government its award dated 29/03/2022 on the said Industrial Dispute vide memo no. 453 – L. T. dated. 07/04/2022.

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,

Sd/-

Joint Secretary
to the Government of West Bengal

I/189218/2022

No. Labr/419/15/(LC-IR)

Date: 22/04/2022.

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

1. M/s. Kesoram Industries Ltd, 9/1, R. N. Mukherjee Road, Kolkata - 700001.
2. Sri Sukhdham Pandey, A/7 Bajrangbali, RIC- 2, Banhooghly, Kolkata - 700108.
3. The Assistant Labour Commissioner, W.B. In-Charge, Labour Gazette.
4. The O.S.D. & E.O. Labour Commissioner, W.B. New Secretariate Buildings, 1, K. S. Roy Road, 11th Floor, 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/ /(LC-IR)

Date: /2022.

Copy forwarded for information to:

1. The Judge, First Industrial Tribunal, West Bengal with reference to his Memo No. 453 – L. T. dated. 07/04/2022.
2. The Joint Labour Commissioner (Statistics), West Bengal, 6, Church Lane, Kolkata -700001.

Joint Secretary

In the matter of an Industrial Disputes exists between M/s Kesoram Industries Limited, 9/1, R. N. Mukherjee Road, Kolkata – 700 001 and their Workman named Sri Sukhdham Pandey, A/7 Bajrangbali, RIC- 2, Banhooghly, Kolkata – 700 108.

G.O. No. 110-IR/IR/10L-14/2003, dated 01.02.2010

Case No. VIII – 07/2010 of the Industrial Dispute Act 1947

BEFORE THE FIRST INDUSTRIAL TRIBUNAL: WEST BENGAL

PRESENT

**SHRI UTTAM KUMAR NANDY, JUDGE
FIRST INDUSTRIAL TRIBUNAL, KOLKATA**

Date of Order: 29.03.2022

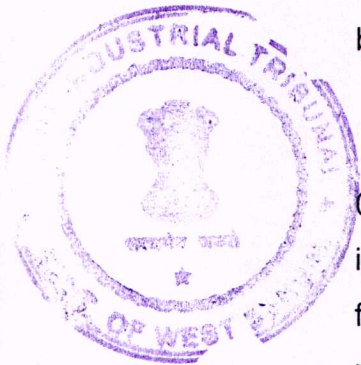
Case No.: VIII – 07/2010

The instant case has been initiated on receipt of a copy of Government Order of reference No. 110-IR/IR/10L-14/2003, dated 01.02.2010 from the Labour Department, Government of West Bengal referring an industrial dispute between M/s Kesoram Industries Ltd. of 9/1, R. N. Mukherjee Road, Kolkata – 700 001 and their Workman named Sri Sukhdham Pandey residing at A/7 Bajrangbali, RIC- 2, Banhooghly, Kolkata – 700 108, for adjudication of the matter and submitting its award to the State Government.

The fact of the statement of claim of the Workman of M/s Kesoram Industries Limited is in short that M/s Kesoram Industries Limited is a group of industries having its office at 8th Floor, Birla Building, 9/1, R. N. Mukherjee Road, Kolkata – 700 001. The Workman was a permanent employee of the Company and had served the Company for a long period of about 16 years before his forceful termination w.e.f. 30.05.2008.

Initially the Workman joined the Company on Casual basis on and from 01.12.1992 without having any appointment letter, which was subsequently issued on 12.04.1994 appointing him as a temporary staff w.e.f. 18.04.1994 for a period of only two months on a consolidated salary of Rs. 1000/- per month and the Workman was continuing his service even after the said two months.

In this juncture the Workman states that the authority of Birla Building used to issue gate-pass for the employees of the respective companies upon request or application to them and thereafter on 20.06.1994 the Company issued a fresh appointment letter in the letter head of M/s Kesoram Industries



& Cotton Mills Limited and appointed the applicant as an Assistant of the Company in accounts department on probation for six months upon some terms and conditions mentioned therein. The Workman completed the probation period. The management neither terminated him nor extended his probation period though the Workman was continuing his service in the Company and therefore as per sub-clause (2) of Clause-C of the permanent letter dated 20.06.1994, the Workman had been automatically confirmed and had been rendering his sincere honestly and uninterruptedly till 30.05.2008 when he was illegally terminated from his employment.

The Workman further states that the nature of his job was purely clerical having no supervisory power in the Company who did not maintain any attendance register for the Workman. Generally the Workman of the Company used to sign on a register where no named of the Company was written and even though on the basis of said so called attendance register the salary of the Workman was paid by the Company sometimes in cash and sometimes by cheques issued by different companies such as Kesoram Textile Mills Limited, M/s Kesoram Insurance Management Limited, Vasavadatta Services Limited etc.

Then on 03.02.1995, the Company issued a certificate in favour of the Workman declaring him as an employee of the head office. That apart one inter office memo, dated 23.03.2000 was issued by Sri S. R. Chamaria of Accounts Department of the Company to the Workman asking him to deposit his outstanding dues of Rs. 1000/- on or before 27.03.2000 and accordingly the said amount was deposited with the Accounts Department.

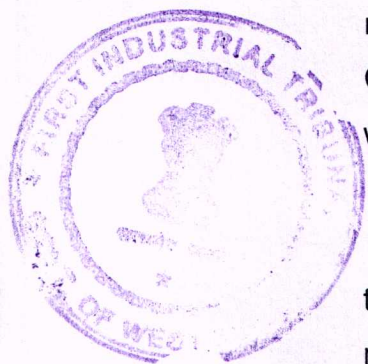
The Workman further states that the employees of the Company are covered under ESI Act, the Employees Provident Fund and Miscellaneous Act. The Provident Fund Accounts are operated and controlled by the Trustee Board of the Company and the Workman lastly received the said account slip for the year 2001-02 as the Company is very much irregular in this regard.

