

37521/2019

**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/ 125/(LC-IR)/.....

Date : 05.02.19

**ORDER**

WHEREAS under the Government of West Bengal, Labour Department Order No. 574-IR dated 13/05/2008 the Industrial Dispute between M/s : Purbabbarh Samabaya Krishi Unanyan Samity Ltd. (SKUS) , Purbabbarh, P.O.- Kalindi, Dist.- Purba Medinipur and their workman Shri Pravat Kumar Maity, Purbabbarh, P.O.- Kalindi, Dist.- Purba Medinipur regarding the issues 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, Second Industrial Tribunal, West Bengal.

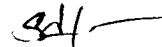
AND WHEREAS the Judge of the said Second Industrial Tribunal, West Bengal, has submitted to the State Government its award on the said Industrial Dispute.

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,



Deputy Secretary  
to the Government of West Bengal

No. Labr/ 125/(5)/(LC-IR)

Date : 05.02.19

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

1. M/s . Purbabbarh Samabaya Krishi Unanyan Samity Ltd. (SKUS) , Purbabbarh, P.O.- Kalindi, Dist.- Purba Medinipur .
2. Shri Pravat Kumar Maity, Purbabbarh, P.O.- Kalindi, Dist.- Purba Medinipur .
3. The Assistant Labour Commissioner, W.B. In-Charge, Labour Gazette.
4. The Labour Commissioner, W.B. New Secretariate Buildings, 1, K. S. Roy Road, 11<sup>th</sup> Floor, Kolkata- 700001.
- ✓ 5. The O.S.D., IT Cell, Labour Department, with the request to cast the Award in the Department's website.



Deputy Secretary

No. Labr/125/2(2)/(LC-IP)

Date : 05.02.19.

Copy forwarded for information to :

1. The Judge, 2nd . Industrial Tribunal, West Bengal with reference to his Memo No. 62-L.T. dated 08/01/2019 .
2. The Joint Labour Commissioner (Statistics), West Bengal, 6, Church Lane, Kolkata -700001.

Deputy Secretary

In the matter of an industrial dispute between M/s. Purbabarh Samabaya Krishi Unanyan Samity Ltd. (SKUS) at Purbabarh, P.O. – Kalindi, Dist. Purba Medinipur, and the workman Sri Pravat Kumar Maity, Vill. – Purbabarh, P.O. – Kalindi, Dist. – Purba Medinipur.

BEFORE THE SECOND INDUSTRIAL TRIBUNAL: WEST BENGAL

PRESENT: SHRI SRIBASHJ CHANDRA DAS, JUDGE,

SECOND INDUSTRIAL TRIBUNAL, KOLKATA

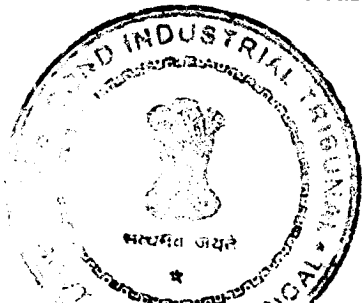
Date of passing award –

A W A R D

This case has come into existence by way of order of reference vide No. 574-I.R./IR/11L-154/2000 dt. 13.05.2008 by order of Governor signed by Mr. Hazarilal Mondal, Assistant Secretary to the Government of West Bengal, Labour Department, I.R. Branch, Writers' Buildings, Kolkata -700001 mentioning that an industrial dispute exists between M/s. Purbabarh Samabaya Krishi Unayan Samity Ltd. (SKUS) at Purbabarh, Kalindi in Purba Medinipur District and the workman Sri Prabhat Kr. Maity, Manager, residing at Purbabarh in Kalindi in Purba Midnapure district relating to the issues as mentioned in the order of reference stated to be matters specified in the second schedule to the Industrial Disputes Act, 1947, further mentioning that it became expedient that the said dispute should be referred to Industrial Tribunal constituted U/s. 7A of the Industrial Disputes Act, 1947, and there upon, in exercise of power conferred by Section 10, read with Section 2A of the Industrial Disputes Act, 1947 the Governor became pleased to refer this dispute to this Tribunal stated to be constituted under notification No. 808-I.R./IR/3A-2 /57 dt. 11.03.1997 for adjudication requiring this Tribunal to submit its award to the State Government within the time as mentioned in this order of reference in terms of sub-Section 2A of Section 10 of the Industrial Disputes Act, 1947, subject to other provisions of the Act, and the issues that have been framed in the order of reference are,

- 1) Whether the termination of the service of workman Prabhat Kr. Maity w.e.f. 21.09.1998 by his employer is justified or not,
- 2) Whether the employer is justified by denying the salary dues to Sri Prabhat Kr. Maity since November, 1997 or not, and
- 3) What other relief, if any, is the workman entitled to.

