

I/191840/2022

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

No. Labr/476/(LC-IR)/22015(16)/15/2022

Date: 06/05/2022

ORDER

WHEREAS an industrial dispute existed between M/s. Wide Angle Packaging System Pvt. Ltd., Village-Chakundi, N.H.-2(Delhi Road), P.O.-Dankuni, Dist.-Hooghly, PIN - 712310 and Sri Biswa Poddar, 91, Bangur Quarter, Biswalakshmitala, Bansai, P.O.-Kanaipur, Dist.-Hooghly, PIN-712233 regarding the issue, being a matter specified in the Second schedule to the Industrial Dispute Act, 1947 (14 of 1947);

AND WHEREAS the workman has filed an application under section 10(1B) (d) of the Industrial Dispute Act, 1947 (14 of 1947) to the 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 (14 of 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 12/04/2022 under section 10(1B) (d) of the I.D. Act, 1947 (14 of 1947) on the said Industrial Dispute vide memo no. 540 - L.T. dated 21/04/2022.

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,



Joint Secretary
to the Government of West Bengal

I/191840/2022

: 2 :

No. Labr/. 476 .1/(5)/(LC-IR)

Date : 06/05/2022

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

1. M/S. Wide Angle Packaging System Pvt. Ltd., Village-Chakundi, N.H.-2(Delhi Road), P.O.-Dankuni, Dist.-Hooghly, PIN - 712310.
2. Sri Biswa Poddar, 91, Bangur Quarter, Biswalakshmitala, Bansai, P.O.-Kanaipur, Dist.-Hooghly, PIN-712233.
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. 540 - L.T. dated 21/04/2022.
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. 19/2018

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

Sri Biswa Poddar
91, Bangur Quarter, Biswalakshmitala,
Bansai, P.O.-Kanaipur, Dist.-Hooghly,
PIN – 712233.

... Applicant

-Versus-

M/s. Wide Angle Packaging Systems Pvt. Ltd.
Village-Chakundi, N.H.-2 (Delhi Road),
P.O.- Dankuni, Dist.-Hooghly,
PIN – 712310.

... OP/Company

A W A R D

Dated :- 12.04.2022

The instant application under Section 10(1B)(d) of the Industrial Disputes Act, 1947 as amended in West Bengal has been filed by the applicant after obtaining pendency certificate in Form-S from the concerned Conciliation Officer.

The case of the applicant is that he was appointed as an electrical fitter under company's letter dated 08.02.2012 and on 16.02.2012 he joined his duty and had been working since then as a permanent employee of the company. He alleged that he had to do overtime regularly, but despite demands no payment for overtime was made by the company. The applicant further states that he was not allowed to enter into the factory by the security guard namely Sri Arun on 07.07.2017. He made verbal protest with the Director of the company but to no effect and finally on 17.07.2018 he wrote to the Director of the company requesting him to allow him to join his duty but to no effect. Ultimately, the applicant raised industrial dispute before the Labour Department at Serampore, Hooghly through his letter dated 03.07.2018. The company never appeared before the Conciliation Officer but sent a document regarding the dues to which he was entitled. On 13.11.2018 he made application before the Conciliation Officer and on 19.11.2018 he received Form-S dated 15.11.2018. The applicant alleges that the company terminated his

service without following the terms and conditions of the letter of appointment and the provisions of I. D. Act without affording any opportunity to defend himself. He further submits that he was not gainfully employed anywhere after the termination of his service and has been passing days with great hardship. He further states that his last drawn salary was Rs.8674/- per month. He prayed for the relief of reinstatement with full back wages and other consequential benefits.

The company contested the claim of the applicant by filing a written statement. Company challenged the maintainability of the application mainly on the grounds that after insertion of Section 2A(2) in the I. D. Act by the Parliament the remedy under Section 10(1B)(d) as amended in West Bengal was not available and that there was in fact no termination of service of the applicant by the company as he was all along on the roll of the company till his attaining age of superannuation. The company alleged that in June, 2017 machine programming instrument of auto-lamination machine was stolen from the factory premises. It further alleged that on 19.06.2017 at about 6:10 p.m. the applicant was found near camera no. 22 on the second floor and thereafter the said camera was disconnected and on 24.06.2017 at about 6:00 p.m. the applicant was found in the vicinity of camera No. 13 installed at board storage and the said camera was also disconnected thereafter. As no views from those cameras found the concerned maintenance agency was informed which reported that the cameras were missing from their points. The matter was informed to Police which started investigation and called the applicant. On 10.07.2017 Police recovered the cameras from the residence of the applicant and handed over the same to the administrative manager of the company after calling him at the Police station. The company stated that the applicant was absent on 03.07.2017 and 05.07.2017 and thereafter he again absented on and from 07.07.2017 without any intimation or authorization. The company further stated that the plea of overtime raised by the applicant was baseless. The company denied all the material allegations made by the applicant and prayed for an award dismissing the claims of the applicant.