The main allegation of the Workman as stated is in short that on 30.05.2008 when the Workman went to resume his normal duties, the Security-in-Charge along with other security personnel forcibly and illegally restrained him from entering into the office without assigning any reason and since all the repeated requests to allow him to join duty ended in smoke. The Workman lodged a complaint in black and white on 30.05.2008 before the local Police Station against those officials of the Company and after receiving the same the officer on duty named Sri Dinabandhu Paul made a telephonic discussion with Mr. Shiv Kumar Parik who asked the Workman through the

said duty officer to come to the office and when the Workman reached before Mr. Parik, the Security Personnel asked him to come on 02.06.2008 as per instruction of Mr. Parik. Thereafter on the next day i.e. on 02.06.2008, the Workman reached his office at about 12 O'clock, he was allowed to enter into his office. The Workman met with Mr. Parik at 8th Floor, scouted with two security personnel where Mr. Parik with the help of security personnel and one Sri Yaswant Mishra forcefully obtained the signature of the Workman on some blank papers and also snatched away the key of drawer of working table of the Workman for which the Workman immediately after coming out from the office lodged a written complaint on 02.06.2008 before the local Police Station with a copy being served to Deputy Commissioner of Police (Central) and Commissioner of Police, Kolkata.

The Workman further states even after the aforesaid unwanted events, the Workman went to his office for attending his duty in regular course but had all the times he was refused and not allowed to attend his duty and eventually his service was terminated w.e.f 30.05.2008 by the Company. Even then the Workman requested the management particularly Mr. Parik to let him know the reason of such forceful termination but nothing was assigned to him rather neither he was offered any compensation nor given any prior notice or paid anything in lieu thereof as per the terms and conditions applicable to him and after waiting for a period of two months having got no response from the rigid attitude of the management of the Company the Workman submitted a letter on 06.08.2008 raising protest against the said illegal termination before the Chairman of the Company requesting him to allow the Workman to resume his duties with full back wages for the period he was forced to remain idle through registered post with AD but when no response came the Workman again sent a letter on 04.09.2008 to the Company as well to the Chairman with same request to resume his duty within 7 days following which he will take proper steps in accordance with law.

This time the Company replied to the letter, dated 04.09.2008 sent by the Workman vide their letter dated 15.09.2008 stating that the Workman was never employed with the Company and finding no other alternative the Workman raised the instant industrial dispute before the Labour Directorate by his letter dated 15.10.2008 along with copies of his letter to the management, dated 06.08.2008 and 04.09.2008 respectively and in due course of time Assistant Labour Commissioner forwarded a copy thereof for submitting their comments about the employer who for the first time came out with a false, fabricated, concocted and afterthought plea that the Workman under reference has resigned from his service by their letter dated 26.11.2008 and he has also settled his service dues and they (the company) submitted a false fabricated



and manufactured letter of resignation dated 28.02.2005 and a copy of the receipt dated nil.

The Workman submits and claims that he has never resigned from his service and signature of him is forged by the Company in the said purported resignation letter. Though on behalf of Kesoram Textile Mills Limited a sum of Rs. 21,164/- only was paid to the Workman by cheque No. 224747, dated 11.03.2005, but the said amount of money was not paid to the Workman on account of his settlement and the purported money receipt is also a manufactured document.

The Workman further states that on 09.01.2009 he made reply to the letter of management dated 26.11.2008 and requested the Conciliation Officer to take proper steps against the management and in reply to the plea as taken by the management who specifically denied that the Workman did not resign from his employment and as such since the Conciliation proceeding has failed, the appropriate Government was pleased to refer the matter before this Tribunal to adjudicate the issues as follows:

- a) Whether the termination of service of Sri Sukhdham Pandey by way of refusal of employment w.e.f. 30.05.2008 by the management is justified?
- b) What relief, if any, is the Workman is entitled to?

Hence the instant Written Statement of claim of the Workman whose last drawn salary was 7640/- only (approx) net after deduction, praying to pass an Award holding that the termination of the Workman from his service is illegal and direct the Company to reinstate him in service with full back wages along with other consequential benefits accrued thereto.

On the other hand the Company named M/s Kesoram Industries Limited has filed their Written Statement on 22.11.2010 against statement of claim dated 15.07.2010 filed by the Workman Shri Sukhdham Pandey, denying all material allegations and states inter alia to the effect that the statement of claim filed by the Workman contains and incorrect, misleading and baseless statement or allegations and / or contentions.

The Company states specifically that the Company earlier known as Kesoram Industries and Cotton Mills Limited is engaged inter alia in the business and manufacture and sale of cement, rayon, transparent paper, spun pipes, fire bricks, automobile, tyres and tubes etc. and the Workman was



appointed by the Company herein as Assistant vide letter dated 20.06.1994. Then in pursuance of the sanction of scheme of arrangement by the Hon'ble High Court at Kolkata in CP No. 387 of 1999, the Textile Division of the Company stood transferred and / or vested in new Company named the Kesoram Textile Mills Limited on and from 01.06.1999 and the employees and / or the Workman of the said Textile Division including the present Workman herein stood transferred on and from 01.06.1999 under the sanctioned scheme of arrangement. Thus on and from 01.06.1999 the Company herein did not have any liability whatsoever towards the Workman and the continuity of service of the present Workman was to be maintained with the Kesoram Textile Mills Limited and thereafter during the course of conciliation proceeding it was come to the knowledge of the Company herein that the Workman had tendered his resignation from his service of Kesoram Textile Mills Limited vide his letter dated 28.02.2005 and had settled his dues full and final with the said Kesoram Textile Mills Limited.

It is further stated that the said Kesoram Textile Mills Limited was a part of Provident Fund known as Birla Industries Provident Fund in respect of its employees who has settled the Provident Fund dues of the Workman.

It is specific allegation of the Company against the Workman that after more than 3 (three) years from his resignation from the service of Kesoram Textile Mills Limited the present Workman purported to claim reinstatement of his service in the Company though he had ceased to be an employee of the Company. The Company however states that vide a letter dated 15.09.2008 the Company herein wrote to the Workman informing him by saying that he was not an employee of the Company herein (earlier known as Kesoram Industries and Cotton Mills Limited) because of the fact that his services stood transferred to the Kesoram Textile Mills Limited on and from 01.06.1999.

