

I/194134/2022

Government of West Bengal  
Labour Department, I. R. Branch

N.S. Buildings, 12<sup>th</sup> Floor, 1, K.S. Roy Road, Kolkata - 700001

No. Labr/ 514 / (LC-IR)/ 11L-125/14 Date: 20/05/2022

ORDER

WHEREAS under the Government of West Bengal, Labour Department Order N 1259/(LC-IR)/IR/11L-125/2014 dated 15/06/2014 the Industrial Dispute between M/ Women's Interlinked Foundation, 24 Baligunj Place East, Kolkata - 700019 and Smt. Tarana Mumtaz, 2/17, Gopal Ch. Mukherjee Road, Kolkata - 700002 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, Fifth Industrial Tribunal.

AND WHEREAS the said Fifth Industrial Tribunal, West Bengal, has submitted to the State Government its award dated 22/04/2022 on the said Industrial Dispute vide memo no 589 - L.T. dated - 27/04/2022.

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

No. Labr/ 514 / (LC-IR) Date: 20/05/2022

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

1. M/s Women's Interlinked Foundation, 24 Baligunj Place East, Kolkata - 700019.
2. Smt. Tarana Mumtaz, 2/17, Gopal Ch. Mukherjee Road, Kolkata - 700002.
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, 11<sup>th</sup> Floor, Kolkata- 700001.
- ✓ 5. The Deputy Secretary, IT Cell, Labour Department, with the request to cast the Award in the Department's website.

*[Signature]*

Joint Secretary

No. Labr/ 514 / (LC-IR) Date: 20/05/2022

Copy forwarded for information to:

1. The Judge, Fifth Industrial Tribunal, West Bengal with reference to his Memo No. 589 - L.T. dated - 27/04/2022.
2. The Joint Labour Commissioner (Statistics), West Bengal, 6, Church Lane, Kolkata - 700001.

Joint Secretary



In the matter of an industrial disputes between Women's Interlinked Foundation of 24 Baligunj Place East, Kolkata - 700 019 and Non-Government Organisation and its workman, Smt. Tarana Mumtaz of 2/17, Gopal Ch. Mukherjee Road, Kolkata - 700 002.

**Case No. VIII-94/2014**

**Before the Ld. 5<sup>th</sup> Industrial Tribunal, Kolkata**

**Present: Shri Kamal Sarkar, Judge,**

**Fifth Industrial Tribunal**

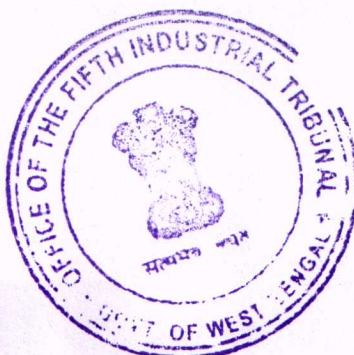
**A W A R D**

This case arose by way of order of reference Vide No. 1259-IR/IR/11L-115/2014, Kolkata, Dated 15.09.2014 by order of the Governor signed by the Deputy Secretary to the Govt. of West Bengal, Labour Department, IR Branch, East India House (2<sup>nd</sup> Floor), 20B, Abdul Hamid Street, Kolkata-700 069 mentioning that an industrial dispute exists between M/s. Women's Interlinked Foundation of 24 Baligunj Place East, Kolkata - 700 019 a Non-Government Organisation and its workman, Smt. Tarana Mumtaz of 2/17, Gopal Ch. Mukherjee Road, Kolkata - 700 002 relating to the issues as mentioned in the order of reference stated to be being matters / matter specified in the 2<sup>nd</sup> Schedule of the Industrial Disputes Act, 1947, further mentioning that it is expedient that the said dispute should be referred to an Industrial Tribunal constituted under Section 7A of the Industrial Disputes Act, 1947 and therefore, in exercise of power conferred by Section 10 read with Section 2A of the Industrial Disputes Act, 1947, the Governor is pleased by this order of reference to refer this dispute to the 7<sup>th</sup> Industrial Tribunal stated to be constituted under Notification No. 3115-IR/IR/3A-6/59 dt. 21.06.1960 for adjudication requiring this Tribunal to submit Award to the State Govt. with a period of three months from the receipt of this order of reference by the Tribunal in terms of sub-section 2(A) of Section 10 of the Industrial Disputes Act, 1947 subject to other provisions of the Act, the issues as have been framed in the above mentioned order of reference being,

- (1) Whether the refusal of employment of Smt. Tarana Mumtaz w.e.f. 31.03.2012 by the management of M/s. Women's Interlinked Foundation is justified?
- (2) To what relief is she entitled?

The case record shows that after receipt of the above noted order of reference, the 7<sup>th</sup> Industrial Tribunal issued summons to both the parties as per order of reference and after receiving two summons; the workman and the management appeared before the 7<sup>th</sup> Industrial Tribunal and thereafter date was fixed for filing their respective written statement. The workman filed her written statement first on 25.02.2015 simultaneously the

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management, M/s. Women's Interlinked Foundation also filed its written statement on 08.07.2015.

In the written statement filed by the Ld. Lawyer for the workman, it has been contended inter alia that the workman, Smt. Tarana Mumtaz was appointed by the management viz., Women's Interlinked Foundation on 16.08.2021 as "Sebika" and the said organisation is an NGO and its vision to fight for disadvantaged women, vulnerable children and to improve their quality of lives through its various projects with an aim to bring them into the main stream of life and self-relations who are under privileged and also victims of social injustice and sexual exploitation. It is also the case of the workman that the time of appointment it was not intimated by the management either in writing or verbally that the concerned workman was appointed into service for a particular project. It also further submitted by the workman that the management used to pay her salary lastly Rs. 2500.00 by cheque and her attendance was recorded daily at the bottom of the attendance sheet of children and she was performing her duties most diligently, honestly & sincerely and lastly she was working under Ward No. 6 of the Kolkata Municipal Corporation and she used to sit in different clubs as Sebika Smt. Mumtaz and performed her duties from their and like other sebikas, she used to dedicate herself to modify unfortunate poor children for getting education who were immensely dropped out from the customary schools. It also stated by her that the full works was controlled from the office of the organisation till March, 2012 continuously without any brake but surprisingly she was terminated from her service without showing any cause w.e.f. 31.03.2012 and during her long tenure in service she never received any charge sheet or show cause notice containing any allegation and no particular hearing had given to her in the interest of self-defence or no notice and no compensation in accordance with law was offered or paid to her. Thereafter, she made several representations to the management or the organisation but they did not pay any heed to the same and finding no other alternative she prayed for intervention of the Labour Commissioner under the Govt. of West Bengal for redress and during conciliation process initiated by the Assistant Labour Commissioner, Govt. of West Bengal, the management of the organisation submitted their comments in writing on 22.10.2013 but this workman never aware that she was appointed for a particular Govt. project viz., "Sikshalaya Prokalpo"

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under the Deptt. Of Education "Sarbo Siksha Mission", Govt. of West Bengal. It also denied by the workman that she along with other Sebikas were under control of the Govt. Another submission was made on behalf of the organisation on 03.11.2013 where the management categorically admitted that they requisitioned service of Sebika to make Sarbo Siksha Mission a success and for that the concerned workman was personally employed by the management of the Opposite Party. The workman also denied the contention of the Opposite Party organisation under reference that there was no Master & Servant relationship existed between the concerned workman and the Opposite Party, however, conciliation process ultimately failed due to adamant attitude of the management and ultimately the matter has been referred before the Ld. Tribunal for adjudication of the issue as stated earlier. It is also the case of the workman that her termination of service in the shape of refusal of employment w.e.f. 31.03.2012 is nothing but case of unlawful, arbitrary and unjustified retrenchment from service and the concerned workman was verbally informed by the authority of the Opposite Party that her service has been termination on and from 31.03.2012. It is also submitted by the workman that though she tried with all sincerity for getting any other alternative employment but she failed to obtain the same and has been passing her days along with her family in acute financial stringency. As a matter of fact the workman is fully unemployed after wrongful termination of service. Accordingly, by filing this case the workman prays for determination for the Tribunal that her termination of service in the form of refusal of employment w.e.f. 31.03.2012 is arbitrary, illegal and unjustified and pass an award in favour of the workman directing the organisation reinstate her in service with full back wages along with consequential benefits.