On the basis of the pleadings of the parties the following issues were framed:

1. Whether the application under Section 10(1B)(d) of the I. D. Act filed by the applicant is maintainable in its present form ?
2. Whether the termination of service by way of refusal of employment to the applicant / workman Sri Biswa Poddar w.e.f. 07.07.2017 is justified or not?
3. What relief or reliefs, if any, the applicant / workman is entitled to ?

In order to substantiate his case the applicant examined himself as PW-1 and brought the following documents on record :

1. Copy of ESI temporary identity certificate as Exhibit-1;

2. Copy of company's letters dated 08.02.2012 and 14.01.2015 issued to the applicant as Exhibits-2 & 2/1 respectively ;
3. Copy of applicant's letter dated 17.08.2017 to the Director of the company as Exhibit-3 ;
4. Copy of applicant's letter dated 14.09.2017 to the Deputy Labour Commissioner, Serampore as Exhibit-4 ;
5. Copies of applicant's letters dated 16.01.2018, 03.07.2018 and 16.02.2018 addressed to the A.L.C., Serampore, Hooghly as Exhibits-5, 5/1 & 5/2 respectively ;
6. Server copy of e-mail stated to be submitted by the company to Deputy Labour Commissioner, Serampore as Exhibit-6 ;
7. Copy of conciliation notice dated 28.12.2017 as Exhibit-7; and
8. Copies of wages / salary statements of the applicant as Exhibit-8.

The company on the other hand examined their Manager, HR & Admn. Sri Sourabh Patodia as OPW-1 and brought the following documents on record :

1. Copy of letter dated 06.07.2017 of the company addressed to O.C., Dankuni P.S. as Exhibit-A;
2. Copy of report dated 01.12.2017 of Minimum Wages Inspector as Exhibit-B;
3. Copies of images of CCTV camera as Exhibits-C, C/1 & C/2; and
4. Conciliation file as Exhibit-D.

Decision with reasons

Learned advocate for the company in the course of arguments submits that the workman got certificate from the Assistant Labour Commissioner on 15.11.2018 and he filed the instant application on 20.12.2018 after more than one month which is beyond the prescribed period as such the application is not maintainable. He also contends that it is only in case of termination of service that the Tribunal can look into its legality, but in this case where there is no termination of service and the workman was continuously on the rolls of the company till his attaining the age of superannuation there cannot be termination of his service as alleged. Since the service of the workman was never terminated by the company the instant application cannot be maintained. Pointing at the examination-in-chief on affidavit of the workman dated 07.11.2019, the learned advocate submits that the applicant/workman has stated his age as 58 years which is the age of superannuation as per clause-5 of the model standing orders under the Bengal Industrial Employment (Standing Orders) Rules 1946. He further submits that no document of termination of service has been produced by the employer. The alleged refusal by one Arun cannot be stated to be the refusal of employment by the employer. The termination of service can be done by the