The Company denied that the Workman was a permanent employee of the Company or he served the Company for a long period of about 16 years or he did not himself resigned from the service of said Kesoram Textile Mills Limited or he lastly worked in the Accounts Department of the Company.

The Company demanded that the salary of the said Workman was always paid from the accounts of the said Kesoram Textile Mills Limited and Provident Fund dues of the said Workman was also paid to him from the Trust Fund i.e. Birla Industries Provident Fund. The Company also denied that a sum of Rs. 21,164/- was not paid to the Workman by cheque No. 224747, dated 11.03.2005 in full and final settlement.

It was also denied by the Company to the effect that the termination of service of the Workman by way of refusal of employment w.e.f. 30.05.2008 by the management, rather the Company demands that he has resigned himself from his service on and from 28.02.2005 by his letter to the Kesoram Textile Mills Limited.

In view of the aforesaid circumstances the Company prays for passing an Award dismissing the instant reference and pass such other order or orders and / or give such direction or directions as the Tribunal deemed fit and proper.

Issues have been framed by the concerned authority of Labour Department, Government of West Bengal when the instant case was referred to this Tribunal that apart I find no other issues being referred to be discussed by this Tribunal. These issues are as follows:

ISSUE(S)

- 1) Whether the termination of service of Shri Sukhdham Pandey by way of refusal of employment w.e.f. 30.05.2008 by the management is justified?
- 2) What relief if any is the Workman is entitled to?

Decision with Reason :

To prove the contention of respective parties regarding the aforesaid issues having adduced both oral and documentary evidence as follows:

From the side of Workman the following evidences have been led:

- 1) Shri Sukhdham Pandey as WW-1, the applicant of the present reference.

DOCUMENTS

The following documents have been marked and exhibited as follows:

- 1) Appointment letter, dated 12.04.1994 as **Exhibit-1.**
- 2) Another appointment letter, dated 20.06.1994 as **Exhibit-1/1.**
- 3) Photocopy of Identity Card as **Exhibit-2.**

- 4) The photocopy of Employment Certificate, dated 03.02.1995 as **Exhibit-3.**
- 5) Provident Fund Slip of the Workman from 2001-2002 issued by Birla Industries Provident Fund as **Exhibit-4.**
- 6) The photocopy of Employment FIR, dated 30.05.2008 as **Exhibit-5.**
- 7) The photocopy of Employment FIR, dated 02.06.2008 as... **Exhibit-5/1.**
- 8) The photocopy of the letter by the Workman to the Company, dated 06.08.2008 as **Exhibit-6** and the photocopy of letter dated 04.09.2008 of the Workman to the Company and their Chairman as **Exhibit-6/1.**
- 9) The reply of the Company dated 15.09.2008 as marked as . **Exhibit-7.**
- 10) The photocopy of letter of complaint before the Labour Commissioner as marked as **Exhibit-8.**
- 11) The reply of the Company dated 26.11.2008 as **Exhibit-9.**
- 12) The alleged resignation letter dated 28.02.2005 (photocopy) as **Exhibit-9/1.**
- 13) One Money Receipt dated Nil as **Exhibit-9/2.**
- 14) The photocopy of letter, dated 09.01.2009 as **Exhibit-10.**
- 15) The photocopy of inter office memo issued by Mr. Sitaram Chamria, Senior President, HR and Accounts of M/s Kesoram Industries Limited, dated 23.03.2000 to the Workman as **Exhibit-11.**
- 16) The photocopy of letter dated 31.03.2000 of the Workman to the authority of M/s Kesoram Industries Limited as **Exhibit-12.**
- 17) The photocopy of Pass Book in respect of the Saving Bank Account of the Workman lying in the Punjab National Bank as **Exhibit-13 (3 sheets Collectively).**

On the other hand the Company has cited the following witnesses:

- 1) Seemab Ahmad Khan as **CW-1.**
- 2) Shri Rajesh Kumar Prasad as **CW-2.**

That apart the Company also filed some documents which have been exhibited as follows:

- 1) The photocopy of application allegedly written by Sukhdham Pandey dated 12.08.2013 to the President, Birla Industries Provident Fund as **Exhibit-A.**
- 2) The photocopy of letter dated 16.08.2013 of Birla Industries Provident Fund to Shri Sukhdham Pandey through Speed Post as **Exhibit-A/1.**

- 3) A copy of letter by Kesoram Insurance Management Limited to Shri Sukhdham Pandey dated 01.10.2006 as **Exhibit-B**.
- 4) The photocopy of letter dated 09.12.2014 of Kesoram Textile Mills Limited to the Manager under reference to the A/c No. - 2097563697 as **Exhibit-C**.

Since the issues to be considered are interlinked with one another I have taken them together for brevity of my discussion. The applicant Sukhdham Pandey has deposed in this case as PW-1 who states that he used to work at Kesoram Industries Limited i.e. the Company in the instant case (herein after to referred and call as the Company) situated at 9/1, R. N. Mukherjee Road, Birla Building, Kolkata – 700 001.

PW-1 claims that he joined this Company on 01.12.1992 as Casual Worker being recruited verbally by the management and thereafter on 12.04.1992 he was issued an appointment letter only for two months though even after that period he was working continuously and subsequently on 20.06.1994 he was issued another appointment letter. Those appointment letters were marked as **Exhibit-1** and **Exhibit-1/1**. He was also issued an identity card by the Company which has been marked as **Exhibit-2**.

He further claims that he worked in this Company for about 16 years as an Assistant in various departments of the Company such as Kesoram Textile Mills Limited, Kesoram Insurance Management Limited and Vasavadatta Services Limited as per direction of the higher authority of the Company.

He further claims that he used to put his signature in an attendance register regularly which was not maintained in any printed form of attendance not the name of the Company found place on the cover page of the said attendance register and on the basis of said attendance salary of PW-1 used to be paid sometimes by cheque and sometime by cash.

He also claims that **Exhibit-3** is the evidence of his employment under Kesoram Industries Limited and **Exhibit-4** is the proof that Provident Fund Account was maintained by Birla Industries Provident Fund on behalf of his Company upto 2002.