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The management of the organisation, M/s. Women's Interlinked Foundation has contested this case by filing their written statement and in their written statement they has raised some legal technicalities such as the present case is misconceived, erroneous, bad and no maintainable either in law or in facts and workman has filed this case just to extort money from the respondent and as the Opposite Party is a non-Government organisation and no profit making organization as such it is not an industry





and there is no employer – employee relationship between the applicant and the Opposite Party and the workman had been performing the job under a specific project titled “Paschimbangyo Sarbo Sishka Mission” and the service was required after stopped providing aid by “CLPOS”. The Opposite Party also suggested to frame issues in their written statement which are as follows:-

- (A) Whether the applicant has been appointed by the Opposite Party?
- (B) Whether there was any employer – employee relationship between the applicant and the Opposite Party?
- (C) Whether the applicant has been recruited for a specific project under contractual terms & conditions?

It also contended by the Opposite Party that the preliminary objection is vital and it also stated that the Opposite Party is a non-Government organisation had enormous experience in social work and making the children who come from lower stratum of society enumerated from the pangs of illiteracy and ill-health and they have earlier provided education to street children. It is also their case that dedication on the part of the Opposite Party had attracted the attention of CLPOA and the Project Commissioning Authority, Ministry of HRD, Govt. of West Bengal / Sarbo Siksha Mission and accordingly the Opposite Party had given the duty to conduct the said project and took all possible steps as advised by the Nodal Authority, Govt. of West Bengal was the benefits of the Right to Education Act, 2009 as percolated down to all drop outs of the customary schools to make the said project successful requisitioned service of Sebikas and honorarium could be handed over to the Sebikas against rendering service was fixed by the Commission time to time and this O.P. not prayed any administration charges of supervisory cost for the said project and this O.P. did the needful totally on voluntary basis and keeping no financial benefit reserved for its own existence and this O.P. is only the service provider having no gain in return. It also contended by this O.P. that at the time of enducing in the noble mission duly apprised that the existence of the total scheme rests on the sweet will of the authority

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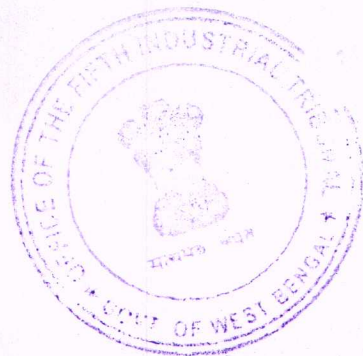


that is the Govt. of West Bengal and the continuous of service of this O.P. was depending on the terms framed by the Govt. of West Bengal and as the authority to stop the project as such this O.P. informed the petitioner that the project for which she was appointed has been stopped and as such the requirement of the petitioner was no more necessary. It is also the case of the Opposite Party that all on a sudden they received one letter from the Office of the Labour Commissioner and accordingly the management submitted their comments with regard to the same and categorically mentioned the reason behind such decision. It also contended by the o.P. that the petitioner through fully aware of the fact that the management hired her for the project and as the project was over as such question of refusal of employment does not arise. This O.P. further submits that they denied the contents of the petitioner made in her written statement and the petitioner is hereby put to strict proof of the same and they had verbally intimated to the applicant that her appointment was for a particular project. This O.P. totally denied the contention of the petitioner's written statement and finally prayed for an award by dismissing the application of the petitioner.

During hearing of the case on merit, both the parties adduced evidence, both oral and documentary in support of their respective cases. The retrenched Workman Smt. Tarana Mumtaz has been examined cross-examined in full as PW-1 and the documents marked exhibits on her behalf are:- 1> Copy6 of letter dt. 11.05.2013 (Ext. 1), <2> Copy of another letter dt. 22.10.2013 (Ext.2), and <3> Copy of another letter dt. 03.11.2013 (Ext.3) and during her Cross – examination, the payment schedule in marked as Ext. A.

On the contrary, the management of the organisation namely M/S. Women's Interlinked Foundation also adduced evidence and one Sri Nisi Kanta Adhikari, the Senior Accountant of the Organization deposed as O.P.W.-1 and one Nandini Chatterjee, the then Secretary of the organization namely City Level Programme of Action, has deposed as O.P.W.-2 and the documents marked exhibits on behalf of the management are as follows:-

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- (a) Payment schedule (Ext. A),
  - (b) Letter dt. 19.11.2008 issued by the Secretary of CLPOA (Ext. B),
  - (c) Letter dt. 07.01.2009, issued by the Secretary of CLPOA (Ext. C),
  - (d) Letter dt. 07.08.2009 issued by the Co-ordinator of Women's Interlink Foundation (Ext. D),
  - (e) Letter dt. 27.05.2010 issued by the District Project Officer of Sarva Siksha Mission, Kolkata (Ext. E),
  - (f) Letter dt. 25.06.2010 issued by the Secretary of the CLPOA (Ext.F),
  - (g) Letter dt. 04..04.2011, issued by the State Project Director of Paschim Banga Sarva Shiksha Mission (Ext. G),





- (h) Letter dt. 25.07.2011 issued by S. M. Cyril, Director of LD STTI alongwith performance report for the month of April & May, 2011 (Ext. H),
- (i) Statement of expenditure of Shikshalaya Prrakalpo, for the month of February, 2012 alongwith payment Sheets (Ext. I),
- (j) Letter dt. 29.07.2013 issued by Tarana Mumtaz addressing the Labour Commissioner (Ext. J),
- (k) Letter dt. 22.10.2013 issued by the Chairperson of Women's Interlink Foundation (Ext. K),
- (l) Letter dt. 03.11.2013, issued by Amitabha Sen (Ext. L),
- (m) Details of fund disbursement to Women Interlink Foundation for Shikshalay Prokalpa from the Year 2002 to 2012 (Ext. M),
- (n) Photocopy of agreement with M/S. Women's Interlinked Foundation (Ext. N),
- (o) Letter dt. 21.08.2009, issued by the Secretary of CLPOA (Ext. O),
- (p) Letter dt. 10.05.2010, issued by the Secretary of CLPOA (Ext. P),
- (q) E-mail dt. 16.08.2010, alongwith attachment (Ext. Q),
- (r) Letter dt. 15.12.2010, by the State Project Director of Sarva Shiksha Mission (Ext. R),
- (s) Letter dt. 13.10.2011, by District Project Officer, Sarva Shiksha Mission (Ext. S),
- (t) Letter dt. 17.08.2015, by the Chairperson of Women's Interlink Foundation (Ext. T) and
- (u) Letter dt. 28.08.2015 issued by the Secretary, CLPOA (Ext. U).

#### Decision With Reasons

It has already been discussed earlier that the order of reference contains only two issues such as :-

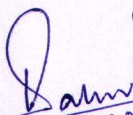
- 1) Whether the refusal of employment of Smt. Tarana Mumtaz w.e.f. 31.03.2012, by the management of M/S. Women's Interlinked Foundation is justified? and
- 2) To what relief is she entitled?