employer only. Pointing at the cross-examination of the workman (PW-1) he submits that the applicant did not write to the Director even on the alleged refusal by the security guard Arun nor he asked the Director that why he had ordered the security guard to prevent the workman from entering into the company premises. Referring to Exhibit-1 the learned advocate submits that the date of birth of the workman is mentioned as 17.01.1961 and therefore the workman attained the age of superannuation (58 years) in the year 2019 itself. The learned advocate further points out that the workman was allegedly refused on 07.07.2017, but he sent letter to the Director on 17.08.2017 after more than one month from the date of the alleged refusal. He also submits that the name of Arun is not mentioned in Exhibit-4. Referring to Exhibit-5 the learned advocate submits that the workman was interested in getting his dues only and not the relief as claimed in this application. The learned advocate contends that the protection of Section 25F of the I. D. Act is available only on proof of continuous service of 240 days preceding 12 months of termination. He cites the decision of the Hon'ble Supreme Court in **Deep Chandra vs. State of U.P.** reported in **2001 – I – LLJ 742** on this point. He further contends that the onus to prove that he worked for 240 days in preceding 12 months of his termination squarely lies upon the workman. On this score he cites the decisions in **Batala Co-operative Sugar Mills Ltd. vs. Sowaran Singh** reported in **[2005 (107) FLR 815]**, **The Range Forest Officer vs. S.T. Hadimani** reported in **[2002 (93) FLR 179]** and **Krishna Bhagya Jala Nigam Ltd. vs. Md. Rafi** reported in **[2009 (123) FLR 612]**. He further submits that when it is the firm stand of the company that it did not terminate the service of the workman and the workman was till then on the rolls of the company, the proceeding of the case should have been stopped without adjudication in view of the decision of the Hon'ble Allahabad High Court in **Ram Singh vs. J. K. Jute Mills Co. Ltd.** reported in **[2002 (95) FLR 1058]**. Concluding his argument learned advocate for the company submits that there is no merit in the case of the workman as such the application under Section 10(1B)(d) is fit to be dismissed passing award in favour of the company.

Learned advocate for the workman submits that the company's plea that the workman remained absent since 07.07.2017 is baseless as no notice was served upon the workman by the company. He submits that the company made serious allegations of theft against the workman, but they did not produce any G.D. entry made with the concerned P.S. nor any document has been produced to show that the FIR was lodged and criminal case was started against the workman. Referring to the cross-examination of OPW-1 the learned advocate submits that the witness categorically admitted the company did not issue any letter to the workman asking him to join his duties. He further submits that the workman was appointed as electrical fitter as such it was his duty to see the electrical installations in the premises of the company. Therefore, the allegation of the company that he was found near the cameras has no substance. Referring to Exhibit-6 the learned

advocate submits that the document clearly speaks of termination of service of the workman which is inconsistent with the plea raised by the company that the service of the workman was never terminated by them. He further submits that the workman was appointed as permanent worker and not as casual or temporary worker as such there arises no question of proving by the workman that he worked for 240 days preceding 12 months of the date of refusal of employment. He further submits that the company did not produce their attendance register and salary register to substantiate their plea that the workman unauthorisedly absented himself and he did not work for 240 days continuously. The learned advocate cites the decision of the Hon'ble Supreme Court in **Superintending Engineer TWAD Board vs. M. Natesan** reported in 2019 LLR 743, of Punjab & Haryana High Court in **Executive Engineer, Provincial Division, Haryana PWD vs. Pradeep Kumar** reported in 2019 LLR 617 and of the Hon'ble Bombay High Court, **Aurangabad Bench in Vidya Vijay Kadam vs. Executive Officer, Shree Sai Baba Sansthan** reported in 2020 – I – CLR 46.

Coming to the issue of maintainability first, we find that the company challenged the maintainability of the application on two counts. Firstly, on account of filing of the application beyond the period prescribed by the statute and secondly, on the ground that the company never terminated the service of the workman. So far as the second ground is concerned it is the mixed question of facts and law which can be decided only after considering the evidence and materials on record during discussion under issue No. 2. Looking at the first ground we find that the workman received Form-S dated 15.11.2018 on 19.11.2018 he filed the instant application on 20.12.2018 well within 60 days of obtaining the pendency certificate as mentioned in section 10 (1B)(c) of the I. D. Act as amended in West Bengal. Thus challenge to the maintainability of the application on this ground is not sustainable.

Now, the question is that whether the workman was refused employment or not. According to the workman he went to join his duty on 07.07.2017 but he was not permitted to enter into his workplace by a security guard namely Arun while the contention of the company is that they never terminated the service of the workman who was all along on the rolls of the company till he attained his age of superannuation. Surprisingly, the company suspected that the workman stole two cameras and one machine programming instrument of auto lamination machine but they did not charge him of misconduct. Exhibit-A is the letter written to the local police station by the company expressing their suspicion against the workman behind the theft of two cameras but nothing is brought on record to show if any FIR was drawn and investigation was initiated by police against the workman on the basis of their letter. The story brought by the company that the stolen cameras were recovered from the possession of the workman and police handed over the same to their