Then he states that he was terminated from his service from 30.05.2008 when he was not allowed to join his duty by Birla Building authority's security personnel as per instruction of S. K. Parik, Chief of Staff of Kesoram Industries Limited for which he lodged an F.I.R. i.e. **Exhibit-5** before the Hare Street Police Station and talking with the then officer Mr. D. Pal of Hare Street Police Station. Mr. Parik instructed PW-1 through the duty officer

to come on 02.06.2008 as it was 05:30 pm when PW-1 reached office and Saturdays and Sundays were weekly holidays.

It is further stated by PW-1 that on 02.06.2008 he was taken by the security personnel to the chamber of S. K. Parik at 12:00 noon when Yaswant Mishra, Vice President and other security personnel were also present. PW-1 was asked by them in the chamber of S. K. Parik to handover the key and his signature was forcibly taken on the blank paper for which PW-1 lodged an F.I.R. on 02.06.2008 which has been marked as **Exhibit-5/1** with the copies to the AC and DC of the Police.

Then on 06.08.2008 and 04.09.2008 PW-1 appealed before the Company through **Exhibit-6** and **6/1** for his reinstatement in the service, against which he got the reply of the Company on 15.09.2008 vide **Exhibit-7** wherein he was denied to be an employee of the Company and therefore, he through **Exhibit-8** filed a letter of complaint before the Labour Commissioner for which later the Labour Commissioner got a reply from the Company on 26.11.2008 stating inter alia that the Workman i.e PW-1 had resigned from his service which is marked as **Exhibit-9** and PW-1 claimed that the statement made by the Company is absolutely false.

PW-1 denied the **Exhibit-9/1** and **9/2** stating that the Company never issued any cheque in his favour towards full and final settlement of his dues and the signature appearing therein is not at all of him and that's why PW-1 challenged those signatories by submitting a letter to the Labour Commissioner vide **Exhibit-10** dated 09.01.2009.

It is further stated that he was never an employee of Kesoram Textile Mills Limited and he did not get any cheque from Kesoram Industries Limited but he got the cheque to the tune of Rs. 21,164/- from Kesoram Textile Mills Limited but not towards full and final settlement.

He further states that the company did not issue any show-cause or any charge sheet or pay any retrenchment compensation.

PW-1 categorically stated that he did not withdraw any money from Provident Fund or he is not gainfully employed anywhere and his net salary was Rs. 7,640/-.

PW-1 denied that he was/is in relation on and from 01.06.2009 of employer and employee in between the company and himself or he did never voluntarily resigned from his company.

From his cross examination it is revealed that PW-1 never filed any of his salary sheet before this Tribunal because the company never issued pay slip in favour of the Workman. Ld. Counsel for the Company though raises objection to this statement but could not file any pay slip of any worker before this Tribunal at any point of time.

He further clarified as revealed from his cross examination that since the attendance register is in possession of the company, he is unable to produce any document to show that he had worked till 30.05.2008.

It is also clarified that bank statement is the proof that sometimes PW-1 received salary by cheque.

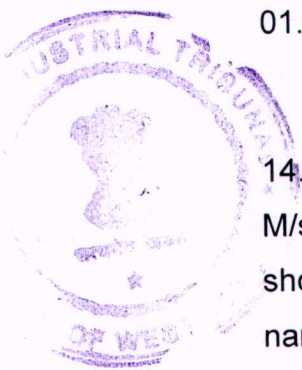
It is also revealed from his cross examination that M/s Kesoram Industries Limited was a group of companies, such as Birla Tyre, Kesoram Rayon, Kesoram Refectory, Kesoram Spunpipe and Kesoram Textiles and he demanded that he was all along the staff of the head office i.e. Kesoram Industries Limited and never an employee of textile division.

He also denied that he became employee under M/s Kesoram Textile Mills Limited in the year 1999 as per order of Hon'ble High Court in view of demerger of M/s Kesoram Industries Limited.

He also denied that he tendered his resignation from the service of M/s Kesoram Textile Mills Limited or he accepted the settled dues fully and finally from M/s Kesoram Textile Mills Limited towards his Provident Fund, Gratuity etc. as he was never an employee of M/s Kesoram Industries Limited after 01.06.1999.

PW-1 admitted that the cheques dated 31.01.2008, 26.02.2008, 14.03.2008 and 15.03.2008 were issued by Vasavadatta Services Limited and M/s Kesoram Insurance Management Limited in his favour but it would not show that he was the employee of the said companies but the signatories namely Vikash Agarwal, Uma Shankar Asopa and Mr. Sharma were the employees of M/s Kesoram Industries Limited and he claimed himself again to be an employee of the M/s Kesoram Industries Limited if those signatories issued the cheques on behalf of his employer whosoever the employer may be A, B or C or Tata Company.

PW-1 admitted that prior to **Exhibit-6**, dated 06.08.2008 he did not give any written letter to the company asking as to why the cheques were being issued on behalf of some other companies and not M/s Kesoram Industries Limited but he verbally told them.



He also claimed that Provident Fund and ESI used to be deducted all along till 2008 and since Provident Fund contribution which was deducted from his salary but he could not state whether the same was deposited or not on or after 31.03.2002 as the copy of the statement was not supplied to him.

PW-1 certified **Exhibit-A** along with his signature filed by the company, which is a letter written by PW-1 to the Birla Industries Provident Fund praying for providing him with a copy of account statement towards Provident Fund.

PW-1 also certifies **Exhibit-A/1**, dated 16.08.2013 issued by Superintendent of Birla Industries Provident Fund against which PW-1 did not give any counter reply nor he supplied the documents mentioned in i, ii, iii and iv of **Exhibit-A/1**.

PW-1 was shown a letter, dated 01.10.2006 which has been marked as **Exhibit-B** and he admitted his signature on the right hand bottom of the said letter (**Exhibit-B**).

PW-1 admitted **Exhibit-B** being addressed to him for his placement in the company issued by Chief Executive for Kesoram Insurance Management Limited and said KIM Limited have not been made a party to this case though PW-1 demanded that he did not comply with the terms and conditions as noted in **Exhibit-B** as he was not an employee of Kesoram Insurance.