The case record shows that after receiving this order of reference, this case was started as case No. VIII-34/08 dt. 16.06.2008 and summons were issued to both parties and accordingly both parties also appeared, the management of the company authorised Ld. Advocate Mr. Sinha to conduct the case on its behalf and workman appears to have conducted



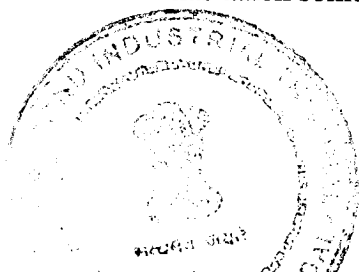
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respective written statement.

In the written statement filed by workman Sri Pravat Kr. Maity it has been mentioned that he was appointed in the company M/s. Purbabarh Samabaya Krishi Unayan Samity Ltd. (SKUS), subsequently mentioned as company, in the capacity of manager on and from 02.01.1979 at a salary of Rs. 100/- per month initially but it was increased to Rs. 250/- per month subsequently. It is also mentioned that till November, 1997 his salary used to be paid by Balageria Central Co-operative Bank Ltd. described as mother bank as per system of C.C.A as was introduced at that time after his appointment. It has been further stated that the workman had been performing his duty honestly and sincerely without any complaint from anyone. It has been next stated in the written statement that workman as a common cadre group of Balageria Central Co-operative Bank Ltd. (mother bank), he would get his salary @ Rs. 250/- per month till that C.C.A. (Common Cadre Authority) had been in force. It is also stated that in 1994 the company selected the workman for getting training and for this purpose sent him to Jhargram Co-operative Training Centre for 6 months and after completing training for that period he was returned to his post in the company. But in December, 1997 the Government of West Bengal by notification abolished the Common Cadre Authority and as a result his salary was withheld. The workman has further stated in the written statement that on 12.02.1998, the Chief Executive Officer, Balageria Central Co-operative Bank Ltd. informed the workman that his salary would be paid by the company i.e. M/s. Purbabarh Samabaya Krishi Unayan Samity Ltd. (SKUS) thenceforth but the company did not pay his salary from 01.12.1997 till filing of this case as mentioned. The workman has further stated in the written statement that he performed his duty in the company till June, 1998 and after that the Secretary of the company M/s. Purbabarh Samabaya Krishi Unayan Samity Ltd. (SKUS) did not allow him to do his duty and no salary was also paid to him, with addition that no termination letter by the company was also given to the workman terminating his service. The workman has further stated in the written statement that in the meantime the Government of West Bengal provided many monetary benefits such as Puja bonus, ad-hoc grant etc. to others of the company and the workman also became entitled to get the same as per rules but he was not given any such benefits. It is the prayer of the petitioner/ workman that there should be a direction by this Court on the company so that the petitioner/ workman can get back his post of managerial duty and to perform his duties without any disturbance from anyone and also to get all outstanding salary with current salary and other financial benefits connected therewith as per government circular as provided from time to time by the company M/s. Purbabarh Samabaya Krishi Unayan Samity Ltd. (SKUS).

The company also filed written statement to contest the case. From the written statement filed by the company M/s. Purbabarh Samabaya Krishi Unayan Samity Ltd. (SKUS), it is found that it has taken some legal technicalities such as the order of reference

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is not maintainable in law, no dispute was raised before management of the company M/s. Purbabarth Samabaya Krishi Unayan Samity Ltd. (SKUS) and accordingly the dispute has remained up to the stage of demand and has not become industrial dispute and the order of reference has been sent to this Tribunal by the government without any application of mind. The company has also raised in the written statement that manager does not fall within the definition of workman as per Section 2(s) of the Industrial Disputes Act, 1947 and this dispute cannot be adjudicated upon, further mentioning that the company M/s. Purbabarth Samabaya Krishi Unayan Samity Ltd. (SKUS) is not an industry within the meaning of Section 2(j) of the Industrial Disputes Act, 1947 and accordingly it is out of the purview of Industrial Tribunal.