manager by calling him at police station appears fanciful as there is no material on record to show the recovery of the stolen articles from the possession of the workman was made by police and the recovered articles were given in custody of the company in accordance with the provisions of the code of criminal procedure. It is no case of the company that the workman was arrested in connection with the alleged theft or he obtained bail from the competent Court. The most surprising feature is that despite such incident which amounts to gross misconduct on the part of any employee the company did not take any disciplinary action against the workman. At the one hand the company suspect the workman to be a thief and on the other hand they say that they never terminated the service of the workman. Such stand of the company can hardly be swallowed. There is nothing in the written statement and evidence of the company that there was no security guard named Arun in their premises. Learned advocate for the company pointed that the name of the said Arun was not mentioned in exhibit-4 but it is found that the name of the person in well mentioned in exhibit-3, the letter written by the workman to the director of the company on 17.08.2017. Exhibit-4 is the letter written by the workman to the Dy. Labour Commissioner, Serampore, Hoogly on 14.09.2017 alleging termination of his service by not allowing him entry to join his duty by the company. It is found from the conciliation file (exhibit-D) that conciliation proceeding was not drawn on the basis of exhibit-4 but the same was drawn on the basis of letter dated 03.17.2018 (exhibit-5/1) of the workman submitted before the Asst. Labour Commissioner, Serampore, Hoogly. Exhibit-5 states that security guard Arun did not allow him to enter into the factory in the morning of 07.07.2017 under the instructions of the director of the company. It is no case of the company that they had no security guard named Arun at the relevant time. In such circumstances non mentioning of the name of the security guard in exhibit-4 is of no consequence. In exhibit-3, addressed to the director of the company, the workman clearly stated that the security guard Arun did not allow him to enter into the factory and told him that he did so as per order of the director. The director did not give any reply to exhibit-3. Therefore, the argument that why the workman did not ask the director the reasons for giving such order to the security guard holds no water. The argument that refusal by the security guard to enter into the factory cannot be said to be refusal by the management is not convincing. During cross-examination of PW1 (workman) question was put to him that whether the security guard Arun was an employee of the company or of any security company to which the witness pleaded ignorance. Obviously, the workman, an electrical fitter, is not supposed to know the status of the security guard. Now, the company did not deny in their written statement or evidence that person named Arun was deputed as security guard at their factory. In any case whether the security guard was an employee of the company or of some security agency, when he was deputed at the factory as security guard he is under the direct control and command of the management during his duty hours. Therefore, the

argument that the refusal by the security guard is not the refusal of employment by the company is not acceptable.

OPW-1 in his evidence stated that Exhibits-2, 2/1, the acknowledgement on Exhibit-3 and Exhibit-8 series (pay slips/salary statement) were manufactured documents, but the company did not produce the service record of the workman to substantiate their version. Such bald statement by OPW-1, in absence of any support from any corner, is not acceptable particularly in the light of the admitted position that the workman was appointed as electrical fitter in the company.

The company did not raise the plea of abandonment of service by the workman directly, but their case that the workman did not turn up since 07.07.2017 and they did not terminate his service is in essence the plea of abandonment of employment by the workman. From the cross-examination of OPW-1 it is found that the company never issued any notice upon the workman for his alleged unauthorized absence nor they issued any letter upon the workman asking him to join his duties. Had it been that the workman did not join his duty despite notice by the company it could have been inferred that the workman had no intention to continue with his job. Exhibit-3 is the letter dated 17.08.2017 written by the workman to the Director of the company praying for revocation of termination order and for allowing him to resume his duties. It appears that the company never gave any reply of such notice to the workman. Even if it is assumed for the sake of argument that the workman did not report to his duties since 07.07.2017 without any intimation, it is highly unpalatable that the company did not propose to take any sort of action against the workman for such unauthorized long absence.

The persistent assertion of the company that they did not terminate the service of the workman appears inconsistent with their allegations of theft of company's property and long unauthorized absence against the workman. Exhibit-A is the copy of complaint dated 06.07.2017 addressed to the Officer-in-Charge, Dankuni by the company informing the theft of two numbers of CCTV cameras from their factory and suspecting the workman behind the theft. The making of complaint of theft of the company's property pointing the workman as the suspect on 06.07.2017 is rather found consistent with the version of the workman that he was not allowed to enter into the factory on 07.07.2017. Exhibit-B is the copy of report of Minimum Wages Inspector dated 01.12.2017. The report records that the Director of the company told the Minimum Wages Inspector that the workman was caught stealing CCTV cameras. The statement of the Director of the company in Exhibit-B is contradictory to the statement made in Exhibit-A. In case the workman was caught red-handed while stealing the CCTV cameras as stated in Exhibit-B, there was no occasion for suspecting the workman behind the theft of the cameras. Thus, the statement of the Director of the company in Exhibit-B is nothing but an attempt to improve and strengthen their case

of theft against the workman. Statement of OPW-1 in his cross-examination that no criminal case was started against the workman with regard to the theft blows up the version of the company that the stolen cameras were recovered from the possession of the workman and the same was handed over to the company by Police.