PW-1 denied that he had worked in another organization for resigning from Kesoram Industries. It is also revealed from the cross examination of PW-1 that on subsequent date i.e. 09.11.2017 PW-1 Sukhdham Pandey was re-examined on recall and crossed in full on 13.12.2017.

It was revealed from his re-examination in chief that he has filed an inter office memo dated 23.03.2000 by Senior President, HR and Accounts of M/s Kesoram Industries, which has been marked as **Exhibit-11**.

PW-1 also exhibited a document (**Exhibit-12**) written by PW-1 to the authority of Kesoram Industries Limited regarding reminder for certificate of ESI deduction from salary and deposited to the concerned office dated 31.05.2000 as received by Kesoram Industries Limited.

PW-1 filed a copy of bank passbook of Punjab National Bank which has been marked as **Exhibit-13** and the passbook was operative till 11.08.2008.



PW-1 admitted that an amount of Rs. 11,500/- and Rs. 22,350/- have been credited in his said savings bank account on 11.01.2008 were received by him being issued by Vasavadatta Services Limited and Kesoram Insurance Management Limited respectively when photocopy of two cheques were shown to him by Ld. Counsel for the company.

PW-1 lastly denied that on 28.02.2005 he tendered resignation from his service at M/s Kesoram Industries Limited and he also denied that **Exhibit-11, 12 and 13** did not suggest that he was an employee of M/s Kesoram Industries Limited during the period from 28.02.2005 to the date of reference of the instant case.

On the other hand one Mr. Seemab Ahamed Khan working as Lead Legal of M/s Kesoram Industries Limited has deposed on behalf of the Company as CW-1 who has filed some documents which have been already marked as **Exhibit-A, A/1 and B** respectively.

CW-1 claims that he is acquainted with the facts and circumstances of the instant case in usual course of his duty based on the records maintained by the Company and on facts. He demands that there was no employer and employee relation between the company and the applicant herein on the date of reference of the instant case.

He states that the company i.e. M/s Kesoram Industries Limited once upon a time had a textile business which was demerged w.e.f. 01.06.1999 as per order of the Hon'ble High Court at Kolkata and since then the demerged company was called Kesoram Textile Mills Limited. He further states that on the basis of the order of Hon'ble High Court at Kolkata the service of the employees working in textile business also stood transfer to demerged company Kesoram Textile Mills Limited on the same terms and conditions on which they were engaged by the company i.e. Kesoram Industries Limited.

CW-1 admittedly states that the Workman was appointed by Kesoram Industries Limited as Assistant on 20.06.1999 through **Exhibit-1** and his service was transferred to Kesoram Textile Mills Limited on and from 01.06.1999 and the salary of the Workman were always paid from his employers account i.e. Kesoram Textile Mills Limited.

He further states that the Workman tendered his resignation from the service of Kesoram Textile Mills Limited vide his letter 28.02.2005 and his dues were fully and finally settled "but when it was settled finally, the date was not mentioned by CW-1".




It is further claimed by CW-1 that the Birla Industries Provident Fund Trust has settled the Provident Fund dues of the Workman fully and finally and in this connection no date has been mentioned by CW-1.

CW-1 further states that Workman had sent a letter to the Provident Fund Trust of Birla Industries on 12.08.2013, which was answered by the Trust on 16.08.2013.

CW-1 further states that after a lapse of more than 3 (three) years from 28.02.2005 the Workman sought reinstatement of service in the Company i.e. Kesoram Industries Limited though he had ceased to be an employee of the Company long back and the Company vide letter, dated 15.09.2008 informed the Workman in this regard stating inter alia that his service were transferred to Kesoram Textile Mills Limited on and from 01.06.1999. CW-1 demands that after severing his relationship with the Company i.e. Kesoram Industries Limited, the Workman had joined in another company named Kesoram Insurance Management Limited which will be proved from the letter dated 01.10.2006 issued by the said Kesoram Insurance Management Limited to the Workman, which the Workman had accepted.

CW-1 denied that the letters, dated 06.08.2008 and 04.09.2008 allegedly written by the Workman as genuine and he believes and asserts that the workman concern is not entitled to any relief whatsoever because he has already received the cheque amounting to Rs. 21,000/- and something issued in his favour by the management of the Company towards his full and final settlement.



From his cross examination it is revealed that CW-1 has not filed any document to show that he worked as Lead Legal of Kesoram Rayon, Birla Tyre and Kesoram Cements, the business units of Kesoram Industries Limited. He explains in his cross examination that CW-1 worked in the corporate office of Kesoram Industries Limited and the aforesaid three units are plants of the said Kesoram Industries Limited.

He further demands that the employees of those plants or units are appointed by the corporate office.

It is revealed that he i.e. CW-1 did not look out the matter of three units. He only looks after the legal matters. He also does not know the contents of the Written Statement filed by the company and he has not filed his copy of appointment letter.

He admits that the proprietor of Kesoram Industries Limited issued the appointment letter i.e. **Exhibit-1** after it has been referred to him.

He also admits that the signature of Mr. Sitaram Chamaria appearing in **Exhibit-1**. He also admits that in Clause C(2) of **Exhibit-1/1** dated 20.06.1994 of Kesoram Industries Limited, which has clearly mentioned that after expiry of first six months of probation if the company does not either terminate the service of Shri Sukhdham Pandey or extend the probation period in writing, the service of Sukhdham Pandey shall be automatically deemed to have been confirmed by the Company i.e. Kesoram Industries Limited.

He also admits that the contents of **Exhibit-2** and **3** issued in support of employment of Shri Sukhdham Pandey who was working at their Kolkata head office and this certificate i.e. **Exhibit-3** was issued in the letter head of Kesoram Industries Limited.

CW-1 also admits that **Exhibit-9** has been issued by Yaswant Mishra for Kesoram Industries Limited and it is addressed to the Assistant Labour commissioner and on the date of issuance of the letter dated 15.09.2008 the said resignation letter i.e. **Exhibit-9/1** was on record of the Company having no proof of receipt of the letter of resignation and the **Exhibit-9/1** does not appear the seal and signature of the Company.