This tribunal has already been discussed the case of Workman as stated by her or in her written statement which in gist is that the workman Tarana Mumtaz was appointed by the management of M/S Women's Interlinked Foundation on 16.08.2001, as "Sebika" at a monthly remuneration of Rs. 2500/-.

#### Case No. VIII-94/2014

During hearing of the Case on merit, both sides adduced evidence both oral and documentary. The Workman Smt. Tarana Mumtaz examined herself as PW-1 & she also cross-examined by the other side and she proof the documents like the copy of letter dated 11/05/2013, written to the secretary, Women interlinked foundation (Exhibit - 1), another letter dated 22/10/2013, written by the women interlinked foundation addressing to the Assistant Labour Commissioner (Exhibit-2), another letter dated 03/11/2013, addressing to Smt. B. Bhattacharrya, Assistant Labour Commissioner(Exhibit-3), on her behalf.

The management also adduced evidence and one Shri Nishikanta Adhikari is examined & Cross-examined as OPW-1 and another Smt. Nandini Chatterjee is examined & Cross-examined as OPW-2, and the documents marked exhibits on behalf of the management are Re-payment Schedule (Exhibit-A),

  
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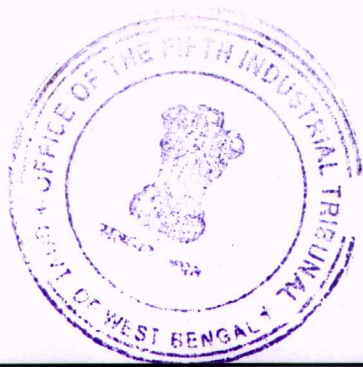


letter dated 19/11/2008, issued by the Secretary of CLPOA(Exhibit-B), letter dated 07/01/2009, issued by the Secretary CLPOA (Exhibit-C), letter dated 07/08/2009, issued by the Co-ordinator of Women Interlinked Foundation(Exhibit-D), letter dated 27/05/2010), by the District Project Officer of Kolkata Sarbo Shiksha Mission, Kolkata (Exhibit-E), letter dated 25/06/2010, issued by the Secretary of CLPOA (Exhibit-F), letter dated 04/04/2011, issued by the State Project Director of Paschim Bango Sarboshiksha Mission (Exhibit-G), letter dated 25/07/2011, issued by S. M. Cyril, Director of L.D.S.T.T.I. alongwith the performance report for the month of April and May, 2011 (Exhibit-H), statement of expenditure, Shikshalaya Prokalpo for the month of February 2012, submitted by the women interlinked foundation alongwith payments Sheets(Exhibit-I), letter dated 29/07/2013, issued by Tarana Mumtaz, addressing the Labour Commissioner to the West Bengal (Exhibit-J), letter dated 22/10/2013, issued by the Chairperson Women Interlinked Foundation addressing the Assistant Labour Commissioner (Exhibit-K) & letter dated 03/11/2013, issued by Amitavo Sen addressing to the Assistant Labour Commissioner (Exhibit-L), details of fund disbursement to women interlinked foundation for Shikshalaya Prokalpo for the year 2002 to the year 2012(Exhibit-M), Photocopy of agreement with M/s. Women Interlinked Foundation (Exhibit-N), Photocopy of letter dated 21/08/2009, issued by the Secretary of C.L.P.O.A. (Exhibit-O), another letter dated 10/05/2010, issued by the Secretary of C.L.P.O.A. (Exhibit-P), e-mail dated 16/08/2010, alongwith the adjustment(Exhibit-Q), another letter dated 15/12/2010, issued by the State Project Director of Paschimbango Sarboshiksha Mission (Exhibit-R), letter dated 13/10/2011, issued by the District Project Officer of Sarboshiksha Mission, Kolkata (Exhibit-S), another letter dated 17/08/2015, issued by the Chairperson of Women Interlinked Foundation addressed to the Secretary C.L.P.O.A (Exhibit-T) and another letter dated 28/08/2015, issued by the Secretary C.L.P.O.A., addressed to the Chairperson of Women Interlinked Foundation(Exhibit-U).

#### DECISION WITH REASONS

It has already stated earlier that the order of reference contents only 2 issues, first one is whether the refusal of employment of Smt. Tarana Mumtaz with effect from (w.e.f.) 31/03/2012, by the management of M/s. Women Interlinked Foundation is justified and to what relief the workman is entitled for. This Tribunal has already mentioned the case raised by the Workman in her written statement and recapitulates in gist is that the workman Smt. Tarana Mumtaz was appointed by the Management of Women Interlinked Foundation on 16/01/2001, as "Sevika" & the said organization is a NGO and at the same time of appointment it was not intimated her the management either in writing or verbally that she was appointed for a particular project and the management used to pay her salary lastly Rs. 2,500/- by cheque and her attendance recorded daily at the bottom of the Attendance Sheet of the Children's and she was performing her duty most diligently, honestly and sincerely and she used to sit in different clubs for performing her duties as Sebika. It is also the case of the workmen that the entire work was controlled from the office of the organization till March, 2012, without any breakup but surprisingly she was terminated from her service without showing any cause w.e.f. 31/03/2012 & she never receipt any charge-sheet or any show-cause notice during the tenure of her service and no opportunity had given to her by the Management of being heard for her self defence.

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22.04.2022





She made several representation to the management but they did not pay and heed and unfortunately she filed petition before the labour commissioner for redressal of her grievances and during conciliation process initiated by the Assistant Labour Commissioner the management submitted in writing on 22/10/2013, but this workman was never aware that she was appointed for a particular Government Project i.e. "Shrikshalaya Prokolpo" under the Department of Education "Sarbooshiksha Mission" and she denied that she alongwith other "Sebika" was under controlled of the Government. It is also the case of the Workmen that the Management on 03/11/2013, admitted that her requisition service of the Sebikas to make Sarbooshiksha Mission a success & for that the concerned workmen was personally employed by the Management of the Opposite Party and her termination with effect from 31/03/2012, is nothing but a case of unlawful arbitrary and un-justified, retrenchment from service and the concerned workman was verbally informed by the authority that her service has been terminated on and from 31/03/2012. She is fully unemployed after wrongful termination of service and accordingly by filling of the cases she prays for determination by the Tribunal that her termination of service in the form of refusal of employment with effect from 31/03/2012, is arbitrary, illegal and un-justified and also prays to pass an award in her favour directing the organization, to reinstate her in service with fully back wages along with consequential benefit / relief.

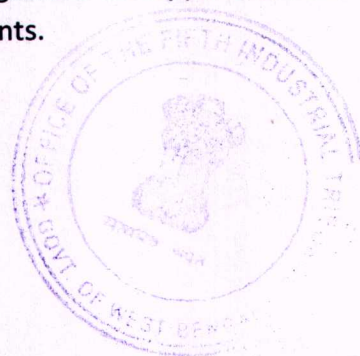
The management in its written statement as this Tribunal find in Paragraph – 3 of their written statement that at no point of time this O.P. has refused from her employment rather accepting the fact that no further work was there for her and she left the organization voluntarily. It also mentioned in their written statement that there was no employer and employees relationship between the applicant and the opposite party. In Paragraph – 17 of their written statement the opposite party also admitted that to make the project successful they requisitioned service of Sebikas and honorarium could be handed over to the Sebika's rendering service was fixed by the Government time to time.