The facts and circumstances of the case coupled with the serious allegations leveled against the workman by the company clearly reflect the intention of the company to terminate the service of the workman. The workman was not permitted to enter into the factory by the security guard at the instance of the management of the company. The plea of the company that they did not terminate the service of the workman and the workman was all along on the roll of the company till his attaining age of superannuation, in the circumstances, appear to be a tactical ploy of the company to defeat the legitimate claim of the workman. Discontinuing the job of the workman by preventing his entry into the factory without affording opportunity to defend himself after leveling serious allegations of theft of company's property on the workman and at the same time keeping his name on the rolls craft fully cannot be allowed to stragulate the reliefs available to the workman in law. In the circumstances I have no hesitation to hold that the action of the company amounted to termination of the service of the workman by refusal of employment for all purposes. Therefore, challenge to the maintainability of the case on the ground that there was no termination of service is found to have no merit.

Coming to the aspect of the nature of employment of the workman, we find that arguments were raised for the company that the workman did not prove that he worked for 240 days preceding 12 months from the date of termination of service. A number of rulings have been cited to buttress the argument but we find from the appointment letter, exhibit-2 that the workman was appointed as electrical fitter and it was stated that initially he would be on probation for six months. The appointment letter was issued on 08.02.2012. It is evident that the workman continued to work till the year 2017. It is no case of the company that the workman was appointed as temporary, casual or budli worker. The company tried to project that the appointment letter was not genuine. OPW-1 stated in his evidence that Exhibit-2 was a manufactured document but he did not challenge the signature of the Director of the company thereon nor the company produced documents regarding the joining of the workman. We, therefore, find that the workman was appointed as a permanent employee by the company. Neither there is any pleading to the effect that the workman was a casual, temporary or budli worker and he did not work for 240 days as required under section 25B of the I. D. Act nor there is anything in evidence to that effect. Therefore, the workman is not obliged to lead evidence with regard to the fact which has not been raised or disputed i.e. which is not at issue. The fact which is not disputed and for which neither issue is framed nor dispute is raised, need not be proved by leading evidence.

Even otherwise the evidence of the workman is that he worked regularly and continuously since 2012 and he was regular and permanent employee. It is not the case even of the company that the workman was daily wage or that he was engaged intermittently and he was not employed continuously. Thus, when the claimant was permanent employee engaged on permanent and regular basis and he was not engaged intermittently, requirement to complete service of 240 days cannot arise. Therefore, the decisions in **Range Forest Officer, Batala Co-operative Sugar Mills Ltd.** and **Krishna Bhagya Jala Nigam Ltd.**, referred to by the learned advocate for the company has no manner of application in this case and for the same reason the decision in **Superintending Engineer TWAD Board** has no relevance in this case. The ratio of the decision in **Deep Chandra vs. State of U.P.** referred to by the learned advocate for the company, is that when an employee has put in service for more than 240 days in a year for several years his services cannot be put to an end without following the procedure prescribed under Section 25F of the Industrial Disputes Act.

It is relevant to note that the company never disputed the factum of employment. It is not the case of the company that the workman was not their employee. When primary factual aspect i.e. employment of the workman with the company has not been disputed, the only question which survives is with regard to the justification or legitimacy of the termination of service of the workman. Undisputedly, the procedure prescribed by Section 25F was not followed. It is not the case of the company that the service of the workman was terminated on account of misconduct or unauthorised absence. Undisputedly, the company did not conduct any inquiry nor granted opportunity of hearing to the workman before discontinuing his service. In other words, neither principle of natural justice nor statutory provisions was followed. The service of the workman came to be terminated on oral instruction through the security guard without following procedure prescribed by law. Thus, termination of service of the workman by the company by way of refusal on 17.07.2017 is held to be not justified.