He admits that no document has been filed on behalf of the Company to show that this Workman has been transferred to any unit of the Company from the head office of Kesoram Industries Limited.

He also could not state or deny or admit as to whether any such transfer order was issued or not in this respect.

He also admits by saying that it is a fact that this Workman works in the head office of Kesoram Industries till he resigned from the post allegedly on 28.02.2005.

He further states that this Workman himself issued this receipt after getting payments towards full and final settlement from Kesoram Industries Limited and put his signature in the receipts and then admits that the Provident Fund accumulation for the period from 2001 to 2005 may be lying with the concerned authority i.e. Birla Industries Provident Fund Authority and it is fact that in the Provident Fund Slip an amount of Rs. 38,224/- has been shown as accumulated during the 2001-2002 but **Exhibit-9** in which it has written that the said amount is lying in the account of this Workman as on the date of resignation i.e. on 28.02.2005.



He further states that if the Workman so desires he may withdraw Provident Fund Slip from the competent authority and even then he denied that the Company is a defaulter as regards to Provident Fund contribution.

According to CW-1, Mr. Pandey submitted resignation letter to kesoram Textile Mills Limited and **Exhibit-9/1** is the copy of said resignation letter dated 28.02.2005 and PW-1 received the payment also towards full and finally settlement when the money receipt was issued in favour of Kesoram Industries Limited vide **Exhibit-9/2**.

CW-1 also admits that he has not filed any documents to show that the Workman has settled Provident Funds dues fully and finally and he also does not know whether PW-1 has settled his Provident Fund account with Birla Industries Provident Fund.

CW-1 states that **Exhibit-9/2** is in connection with payment of Rs. 21,164/- against the cheque No. 224747, dated 11.03.2005 drawn on Allahabd Bank, Stephen House Branch. But CW-1 cannot say whether Kesoram Industries Limited or Kesoram Textile Mills Limited issued that cheque or not.

CW-1 claims that the cheque mentioned earlier was in connection with full and final settlement with PW-1 but he cannot say whether Sitaram Chamaria, Uma Shankar Asopa, Bikash Agarwal and the PW-1 himself became the staff of Textile Division of Kesoram Industries and Cotton Mills Limited.

CW-1 also claims that the question of issuance of charge-sheet or show-cause does not arise as the Workman Sukhdham Pandey tendered resignation from service.

CW-1 admits that **Exhibit-1** relates to appointment of PW-1 was issued by the Company i.e. Kesoram Industries Limited on temporary basis and **Exhibit-1/1** of Kesoram Industry and Cotton Mills Limited was issued by the person in authority under seal of Kesoram Industries Limited and as per terms of service as mentioned in Clause C2 of **Exhibit-1/1** the service of the Workman deemed to have confirmed on expiry of six months of probation period.

CW-1 states that he joined the Company on 01.09.2009 and Sukhdham Pandey did not put his signature in his presence on the documents i.e. **Exhibit-9/1** because at that time CW-1 was not attached with the Company.



CW-1 cannot say who has signed **Exhibit-9/2** unless the original is shown to him.

CW-1 admits that the name of the Company defers as appearing in **Exhibit-9/2** from **Exhibit-C**.

CW-1 admits that he has not produce any document to substantiate his averments made in affidavit in paragraph-5 that the service of the Workman stood transfer to Kesoram Textile Mills Limited and the Workman ceased to be on the role of the Company i.e. Kesoram Industries Limited on and from 01.06.1999 and he has no document to show till 01.06.1999 that there was any payment made to the Workman as full and final settlement with the Kesoram Industries Limited.

CW-1 also cannot say without perusing any official paper (no official paper has been filed or was pursued by the CW-1 at any point of time during the adjudication of this case) whether any letter was issued to PW-1 intimating him about the transfer of the Company namely Kesoram Industries Limited to Kesoram Textile Mills Limited and he also admit that he has no other document to show that since 01.06.1999 PW-1 worked in any capacity with Kesoram Textile Mills Limited.

CW-1 also cannot say whether **Exhibit-2** i.e. Identity Card was issued in favour of PW-1 after retirement.

CW-1 cannot say whether Provident Fund deduction was made from the salary of PW-1 after 2001 to 2002.

CW-1 cannot satisfy this Tribunal to produce pay statement of PW-1 for the year 2003-2004.

CW-1 admits S. K. Parik, S. R. Chamaria and Bikash Agarwal have been paid their dues in full and final settlement being made from Kesoram Industries Limited even then CW-1 cannot state definitely or satisfy this Tribunal whether as per order of Hon'ble High Court those persons were transferred or not.

CW-1 admits that he had never seen PW-1 either to work in the Kesoram Industries Limited or in the Kesoram Textile Mills Limited which goes to show Sukhdham Pandey was fully unknown to him even then he demands that he knows the signature of Sukhdham Pandey.



CW-1 also cannot state the address of the registered office of Kesoram Textile Mills Limited but he admits that PW-1 used to perform his job at Birla Building situated at R. N. Mukherjee Road so long he was attached to the Company.

Lastly he denies that Company terminated service of Sukhdham Pandey by way of refusal of employment on and from 30.05.2008 and averments made in his evidence in chief are all imaginary and the allegations made against Sukhdham Pandey are all untrue.

So, considering the aforesaid piece of evidence of CW-1 it is clear that the testimony of CW-1 is not trustworthy and self-contradictory as CW-1 did not depose on the basis of any record or documents of the Company as claimed by him.

Now CW-2 has stated the same facts in his affidavit-in-chief as CW-1 stated in his affidavit-in-chief.

From the affidavit-in-chief it is revealed that CW-2 named Rajesh Kumar Prasad was working as team member (H.R. of M/s Kesoram Industries Limited) and he is acquainted with the facts and circumstances of the instant case in usual course of his duty based on the records maintained by the Company and on facts.

He states that there was no employer and employee relation between the Company i.e. M/s Kesoram Industries Limited and the applicant herein on the date of reference as the payment towards full and final settlement was done to the Workman Mr. Sukhdham Pandey though fact is that no such documents have been produced by CW-2 in this case.