By way of specific case the company has stated that the company M/s. Purbabarth Samabaya Krishi Unayan Samity Ltd. (SKUS) is a co-operative society of farmers / agriculturalists within the control of Balageria Central Co-operative Bank Ltd. and the local farmers get loan from this co-operative society after getting sanction of Balageria Central Co-operative Bank Ltd. described a central bank on the basis of application and fulfilment of other formalities, with addition that the applicant / workman used to do supervisory and managerial office work and he was appointed as manager of that company by that central bank i.e. Balageria Central Co-operative Bank Ltd. under Common Cadre Authority system and salary of the petitioner/ workman used to be paid by that bank. It is also stated that the workman Prabhat Kr. Maity in the capacity of manager in the company M/s. Purbabarth Samabaya Krishi Unayan Samity Ltd. (SKUS) by the central bank i.e. Balageria Central Co-operative Bank Ltd. under Common Cadre Authority system which also paid his salary, was absolute monarch of the company without any virtual supervision / control and by using his power, he sanctioned loan to his own people without fulfilment of formalities and for that reason several adverse resolution had been adopted by the board of the company but no step could be taken against him as he was never an employee of the company i.e. M/s. Purbabarth Samabaya Krishi Unayan Samity Ltd. (SKUS) though allegations / representations against him were lodged in various forums. Describing the petitioner/ workman as a corrupted person, the company has further stated that due to his corruption, many complaints were filed and as a result his properties were attached by Court and he has not paid dues to the company M/s. Purbabarth Samabaya Krishi Unayan Samity Ltd. (SKUS). The company has further stated in its written statement that the applicant / workman was never appointed by the company M/s. Purbabarth Samabaya Krishi Unayan Samity Ltd. (SKUS) and for that reason it is not liable for his employment dispute with an explanation that he was appointed by the Central bank i.e. Balageria Central Co-operative Bank Ltd. and due to abolition of Common Cadre Authority system, he was found to be surplus and non-sanctioned and for that reason instead of filing the case against M/s. Purbabarth Samabaya Krishi Unayan Samity Ltd.

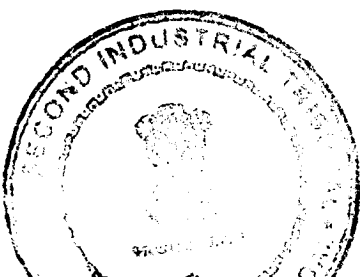
(SKUS), he should file the case against Balageria Central Co-operative Bank Ltd. Describing the contention of the written statement filed by workman the company has stated that the allegations against the company are misconceived, false, vague etc. and being appointed by that bank Balageria Central Co-operative Bank Ltd., the company does not have any employer-employee relationship with the workman and the workman was not selected by the company and his selection for training was taken by himself. Denying the contention of para-4 and 5 of the written statement of the workman the company has raised that all such allegations by the workman are contrary to record and the company also categorically denied that in the letter dt. 12.02.1998 it was mentioned by the company that the salary of the workman would be paid by the company and that bank is the employer of the workman. With reference to para-7 to 10 of the written statement of the workman, the company has stated that such contentions are absurd, baseless, false etc. and with all these the company has prayed for deciding the issues in favour of the company.

The case was then fixed for recording evidences of both parties on merit and during that time petitioner/ workman Sri Prabhat Kr. Maity examined himself as P.W.-1 and he was also cross-examined by Ld. Lawyer for the company and he also adduced documentary evidences which are as under,

- a) Appointment letter of Sri Prabhat Kr. Maity by President of the company M/s. Purbabarh Samabaya Krishi Unayan Samity Ltd. (SKUS), (Ext. 1),
- b) Letter dt. 12.02.1998 addressed to Sri Prabhat Kr. Maity by Chief Executive Officer of Balageria Central Co-operative Bank Ltd., (Ext. 2),
- c) One letter addressed to the Assistant registrar of co-operative societies, Midnapore – I/II, III, Purulia, Birbhum, Bankura with subject as practical training of the trainees of the 44<sup>th</sup> session of junior basic course in cooperation at co-operative training centre, Jhargram – field placement from 12.02.1984 to 03.03.1984 containing the names of trainees including that of the workman Prabhat Kr. Maity (Ext. 3),
- d) One letter with subject as 44<sup>th</sup> session of junior basic course in cooperation for the employees of co-operative societies scheduled to start on and from 31.10.1983 etc. signed by Mr. G.P. Kar, principal, co-operative training centre, Jhargram dt. 23.09.1983 with copy to workman Prabhat Kr. Maity (Ext. 3/1),
- e) One letter mentioning final assessment of co-operative training centre, Jhargram, junior basic course in cooperative, 44<sup>th</sup> session mentioning final assessment by principal cooperative training centre, Jhargram dt. 19.09.1984 (Ext. 3/2),
- f) One memo No. 7/40 dt. 13.04.1984 mentioning workman Prabhat Kr. Maity by principal, cooperative training centre, Jhargram (Ext. 3/3),
- g) One certificate dt. 16.02.1981 in the name of Prabhat Kr. Maity by executive