In the cases of **Vidya Vijay Kadam** and **Executive Engineer, Provincial Division, Haryana PWD**, referred to by the learned advocate for the workman, it is laid down that the burden to prove abandonment of service by the workman lies upon the management. In this case plea of abandonment of service has not been directly raised by the company but their stand is that they did not terminate the service of the workman and he was all along on the roll of the company till he attained age of retirement and such plea has already been discarded in the foregoing discussions. Thus, when the case is found to be of termination of service there arises no question of abandonment of service by the workman. Even if we assume that the workman was not reporting for duty the company had two options either to treat alleged unauthorised absence of the workman as misconduct

or to terminate his service, if provided for under their certified standing orders, on the ground of continuous absence for long time. In case of misconduct opportunity of hearing should have been given and notice should have been issued to call for explanation and the workman should have been heard. Any procedure has not been followed.

In the case of **Ram Singh**, referred to by the learned advocate for the company, the Hon'ble Allahabad High Court held that once the employer had admitted that they did not terminate the service of the concerned workman, the Labour Court should have stopped there and answered the reference and there was no necessity of adjudication. In that case, on the representation of the employer that the service of the workman was not terminated, the conciliation officer had ordered the concerned workman to report for duty but the concerned workman did not present himself for duty. It is also found that after his accident the workman had refused to accept the light work offered to him by the employer. Under those facts and circumstances the Hon'ble Allahabad High Court opined that the learned labour court had travelled beyond the pleadings of the parties. In this case, we have already found that the company deprived the workman of his job by preventing him to enter in to the factory without issuing any termination letter and keeping his name on its roll in crafty manner. Exhibit-D, the conciliation file, does not show that the company had submitted before the conciliation officer that they did not terminate the service of the workman and he was at liberty to join his duty. OPW1 in his evidence stated that he attended conciliation proceedings but there is nothing in his evidence to show that he submitted in the proceeding that the service of the workman was not terminated and he might join his duty. Thus, where the intention of the company to terminate the service of the workman is evident, the decision of the Hon'ble Allahabad High Court in the case of **Ram Singh** cannot be applied in this case.

Coming to the issue of reliefs of the workman, we find that the workman in his examination-in-chief on affidavit sworn on 07.11.2019 disclosed his age as 58 years. Exhibit-1 records the date of birth of the workman as 17.01.1961 which is not disputed. According to clause-5 of the model standing orders under the Bengal Industrial Employment (Standing Orders) Rules 1946 the normal age of superannuation is 58 years. No question in this regard has been raised. It is therefore evident that the workman attained the age of retirement in the year 2019. Thus, there is no scope of reinstatement of the workman in service. The workman stated that he worked overtime but was not paid for that by the company but he did not give specific particulars of the same and in his prayer also he did not make specific prayer for overtime salary. In his cross-examination the workman admitted that he had filed another case before the learned 2nd Labour Court, Kolkata demanding overtime salary. Therefore, we should not delve deep into the matter of alleged overtime by the workman in this case. Evidence of the workman is that after termination

of his service he was rendered fully unemployed and has been passing days in great hardship. It is also found from his evidence that the workman holds B. Com degree and diploma in electrician. He is therefore a qualified electrician. It is no case of the workman that he could not secure any employment despite making frantic efforts. The workman being a qualified electrician cannot be equated with an ordinary mazdoor or labourer. Evidently the workman did not give any service to the company since 17.07.2017. In the circumstances it would be turning blind eyes to the reality if we assume that the workman possessing skill and qualification as electrician remained idle for years together and has been surviving at the mercy of others.

Having considered all the facts and circumstances of this case and the materials and evidence on record, I hold that the workman is not entitled to the relief of reinstatement and awarding back wages to him at the rate of 60% for the period from 07.07.2017 ie the date of refusal of employment till the date of his attaining the age of superannuation in 2019 treating his service as continuous till his retirement would be fair and justified.

All the issues stand disposed of accordingly.

Hence, it is,

Ordered

that the workman is entitled to back wages at the rate of 60% for the period from 07.07.2017 i.e. the date of refusal of employment till the date of his attaining the age of superannuation in 2019 treating his service as continuous till his retirement.

M/s Wide Angle Packaging Systems Pvt. Ltd., Village-Chakundi, NH-2 (Delhi Road), PO-Dankuni, District-Hoogly, Pin-712310 is directed to pay back wages to the workman Biswa Poddar at the rate of 60% for the period from 07.07.2017 to the date of his attaining the age of superannuation in 2019 treating his service as continuous till his retirement 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

sd/-

Judge

sd/-

(Sanjeev Kumar Sharma)

Judge,

Third Industrial Tribunal, Kolkata

12.04.2022