In Paragraph No. 19 of their written statement they further stated that the applicant at the time of inducing in the noble mission duly apprised with the fact that the acceptance of the total scheme rests on the sweet will of the authority i.e. the Government of West Bengal and the continuance of service has rendered by the applicant will depend terms framed by the Government of West Bengal and in Paragraph – 20, it has been stated by the opposite party, as the authority resorted to step the project and as such the opposite party informed the applicant that the project for which she has been recruited has been stopped and as such the requirement of the applicant is no more and the applicant was fully aware of the fact that the management hired her for the project and the project was over and as such question of refusal of the employment does not arise.

The management denied the contention of the written statement filed by the workman that she was ever terminated by the O.P. by way of refusal of employment and prays for passing an award by dismissing the petitioner's application.

Ld. Advocates of both the parties have advanced their argument in support of their respective cases and also filed their written notes of their arguments.

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Ld. Adv. for the workman in his written note of argument submitted that in Paragraph – 1, of the written statement of the workman it has been submitted that on 16/08/2001. The workman was appointed as Sebika and since then till the date of her wrongful termination i.e. on 31/03/2012, she has discharged her duty sincerely and diligently and prior to terminating her service no warning letter, show cause notice or disciplinary proceeding so ever conducted against her. It also contended / argued that the O.P. Management in their written statement never denied the fact that the workman was not employed on 16/08/2001 & since then, she had discharged her duties as Sebika & O.P. also admitted that not written document were handed over to the workman and it was also not informed to her that her service was depending upon the continuation of a particular project by the Government visually "Shrikshalaya Prokolpo". On the contrary the service of the workman was specifically supervised and control and wages were being paid by the O.P. Management and she also sent for training by the O.P. & accordingly it can be said that the O.P. Management had fully control and supervision upon the applicant Tarana Mamta and they had appointed her and is to pay her salary and also finally dismissed her service without following the supervision of Section 25(F) of the Industrial Dispute Act.

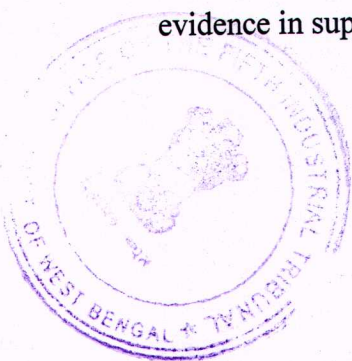
Ld. Adv. further argued that the petitioner in her evidence categorically are stated her case and in her Cross-examination she stated that no appointment letter was issued to her and no written information had given to her that they had appointed her under a specific scheme visibly "Shrikshalaya Prokolpo". It also submitted by the Ld. Adv. for the workman that from Exhibit – D, it appears that the applicant was selected by the O.P. Management as a Sebika and not as a Teacher and OPW-1 in his Cross-examination also categorically appointed the said fact. OPW-1, was also admitted that the O.P. did not filled any document before this Tribunal from which it can be reflected that Tarana Mamta was working as a Teacher and OPW-1 was also admitted that their foundation used to pay the remuneration to Tarana Mamta.

OPW-1 also stated that he could not able to show any document from which it would be reflected that Tarana Mamta was made aware of her service condition and he admitted that they would depute on their behalf some one to attend the meeting. Ld. Adv. also submitted that the witness of the O.P.

Management categorically admitted that they did not filed any document to show that the engagement of the applicant was at the pleasure of the Government of West Bengal, or they felt to show that the continuation of service of Tarana Mamta would depend on the terms framed by the Government. The O.P. also failed to file any document in support of their contention with record to rendering of Voluntary service or the chargeable nature or this O.P. Management did not have any gain while being associated with the project and they also not failed any audit certificate of their foundation.

The OPW-1 also stated that he has not submitted any document or such other the evidence in support of the contention of Paragraph-29

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of their written statement in respect of the claim of financial stringency or un-employment made by Tarana Mamtaz in Paragraph No. 7 to 9 of her written statement. He denied the suggestion that Tarana Mamtaz was working from 16/08/2001. OPW-1 also stated that they maintain attendance register of the employees on their foundation in their office but they could not able to produce the attendance register pertaining to the year 2001, as they kept their record only for last 8 years in terms of their requirement of the Industrial Tribunal retrenchment and they did not issue salary slip in their foundation so the question of issuance no such salary slip to Tarana Mamtaz would not produce or arise. He also stated that they did not intimate any disciplinary proceedings or issues no such notice to Tarana Mamtaz prior to termination of her service.

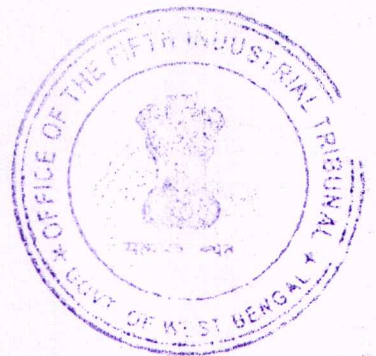
Ld. Adv. further argued that OPW-1 in his cross-examination admitted that in their written statement they did not denied the contention of Tarana Mamtaz regarding her statement that she was serving in their organization since 16/08/2001 and the foundation also not submitted no document before this Tribunal from which it can be seen that the concerned Government had authorized or engaged the foundation to carry out the project on his behalf.

OPW-1 also admitted that Prior to termination of Tarana Mamtaz was not issued any show cause notice or any domestic enquiry was held against her and the foundation did not pay her any compensation and they verbally informed Tarana Mamtaz but never issued any written intimation regarding cessation of the project work and he also not submitted any document before this Tribunal to that effect that the service of Sebika were requisitioned by the foundation for the said project or the quantum of honorarium paid to the Sebika fixed by the Government from Time to time.

OPW-1 also stated that Tarana Mamtaz was not aware of her service condition in writing and he has not filed any document to show that the applicant was a Teacher at the centre or there was no main servant relationship between Tarana Mamtaz and the foundation.

Ld. Adv. for the workman further submitted that the OPW-2 Nandini Chatterjee has stated in her evidence that she did not file any authorization letter from the city level programme of again to disposed in this case and she did not know the facts and circumstances but she only knew that their office received a summon from this tribunal and she did not know any person of Tarana Mamtaz. She also failed to re-collect that whether any document had not filed by her to show that Government has engaged CLPOA to run the scheme Shrikshalaya Prokolpo and she had no knowledge of issuance of 2 letters which are mark as Exbt.-O & Expt.-P and she did not find any attachment in Exbt.-Q. She admitted that Exbt.-R is not a letter present to CLPOA by the State Government

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22.04.2022





and she also not found any enclosures on record has referred in Exhibit.-S and she also not filed any document show that the State Government has closed the programme of Sarboshiksha Mission at any point of time. She further stated that their organization got knowledge that Sebika were practically engaged and performed their duties as Teacher but they have got no knowledge as to whether they were also done any other duties. She categorically stated that their organization had or has got no control over the workers engage by particular NGOs in respect of appointment, termination etc. for those employees has got no personal interaction or knowledge with the employees or particular NGOs and she did not have any idea as to whether the Shrikshalaya Prokolpo of the Government is still running / functioning or not.