From his examination in chief it is revealed that CW-2 joined H.R. Department of M/s Kesoram Industries Limited on 01.09.2009 and the service of an employee of the above noted company comes to an end either by way of attaining age of superannuation or voluntary retirement or leaving service for any reason whatsoever. Resignation in the event of full and final settlement is made by the company in respect of said employee - this is the statement made by CW-2 in his cross examination. According to him final settlement was done by Kesoram Industries Limited vide cheque No. 224747, dated 11.03.2005 drawn on Allababad Bank, Kolkata Branch for an amount of Rs. 21,164/-.



According to CW-2 the cheque was en-cashed positively otherwise the company would have been defaulter and he assured before this Tribunal that on the next date after 25.11.2014 he would produce the bank statement of M/s Kesoram Industries Limited.

CW-2 also states in his cross examination that full and final settlement was made pursuant to tendering of resignation by this Workman vide **Exhibit-9/1** addressed to Kesoram Textile Mills Limited. Then voluntarily states that previously Kesoram Textile Mills Limited and M/s Kesoram Industries Limited were mother and sister concern i.e. the same company and at the time of his joining the service, there was only one company named M/s Kesoram Industries and Cotton Mills Limited and subsequently for the purpose of production and sale of textile products Kesoram Textile Mills was incorporated and Kesoram Industries and Cotton Mills was renamed as M/s Kesoram Industries Limited in the year 1986 while the Workman Sukhdham Pandey was appointed in the year 20.06.1994.

So it is fact that Sukhdham Pandey was appointed by Kesoram Industries Limited.

CW-2 also states that PW-1 i.e. the Workman of the instant case may be transferred from mother company to sister company and vice-versa.

CW-2 also states that ordinarily no transfer order is issued in writing in respect of the Workman being transferred from mother concern to sister concern and vice-versa, only internal management is made.

CW-2 cannot state whether all employees of head office of M/s Kesoram Industries Limited as on 31.05.1999 were transferred to Kesoram Textile Mills Limited as per order of the Hon'ble High Court at Kolkata.

CW-2 cannot say the relevant cheque No. and date through which Provident Fund dues was made. He assured this Tribunal that on the next date he would produce the same after collecting the details from Provident Fund concern.

But facts remains on the next date i.e. on 20.01.2015 CW-2 neither could file the bank statements nor the Provident Fund statements of the Workman.

He only filed a letter dated 09.12.2014 issued by one Uma Shankar Asopa for Kesoram Textile Mills to the Manager, Allahabad Bank, Stephen

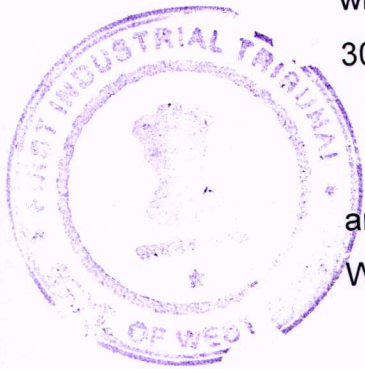
House Branch, Kolkata – 700 001 seeking a certificate detailing the fact of the cheque being No. 224747 dated 11.03.2005 amounting to Rs. 21,164/- in favour of Mr. Sukhdham Pandey, which could not prove whether Sukhdham Pandey got the amount or not.

CW-2 admits that he does not know anything about the **Exhibit-7**. According to CW-2 an employee becomes permanent and at that time his identity card was issued but presently after joining of any employee identity card is issued. Since then i.e. on and from 20.01.2015 the present company witness No. – 2 named Rajesh Kumar Prasad did not come to conclude his cross examination or did not show any dare to be crossed by the side of the Workman and that's why his evidence will be applicable which can favour the case of Workman.

Therefore, considering the above piece of evidence laid by CW-2 it is proved that Kesoram Industries and Cotton Mills Limited was renamed on 1986 as Kesoram Industries Limited in which Mr. Sukhdham Pandey was appointed on 20.06.1994 and Sukhdham Pandey was never transferred to any other Company because of the fact that all other companies as named by the witnesses are the part and parcel of the main company named Kesoram Industries Limited in which PW-1 all along was an permanent employee and since alleged resignation letter dated 28.02.2005 has not been proved in any manner whatsoever by the Company, Mr. Pandey therefore, was terminated without any reason by forcing him not to allow to join his service on 30.05.2008

Now at the time of argument none is present on behalf of the Company and therefore argument is heard only on behalf of the Ld. Counsel for the Workman.

Ld. Counsel for the Workman argues that the Workman though joined his service in the Company named Kesoram Industries Limited verbally, the company has admitted the Workman as their employee on and from 20.06.1994 vide **Exhibit-1/1** and according to Clause-C(2), the Workman was permanent after completion of 06 (six) months in the said service and claimed that the Workman was never employed in Kesoram Textile Division nor he was transferred to Kesoram Textile Division from Kesoram Industries Limited on and from 01.06.1999 and in support of that no paper has been adduced from the side of the Company that the present workman was transferred to Textile Division of Kesoram Industries Limited on and from 01.06.1999.



So, the Transfer to Kesoram Textile Mills as on and from 01.06.1999 as claimed by the Company is not tenable.

It is also argued by the Ld. Counsel for the Workman that the Workman never resigned himself from his service at any point of time whether it is 28.02.2005 or any subsequent dates.

It is also argued that the Company fails to prove the fact of transfer of the Workman and the alleged resignation of Workman in all respects. If that be so the case falls under the category of retrenchment or refusal of employment on 30.05.2008 stands without any question or doubt.

So, the Workman is entitled the order of resumption of service with full back wages and all consequential benefits thereto.

Now considering the facts of the case as stated by both the parties, the admitted position is that as per **Exhibit-1/1, 2 and 3** (issued by the Company at the relevant point of time) that the Workman was an employee of Kesoram Industries Limited i.e. the Company under reference and was permanent as per Clause C (2) of the **Exhibit-1/1**.