At the concluding part of the argument Ld. Adv. For the workman submitted that from known of the Exhibited Document while by the management it could be stated that the applicant was discharging her duties as Teacher or the applicant was made aware in writing that her service was depended upon a particular project which was initiated by the Government of West Bengal and there is no contemporaneous documents from which it could be ascertained that the facts which the management are trying to create does Exbt.-R the workman by adducing evidence proved her case that she had not illegally and unlawfully terminated incomplete derogation of the provision of the Industrial Dispute Act. To substantiate his case Ld. Adv. for the workman relies upon the decisions of the Hon'ble Apex Courts as well as of the Hon'ble High Courts of different states which are as follows:-

- A) (2021) LLR 952, Para-11 to 13 where the Hon'ble Court held that "systematic activity which is organized or arranged in a manner in which service or business did not organize or arrange would be an industries.
- B) (1981) 3SCC225, Para-18 in which the Hon'ble Court held that "the termination was held to be avoid Aibinitio & the Appellant was deem to be in-continuous service with fully back wages and other consequential benefits if any.
- C) (1984) 1 Sec509, Para-3&4 in which the Hon'ble Court hold that "the Termination was held to be avoid Aibinitio & the Appellate was deem to be in-continuous service with fully back wages and other consequential benefits.
- D) (2013) 10 Section 324, Para-38.
- E) (2016) 16 Section 663, Para - 3, in both the cases the Hon'ble Court came to the conclusion that when the applicant was wrongfully retrenched from discharging his duty then the plea of no work no pay should not be allowed.
- F) (2015) 8 Section 150, Para-24, 25 & 27.
- G) (2015) 4 Section 458, Para-21,22 & 23.

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H) (2019) 17 Section 184, Para-15, 16 & 17 and all this aforesaid 3 judgments are relied upon by the Workman where the Honble Court allowed re-instatement with fully back wages and consequential relief incase where the applicant of the workman have superannuated wages or fully back wages, retirement benefits and consequential benefits were fully paid.

At the time of advancing argument Ld. Adv. for the workman submitted that it is the mandatory provision of the Industrial Dispute Act.-1947 that at the time of the retrenchment the employer has to comply with the requirement of the Section 25 F of the Industrial Dispute Act.,- 1947, which Postulate 3 conditions to be vis-à-vis by an employer for effecting but a valid retrenchment, which are one month notice in writing indicating the reasons for the retrenchment for wages in lieu of such notice, payment of compensation to 15 days average pay for every year of continuous service or apart from their all in excess of six months and notice to the appropriate Government in a prescribed manner and he also submitted that considering the fact that the condition few used in Section 25F, of the Industrial Dispute Act., 1947, it imposes the mandatory duty on the employer which is a condition precedent for retrenchment of a workman and any contravention of this mandatory requirement would invalid the retrenchment and it avoid Aibinitua but admittedly the management did not comply with the mandatory provision of Law and thus the termination of service of the workman is in clear violation of the provision of Law & Order of the Principal of Nature of Justice. He also submitted that the decisions referred by the Ld. Adv. for the Women's Interlink Foundation have got no relevancy with the present case and as such they are not acceptable.

Ld. Adv. for the OP Concerned also filed written notes of argument where he has reiterated the facts of the Petitioner's case. It also stated by him that the instant case is misconceived, erroneous, bad and not maintainable. The petitioner's has filed this case to extort money from the respondent by pressurizing the respondent. Present O.P. is a non-Government and non-profit organization and as such not as Industries. There was no employer – employee relationship between the applicant and the opposite party and she was performing the job under a specific project titled "Paschim Bango Sarboshiksha Mission" and the Service was required after stop providing the aid by 'CLPOA'. It also argued by the Ld. Adv. for the OP that it is a NGO and had enormous experience in social work and making the children who come from lower strain of the society. They have earlier provided education to street children and brought them to mainstream of the society. This dedication of this OP attracted attention of 'CLPOA' and the project commissioning authority, ministry of HRD, Govt. of West Bengal – Sarbo Siksha Mission and accordingly this OP was entrusted to conducted said project.

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This OP took all possible steps as advised by the nodal authority and Govt. of West Bengal to make said project successful requisitioned service of Sebikas. It also contended that this OP was not paid any administrative or supervisory charges for that project and it did the needful on voluntary basis without any financial benefit.

The Petitioner was at the time of inducing her job duly informed with the fact that the existence of the total schemes depend upon the sweet will of the Govt. of West Bengal and as the authority resorted to stop the project and as such this OP informed the applicant well in advanced that the project has been stopped and as such the requirement of the applicant is no more and as she was aware of the fact so the question of refusal of employment does not arise. As there was no written communication of the intimation as such the applicant has taken the advantage of the situation. The honorarium paid to the applicant was fixed by the Government from time to time. The applicant service was never terminated by way of refusal of employment rather the Govt. closed the project. Moreover, the applicant has failed to produce any documents that her date of appointment is in the year 2001. It also contended that the applicant in her cross-examination dated 11/09/2017 admitted that since after 31/03/2012, all the centre under the said project was closed and she also admitted that she sent to Loreto School for training and members of several foundation at given training to them. The applicant further admitted in her cross-examination dated 11/09/2017 that **"It is a fact that, we are working in 'Sarba Siksha Mission'. It is a fact that, 'Sarba Siksha Mission' was closed after 31/03/2012. It is a fact that, we never performed any other work for Woman's Interlink Foundation apart from the work specified under 'Sarba Siksha Mission'. It is a fact that my appointment was for the purpose of 'Sarba Siksha Mission'. It is a fact that 'Sarba Siksha Mission' was closed, so we were terminated as per the scheme of 'Sarba Siksha Mission'."** Therefore, from the evidence of the applicant it is crystal clear that she was appointed as a teacher and her appointment was made only for the purpose of Sarba Siksha Mission and there was a closure of her workplace.

Ld. Adv. contended that the Management by adducing evidence has proved their case and it is settled principal of law that the applicant has to prove her case which she has **felt to prove**. According to Ld. Adv. for the OP, the term of workman defines in Section 2(S) of the Industrial Dispute Act which is as follows:- "Workman means any persons (including an apprentice) employed in any Industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be expressed or implied, and for the purpose any proceedings under this act in relation to an industrial dispute, includes any such persons who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that disputes or whose dismissal, discharge or retrenchment has let to that dispute, but does not include any such persons –





- (i) who is subject to the Air Force Act, 1950 (45 of 1950), or the Army Act, 1950 (46 of 1950), or the Navy Act, 1957 (62 of 1957); or
- (ii) who is employed in the police service or as an officer or other employee of a prison; or
- (iii) who is employed mainly in a managerial or administrative capacity; or
- (iv) who, being employed in a supervisory capacity<sup>6</sup>, draws wages exceeding one thousand six hundred rupees per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature.”

He also stated that though the applicant was named as ‘Sevika’ for the purpose of Shikshalaya Prkalpo but her main function was to teach and educate the children and as such she was coming under the category of teacher and being teacher she is not coming under the definition of the workman as per provision of the Industrial Dispute Act. In support of his contention to relies upon the decision of the Hon’ble Apex Court as well as of the Hon’ble High Courts of different states which are as follows:-

- (i) 2015 147 FLR 503, Para – 6,7 & 8:
- (ii) 1999 82 FLR 685, Paragraph – 17,18 and 19:
- (iii) 2008 1 LLJ 712:
- (iv) 1999 3 LLN Page 369:
- (v) 1996 4 JT Page 363:
- (vi) 1988 3 JT Page 121:
- (vii) 1968 (1) LLJ Page 834:
- (viii) AIR 1967 SC Page 469:
- (ix) 2006 LLR Page 750 Paragraph 23:
- (x) 2005 (2) LLJ Page 258:
- (xi) 2007 12 JT Page 477 Paragraph 10:
- (xii) 1999 2 LLJ Page 187 Paragraph 12:

Ld. Adv. for the OP also refers Sec 2(cc) of Industrial Dispute Act which defines the term closure which means the permanent closing down of a place of employment or part thereof, so there is a closure of part of the establishment and the applicant did not challenged the same rather came forward with the plea that she has been terminated and in view factual and legal position this case is not maintainable and liable to dismiss.