Since the Company did not allow the Workman to join his service on and from 30.05.2008 filed by **Exhibit – 5, 5/1, 6, 6/1 and Exhibit – 7**, the Workman finding no other alternative made complaint before the Labour Commissioner through **Exhibit – 8** for which the Labour Commissioner got a reply from the Company on 26.11.2008 stating inter alia that the Workman has resigned from his service which is marked as **Exhibit – 9/1** and at the time of trial the Company has failed to prove the signature of the Workman as per demand of the Workman, as the company has remained absent from appearing before this Tribunal in the instant case at relevant point of time. That apart Company has filed a document regarding money receipt dated NIL which has been exhibited as **Exhibit – 9/2** and the same was not proved as true by the Company.

And since the conciliation was failed the matter was referred to this Tribunal for adjudication.

Exhibit – 4 also proves that the Workman was the employee of Kesoram Industries Limited at least upto 2002. So, it cannot be said that the Workman was transferred to Kesoram Textile Mills Limited on and from 01.06.1999.



From the evidence of the CW-2 it is revealed that Kesoram Textile Mills Limited and M/s Kesoram Industries Limited were mother and sister concern i.e. the same Company and the Workman Sukhdham Pandey was appointed by Kesoram Industries Limited.

It is also not proved that all employees of head office of M/s Kesoram Industries Limited as on 31.05.1999 were transferred to Kesoram Textile Mills Limited as per the order of Hon'ble High Court at Kolkata as no such order has been filed or placed or submitted before this Tribunal at any point of time.

CW-2 also fails to bring the relevant cheque No. and date through which the Provident Fund dues was made as on 20.01.2015. CW-2 neither could file the bank statement nor the Provident Fund statement of the Workman which was demanded earlier occasion by CW-2 himself.

It is also not proved as revealed from the evidence of CW-1 and CW-2 that the final settlement was done by Kesoram Industries Limited vide cheque No. 224747, dated 11.03.2005 drawn on Allahabad Bank, Kolkata Branch for an amount of Rs. 21,164/- because of the fact that CW-2 produced a letter dated 09.12.2014 issued by one Uma Shankar Asopa for Kesoram Textile Mills to the Manager, Allahabad Bank seeking a certificate detailing the fact of the pass book being issued in favour of Sukhdham Pandey, whether Sukhdham Pandey got the amount or not but CW-2 himself was not sure about the facts and Provident Fund statement proves that a sum of Rs. 38,224/- was due in the credit of the Workman for the year 2001-2002.

It is also proved from the evidence of the CW-2 that there was only one Company named Kesoram Industries Limited and subsequently for the purpose of production and sales of textile products Kesoram Textile Mills was incorporated and Kesoram Industries & Cotton Mills was renamed as M/s Kesoram Industries Limited in the year 1986 while the Workman Sukhdham Pandey was appointed in the year 20.06.1994 in the Company named M/s Kesoram Industries Limitd.

This is also the admitted position of the case from the evidence of CW-1 and CW-2 that Company did not maintain any printed attendance register as no witness from the Company stats anything otherwise to the fact.

So, considering all aspects I am of view that since Company has failed to prove the resignation letter dated 28.02.2005 and it is fact that the Workman used to work in the head office of Kesoram Industries Limited till his alleged resignation from the post on 28.02.2005 and since it is fact that CW-2 admits

that the Provident Fund accumulation for the period from 2001-2005 may be lying with the concerned authority i.e. Birla Industries Provident Fund Authority and it is fact that in the Provident Fund slip an amount of Rs. 38,224/- has been shown and if that be so it is also not proved that the Workman was paid allegedly an amount of Rs. 21,164/- for full and final settlement of his all dues.

Therefore, in all respects it is well proved that it is a case of refusal of employment by the employer Company or termination of services of the Workman without complying with Section 25-F of the Industrial Disputes Act would render the order of termination void-ab-initio entitling the Workman to declaration for continuation in service for full back wages and along with all consequential reliefs if any (all benefits, interest etc.) as this conception was held by the Supreme Court as proved by the following rulings cited by the Ld. Counsel for the Workman:

- 1) (2013) 12 Supreme Court Cases 573
Atlas Cycle (Haryana) Limited Appellant
Versus
Kitab Singh Respondent
- 2) (1981) 3 Supreme Court Cases 225
Mohan Lal Appellant
Versus
Management of M/s Bharat Electronics Ltd. Respondent
- 3) (1984) 1 Supreme Court Cases 509
Gammon India Limited Appellant
Versus
Niranjan Dass Respondent
- 4) (2013) 10 Supreme Court Cases 324
Deepali Gundu Surwase Appellant
Versus
Kranti Junior Adhyapak Mahavidyalaya (D. ED) Respondent
And Others
- 5) (2014) 15 Supreme Court Cases 313
Tapash Kukar Paul Appellant
Versus
Bharat Sanchar Nigam Limited and Another Respondent

So in view of my aforesaid discussion with reasons and findings and also accepting the argument as advanced by the Ld. Counsel for the Workman

under reference the issues have been decided in favour of the Workman under reference and against the Company who has miserably failed to prove their case in reply of the issues in any manner whatsoever.

Therefore, the Workman Sukhdham Pandey is entitled to get the relief as prayed for.

Thus all the issues are disposed of and in the result the case of the applicant Workman regarding the issues succeeds.

Hence it is

ORDERED / AWARDED

that the instant case being No. VIII – 07/2010 be and the same is allowed on contest with a cost of Rs. 10,000/- (Rupees ten thousand) to be paid by the Company to the Workman and accordingly, it is held that the termination of the Workman from his service is illegal and it is directed to the Company to reinstate the Workman in service with full back wages along with other consequential benefits accrued thereto.

The Company is, therefore, directed to execute this order / Award of the Tribunal within 03 (three) months from the date of the Award in default the Workman is at liberty to put the Award into execution as per provision of law to be applicable in this regard.

This is my AWARD.

The AWARD be sent to the Government as early as possible.

Sd/-

(Uttam Kumar Nandy)
Judge
First Industrial Tribunal
Kolkata

JUDGE
FIRST INDUSTRIAL TRIBUNAL
WEST BENGAL

Dictated & corrected by me.

Sd/-

(Uttam Kumar Nandy)
Judge

JUDGE
FIRST INDUSTRIAL TRIBUNAL
WEST BENGAL