Admittedly the present case arrows out of order of reference made by the appropriate

Government as this Tribunal mentioned earlier where

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it has been clearly stated that an Industrial Dispute exists between the Management of the Company and the Workman and it was felt expedient that said dispute should be referred to an industrial Tribunal Constituted U/s. 7A of the Industrial Dispute Act 1947 and then the appropriate Govt. made the order of reference in exercise of power conferred by Section 10 read with Sec. 2A of the Industrial Dispute Act 1947 and then the appropriate Govt. referred this order of reference to this Tribunal for deciding the issues which are:-

- (i) Whether the refusal of employment of Smt. Tarana Momtaz with effect from 31/03/2012, by the management of M/s. Women's Interlink Foundation is justified?
- (ii) To what relief is she entitled

and thus the appropriate Government exercised power U/s. 10 of the Industrial Dispute Act 1947 and accordingly the present case before this Tribunals arose by this order of reference only for limited purpose which is to answer the issues as mentioned in the order of reference and nothing else.

It further reveals from the case record that Ld. Judge of 7<sup>th</sup> Industrial Tribunal vide its order no. 27, dated 18/01/2017 framed two additional issues as per petition of the OP management which are as follows:-

Additional issue no. 1) whether the applicant's was a teacher and coming with definition of a workman as defined in Section 2(s) of the Industrial Dispute Act 1947. (2) whether the applicant's service was not a contractual one.

From the case record this tribunal finds that before making reference to the matter of disputes was taken by the then Assistant Labour Commissioner, Kolkata for conciliation to solve the dispute and ultimately he referred the case for adjudication before the appropriate Government and then the appropriate Government made the order of reference. Therefore, it can be said that Ld. Lawyer for the management is totally misconceived regarding the concept of law as per Industrial Dispute Act 1947 and also misconceived the scope of making order of reference by appropriate Govt. in exercise the power U/s. 10 of the **Industrial Dispute Act 1947.**

Now in respect of the additional issue no. 1) whether the applicant's was a teacher and coming with definition of a workman as defined in Section 2(s) of the Industrial Dispute Act 1947, this tribunal is of the opinion that no averment has made by the management in their written statement that the present applicant was a teacher. Admittedly this issue has been framed as per petition

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dated 15/12/2016, filed by the OP management under rule 20D of the West Bengal Industrial Disputes Rules 1958. On perusal the written statement of the Women's Interlink Foundation no where it was found that the applicant Tarana Mumtaz was appointed as a teacher under them or she used to perform the duty of a teacher. Now it is the settled principal of law that Issue is nothing but a bundle of facts in which one party asserts a fact and another party rebuts the same. In the present case the applicant in her written statement has been categorically stated that she was appointed as Sebika under the Organization of the OP. These contentions of the applicant has no where rebutted by the OP in their written statement. Mere by the add of Rule 20D of the Industrial Disputes Rules 1958, no additional issue can be framed beyond pleading of the parties. Further it reveals that the management through its witness (OPW-1) has been admitted that the applicants alongwith some other persons were appointed as Sebikas. Further OPW-1 has been admitted in his cross-examination dated 19/06/2018 that from Exbt.-D it appears that Tarana Mumtaz was selected by them as Sebika and not as a Teacher and OPW-1 also admitted that he has not filed any documents before this tribunal, where from it would reflected that Tarana Mumtaz was working as a **teacher**. Now Exbt.-D is a letter dated 07/08/2009 duly written by one Shukla Bose the then Coordinator, addressing to the Secretary, CLPOA where it has been categorically mentioned that they have selected a Sebika Mrs. Tarana Mumtaz. It further reveals from Exbt.-9 i.e. Memorandum of Understanding between CLPOA and Woman's Interlink Foundations in where it has been mentioned in point no. 3) that - in general cases each Shikshalaya Centre should enrolled 50 children between the age group of 5-9 years and two sebok / sebika and in few cases 25 children with one Sebok / Sebika. Therefore, from the oral testimony of OPW-1 i.e. the management witness as well as from the documentary evidence of the management like Exbt.-D and Exbt.-N and also from Exbt.-K i.e. a letter dated 22/10/2013 written by Aloka Mitra, the then Chairperson of women interlink foundation addressing to Mr. B. Bhattacharaya, the then Assistant Labour Commissioner, this Tribunal has no hesitation to hold that the applicant Tarana Mumtaz was a Sevika and not a Teacher under the management of Women Interlink Foundation and is within the purview of definition as defined in Section 2s of the Industrial Disputes Act 1947. Accordingly this issue is decided in favour of the applicant.

Now in respect of the additional issue no. 2) that – whether the applicant service was not a contractual one this tribunal is of the view that the OP management Mrs. Women Interlink Foundation in its written statement has been categorically tried to establish

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their case that the applicant Tarana Mumtaz was performing the job under a specific project titled 'Paschim Banga Sarba Shiksha Mission' and the service was required after stop providing the aid by CLPOA. It is also the contention of the OP management that they had earlier provided education to street children and brought them to the main stream of the society and these activities attracted the attention of CLPOA, Ministry of HRD, Govt. Of West Bengal Sarba Shiksha Mission, who had entrusted this OP to conduct the said project. To make said project successful this OP requisitioned the service of Sevika's and the honorarium was fixed by the Govt. time to time. As the Authority resorted to stop the project and as such this OP informed the present applicant that the project for which she was recruited has been stopped and as such the requirement of the applicant was no more. In support of their contentions the OP has adduced evidence through OPW-1, Nishikanta Adhikari where he has corroborated the contention of the OP management in his affidavit in chief and also identified some documents on their behalf. Now from his cross-examination he has categorically admitted that he has not filed any documents in support of his contention made in Paragraph-2 and Paragraph-3 of his affidavit in chief, where he has stated that they have earlier provided education to the street children etc. and their activities was attracted the attention of CLPOA, Ministry of HRD, the Govt. of West Bengal Sarba Shiksha Mission and the OP was entrusted to conduct the said project.

He also admitted in his cross examination that he has not filed any document to show that the engagement of the applicant in the scheme was at the pleasure of the Govt. of West Bengal or to show that the continuation of service of the applicant Tarana Mumtaz would depend on the terms frame by such Govt.

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It further reveals from the exhibited documents of OP management that no documents has been submitted by them from which it could be reflected that the Women's Interlink Foundation was entrusted for any particular project under Paschim Banga Sarba Shiksha Mission. Further it is the main contention of the applicant Tarana Mumtaz that she was serving in OP Management since 16/08/2001, and surprisingly the OP management did not rebut this contention of the applicant in their written statement. Even the OPW-1, in his cross-examination dated 25/07/2018, has been stated that in their written statement they have not denied the contention of Tarana Mumtaz in paragraph-1 of her claim statement. The OPW-1 also stated in his cross examination that he has not submitted any document before this tribunal in support of their contention that the services of Sevika's were





requisitioned by the foundation for the said project or that the rate of quantum of honorarium paid to Sevikas for rendering services was fixed by the Govt. from time to time.

From the above facts and circumstances and also discussions made above it is crystal clear before this Tribunal that the Management has palpably failed to prove that the applicant Tarana Mumtaz was appointed for a particular project in their concern rather they had admitted by not rebutting the contention of the applicant that the applicant was serving under Women's Interlink Foundation since 16/08/2001. Admittedly the job of Tarana Mumtaz was terminated on 31/03/2012. Therefore, it can be safely said by this Tribunal that the applicant Tarana Mumtaz served under the OP management from 16/08/2001 to 31/03/2012 i.e. about 11 years and 7 months (approximately). Now it is the settle principal of law that whether one workman was continued in service for a period of 240 days in a calendar year prior to his termination he would be treated in continuous service as per provision of 25B(1) and 2(a)(ii). It has already discussed earlier that the OP has failed to establish that the applicant was appointed for a particular project or she was not in service since 16/08/2001. Therefore, this Tribunal is of the opinion that the applicant service was not a contractual one. Accordingly this issue is decided in favour of the applicant.

Now this Tribunal has to decided the main issue that whether the refusal of employment of Smt. Tarana Mumtaz with effect from 31/03/2012 by the management of Mrs. Women's Interlinked Foundation is justified or not.

The contention of the applicant Tarana Mumtaz that she worked under Women's Interlinked Foundation from 16/08/2001 to March, 2012 without any break but her service has been terminated without showing any reasons w.e.f. 31/03/2012 and during her long tenure in service she was never served any charge sheet or show cause notice, containing any allegation and no minimum opportunity of personal hearing was given to her for self defence and neither any notice nor any compensation in accordance with law was offered or paid at the time of her termination. It also her contention that she made several representation to the management but they did not pay any heed to the same regarding the prayer of reinstatement in service with full back wages alongwith consequential relief.

On the contrary it is the contention of the OP management that the applicant was doing her job in a project and the service of the applicant was depended on the duration of the Sarba Shiksha Mission Project as such after completion of the project the applicant was

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duly informed about the same. It is also the contention of OP that applicant was fully aware of the fact that the management hired her for a particular project and as the project was over as such the question of refusal of employment does not arise.

It has already discussed earlier that OP management has been palpably failed to establish that the applicant Tarana Mumtaz was appointed for a particular project by adducing any cogent evidences either oral or documentary. The OPW-1, Mr. Nishikanta Adhikari has been categorically admitted in his cross examination that no appointment letter was issued to the employee and no intimation had given to the workman has given to the workman that they were recruited under a specific scheme / project viz. "Shikshalaya Prokalpo". He also stated in his cross examination that he could show any document where from it would reflect that the applicant Tarana Mumtaz was made aware of her service condition. He also stated that he has filed any document to show that the engagement of the applicant in the scheme was at the pleasure of the Govt. of West Bengal or to show that the continuation of service of the applicant Tarana Mumtaz would depend on the terms framed by such Govt. or he has not filed any document to show that the applicant Tarana Mumtaz was intimated that the authorities had decided to stop the project vide their letter dated 15/12/2010 or her services were no longer required by the foundation. OPW-1 was also admitted that prior to termination of her engagement Tarana Mumtaz was not issued any show caused notice nor any domestic enquiry was held against her and neither did the foundation pay her any compensation including notice pay and / or retrenchment compensation and they had verbally informed Tarana Mumtaz however, they did not issue any written intimation to her regarding cessation of project work. He also stated that he had not filed any document before this Tribunal to show that the services of Sevikas were requisitioned by the foundation for the said project or that the rate and quantum of honorarium paid to Sevikas for rendering services was fixed by Government from time to time and Tarana Mumtaz was not made aware of her service condition in writing.

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OPW-2, Smt. Nandini Chatterjee who was the then Secretary of CLPOA as stated in his evidence that Sarba Shiksha Mission Prokolpo, Kolkata entrusted them to work with 65 nos. of NGOs and out of said 65 nos. Of NGOs M/s. Women's Interlink Foundation was one of them. But in support of her contention she has not filed any document before this Tribunal and the documents marked exhibited by her have no relation with this case. In her cross examination she stated that she had no authorization letter

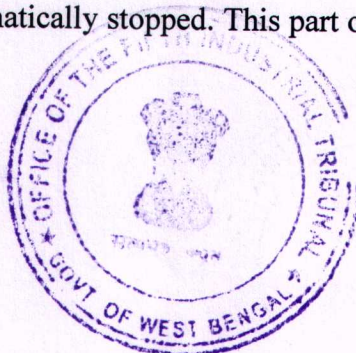




she also did not know any person named Tarana Mumtaz and she felt to recollect that whether any document filed by her to show that the Govt. had engaged CLPOA to run the scheme Shikshalaya Prokolpo. She also did not know about the purpose of two letters namely exhibit-O & P. She categorically admitted that she did file any document to show that the state Government has closed the programme of Sarbo Shiksha Mission at any point of time. She also stated that their organization had got not control over the workers engaged by particular NGOs in respect of appointment, termination etc. for those workers and their organization had got no personal interaction or knowledge of the workers of particulars NGOs and she did not have any idea as to whether the Shikshlaya Prokolpo of the Government is still running or not.

In view of the above facts and circumstances it appears before this Tribunals that the applicant Tarana Mumtaz was appointed by the OP management Mrs. Women's Interlinked Foundation and the OP has failed to establish that the appointment of Tarana Mumtaz was for and particular project. It also discussed earlier that the OP M/s. Women's Interlinked Foundation has felt to rebut the contention of the applicant Tarana Mumtaz that she was not appointed on 16<sup>th</sup> August, 2001. It is admitted position that the applicant was terminated from her job on 31/03/2012 and prior to her termination no show caused letter or charge sheet was served to her or no enquiry conducted against her. The management has failed to prove that the applicant was appointed for a temporary purpose, though Ld. Adv. for the OP management at the time of his argument tried to bank upon the evidence of OPW-1, which she has stated in her cross examination dated 11/09/2017 which is as follows:- **"It is a fact that, we are working in 'Sarba Siksha Mission'. It is a fact that, 'Sarba Siksha Mission' was closed after 31/03/2012. It is a fact that, we never performed any other work for Woman's Interlink Foundation apart from the work specified under 'Sarba Siksha Mission'. It is a fact that my appointment was for the purpose of 'Sarba Siksha Mission'. It is a fact that 'Sarba Siksha Mission' was closed, so we were terminated as per the scheme of 'Sarba Siksha Mission'."** and it is the contention of Ld. Adv. for the OP/Management that from the above statement made by the applicant it is crystal clear that the applicant was a teacher and her appoint was made only for the purpose of "Sarba Siksha Mission" on contractual purpose and there was a closure of her work place. This piece of argument of Ld. Adv. of the OP is not at all tenable and acceptable before this Tribunal. It is a settle principal of law that the parties has to prove their own case by their own merit and not upon the weakness of the other side case.

It is the positive case of the OP / Management that the applicant was appointed under their concerned for a particular project and as said the project was closed so the job of the applicant was not continued and automatically stopped. This part of the statement of the OP /



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Management has not been substantiated by adducing any cogent positive evidence either oral or documentary on the part of the OP/Management. The applicant all along has stated that she was made aware that she had been taken in service for a particular Govt. Project namely Sikshalay Prakalpa under the Education Department, Sarba Siksha Mission, Govt. of West Bengal. Therefore, when the OP Management has failed to establish their positive case by adducing any cogent evidence so mere evidence made by the applicant in her cross examination is not an admission of the positive case of the OP Management rather it is a stray evidence of the applicant which has got no value as the OP has failed to prove its own contention by adducing any positive evidence. It further reveals that prior to reference of this matter the workman sought for intervention of the Labour Commissioner under Govt. of West Bengal, but the conciliation proceeding ultimately failed due to adamant attitude taken by the management and finally Govt. made the order of reference.

In the written statement by the workman it has been stated that after termination from her service by the management in such a manner she tried to get a service elsewhere with all sincerity but she could not secure the same and passing her days alongwith her family in acute financial stringency. Though in the written statement of the management has denied the contention of the applicant but the management has failed to justified the same by adducing any cogent evidence. It is also found that the workmen by adducing cogent evidence as discussed earlier that the OP Management had appointed her as Sevika with effect from 16/08/2001 with a monthly remuneration of Rs. 2500/- and she was continued her service till March, 2012 prior to her termination. It also establish that no show caused letter or charge sheet had issued against her and no enquiry took place against her. It further reveals that the OP Management did not comply the fundamental requirement of Section 25F of the Industrial Dispute Act 1947 without paying any notice pay or any compensation as per law.

In the summing up it is to say that admittedly the present workman was appointed by the OP Management as Sebika and thereafter the OP management terminated said workman Tarana Mumtaz from service illegally and at the same time that the management/OP did not so any cause of her termination. Thus the issues are to be decided in favour of the workman Tarana Mumtaz.

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22.06.2022 Ld. Adv. for the Management/OP has referred the decision reported in 1999(82)FLR685, which is not relevant with the present case because the case referred by the OP/Management where the appointment was made as a teacher but in the present case the Workman Tarana Mumtaz was appointed as a Sebika. Therefore, the case referred above has no relevancy with the present case in hand.

He also referred another case reported in 2015(147)FLR503 where it has been held





He also referred another case reported in 2015(147)FLR503 where it has been held that teacher employed in school does not fall within the definition as workman, but in the instant case it has already discussed earlier that the present workman Tarana Mumtaz was appointed as a Sebika and she also performed the duty as a Sebika. Therefore, the above judgment is not at all similar with the present case and has got not relevancy.

Another judgment referred by the Ld. Advocate for the OP/Management which is 2008(1)LLJ712 where the Hon'ble Court hold that a school where mentally challenged children were taught and the school was not taking any fees from the student does not fall within the definition of Industry as per section 2(j) of the Industrial Dispute Act 1947 is also not tenable and similar with the present case because in the present case the OP/Management is not a School but a Non Government Organization and used to run various activities which is not similar with the case referred above.

Another decision referred by Ld. Advocate for the OP/Management 1999(3)LLN369 where it has held by the Hon'ble Court that teacher is not a workman but in the present case it has already discussed earlier that the present workman performed her duty as a sebika and not as a teacher. Therefore the decision referred above has got no relevancy with the present case.

Ld. Advocate for the OP/Management also referred another case reported in 1996(40)JT363 where the Hon'ble Court hold that the teachers of an educational institution can't be brought within the purview of the minimum wages Act, but the case in our hand is dealt with the workman Tarana Mumtaz whose appointment was made as a Sebika and she also performed her duty as a Sebika and not as a teacher. Therefore, the case referred above also has got no relevancy with the present case.

In another judgment referred by the Ld. Advocate for the OP/Management which is reported in 1968(1)LLJ834 where the Hon'ble Court hold that it no dispute at all was raised by the respondent with the management, any request sent by them to the Govt. would only be a demand by them and not an Industrial Dispute between them and their employee but the same is not tenable and acceptable before this Tribunal because the Hon'ble Apex Court in a judgment reported in 2017(4)LLJ480 hold that even if a dispute is not directly raised with the employer, there are cases and cases where the mode and method of raising the disputes through and independent machinery has been reckoned to be sufficient for the reference and that is binding on al Court.

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In another decision referred by the Ld. Advocate by the OP/Management reported in AIR1967SC469 has got no relevancy with the present case because the case referred is dealt





with lock-out, bonus, strike etc. but the case in hand is related with illegal termination of the workman.

In another decision reported in 2006LLR750 referred by the Ld. Advocate of the OP/Management it was held by the Hon'ble High Court that the Ld. Tribunal was wrong on the question stating that onus lies on the company who prove that he is not a workman and the jurisdiction of an industrial Court to make and award would depend upon the finding whether the Concerned Employee is a workman or not. In the instant case it has already discussed by this Tribunal being a Sebika the workman is within the purview of workman as per provision of Sec2(s) of the Industrial Dispute Act, 1947.

In another case referred by Ld. Advocate for the OP Management reported in 2005(2)LLJ258 the Hon'ble Apex Court hold that the workman has to prove that he worked for 240 days prior to her termination in the one calendar year, not only by way of pleading but also by way of prove. In the present case it has already discussed earlier that the workman has proved by his pleading as well as by adducing evidence that she was in continuing service under the OP Management for more than 240 days in a single calendar year prior to her termination.

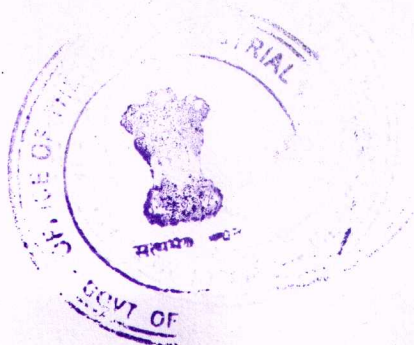
Ld. Advocate for the OP Management also referred another case reported in 1999(2)LLJ187 is related with a case where the post was temporarily created for fulfilling the needs of a particular of scheme limited in its duration come to an end when the need of the project was come to an end but in the instant case the workman was not made aware that she was appointed for a particular project, therefore, this case referred above has got no relevancy with the present case.

Accordingly both the issues i.e. whether the refusal of employment of Smt. Tarana Mumtaz w.e.f. 31/03/2012 by the management of M/s. Women's Interlinked Foundation is justified or not and to what relief the workman is entitled for are decided in favour of the workman Smt. Tarana Mumtaz on contest.

Hence,

#### **ORDERED**

That both the two issues i.e. whether the refusal of employment of Smt. Tarana Mumtaz w.e.f. 31/03/2012 by the management of M/s. Women's Interlinked Foundation is justified or not and to what relief the workman is entitled for including two additional issues

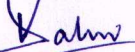




i.e. (1) whether the applicant was a teacher and coming with the definition of a workmen as defying in section 2(s) of the Industrial Dispute Act, 1947 and (2) whether the applicant's service was not a contractual one are decided in favour of the workman Smt. Tarana Mumtaz on contest and it is held by this Tribunal that the termination of the service of Smt. Tarana Mumtaz with effect from 31/03/2012 by way of refusal of employment as mentioned in the order of reference is illegal, arbitrary, un-justified and void ab initio and the same is quashed and it is also held that the workman Smt. Tarana Mumtaz is entitled to be reinstated in service with full back wages / additional wages and also with other consequential benefits arising there from with effect from the date of her termination and accordingly the management of M/s. Women's Interlinked Foundation is hereby directed to reinstate the workman Smt. Tarana Mumtaz in her post w.e.f. 31/03/2012 and the management of M/s. Women's Interlinked Foundation is also directed to give here arrear salaries with other consequential benefits as mentioned earlier immediately and this order and direction of this Tribunal in view of the order of reference having number 1259-IR/OR/11L-115/2014, dated 15/09/2014 by order of the Governor, Signed by the Deputy Secretary, to the Govt. of West Bengal, Labour Department, IR Branch, East India House, (2<sup>nd</sup> Floor), 20B, Abdul Hamid Street, Kolkata - 700 069, is to be treated as an award by this Tribunal on contest. There is no order to cost.

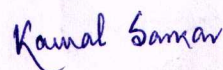
It is also directed that necessary number of copies of this judgment and award be sent to the Ld. Additional Chief Secretary, to the Government of West Bengal, Labour Department, New Secretariat Buildings, 1 No. Kiran Shankar Roy Road, Kolkata - 700 001.

D/C by me



5<sup>th</sup> Judge  
Industrial Tribunal.  
Dated: 22/04/2022.

Judge,  
5th Industrial Tribunal  
Govt. of West Bengal



5<sup>th</sup> Judge  
Industrial Tribunal.  
Dated: 22/04/2022.

Judge,  
5th Industrial Tribunal  
Govt. of West Bengal