- h) officer, Contai Cooperative union secretary (Ext. 4),
- i) One letter addressed to the secretary / chairman, Purbabarh SKUS Ltd. dt. 08.01.1999 (Ext.5),
- j) h) One letter addressed to the secretary / chairman, Purbabarh SKUS Ltd. dt. 15.03.1999 by inspector of cooperative societies, Ramnagar II Development Block (Ext. 5/1),
- k) one letter addressed to workman Prabhat Kr. Maity, memo No. 4572 dt. 05.07.1993 by P. Mondla, Assistant Registrar, Cooperative Societies, Midnapore III, Contai (Ext. 6),
- l) one letter addressed to Assistant Labour Commissioner, Contai by Prabhat Kr. Maity dt. 01.09.1999 (Ext. 7),
- m) one letter addressed to Assistant Labour Commissioner, Contai by Prabhat Kr. Maity dt. 21.04.2003 (Ext. 7/1),
- n) one letter addressed to the secretary, purbabarh SKUS Ltd. by one Laxmi Kanta Panda, state nominee, Purbabarh SKUS Ltd. dt. 01.07.1993 (Ext. 8),
- o) one document containing formats mentioning district Medinipore containing signature etc. of member such Smt. Renuka Das etc. with endorsement thereon as recommended by supervisor mentioning dt. 05.02.1999 (Ext. 9),
- p) one document mentioning appendix B with Karjo Grohoner Sima Nirdharok Bibaron with signature etc. of members (Ext. 9/1),
- q) one document mentioning appendix B with Karjo Grohoner Sima Nirdharok Bibaron with signature etc. of members such as Digambar Satpathi (Ext. 9/2),
- r) one document mentioning Karjo Grohoner Sima Nirdharok Bibaron with signature etc. of members such as Mr. Dandopath (Ext. 9/3),
- s) one document mentioning appendix B with Karjo Grohoner Sima Nirdharok Bibaron with signature etc. of members such as Subhas ch. Das (ext. 9/4),
- t) one document mentioning appendix B with Karjo Grohoner Sima Nirdharok Bibaron with signature etc. of members such as Ahmmad Khan (Ext. 9/5),
- u) one document mentioning appendix B with Karjo Grohoner Sima Nirdharok Bibaron with signature etc. of members such Shibsankar Das (Ext. 9/6).

There is a further matter regarding adducing of evidence by the workman. The case record shows that the workman filed one petition for issuing summon to the secretary of the company M/s. Purbabarh Samabaya Krishi Unayan Samity Ltd. (SKUS) and by order dt. 06.08.2013 this Tribunal allowed the prayer of the workman and the secretary of M/s. Purbabarh Samabaya Krishi Unayan Samity Ltd. (SKUS) was directed to produce documents before this Tribunal on 30.08.2013 and the case record shows that the secretary of M/s. Purbabarh Samabaya Krishi Unayan Samity Ltd. (SKUS) did not appear with any document,



and from order No. 101 dt. 03.02.2015 it comes out that the workman himself filed a separate petition over this matter praying for a direction on the company M/s. Purbabarh Samabaya Krishi Unayan Samity Ltd. (SKUS) to produce the documents and at that time Ld. Lawyer for the company mentioned as I find in that order that the documents as were directed by this Tribunal for production by the company were old and not available but this Tribunal then again directed the company for production of those documents and from order No. 107 dt. 14.08.2015 the Tribunal again took up the matter on being raised by workman himself and on 05.10.2015 this Tribunal gave opportunity to the workman to examine the secretary of M/s. Purbabarh Samabaya Krishi Unayan Samity Ltd. (SKUS) and to take step accordingly by issuing summon to that secretary. The case record further shows that after that Ld. Lawyer for the company M/s. Purbabarh Samabaya Krishi Unayan Samity Ltd. (SKUS) started becoming absent and the company M/s. Purbabarh Samabaya Krishi Unayan Samity Ltd. (SKUS) also started becoming absent without any step and accordingly the secretary of M/s. Purbabarh Samabaya Krishi Unayan Samity Ltd. (SKUS) did not appear as a witness, neither did he produce any document despite the directions of this Tribunal as mentioned above and from order No. 112 dt. 09.05.2016 it is found that on that day the workman appeared and he also conducted the case by himself as usual but the company remained absent but the Ld. Lawyer for the company submitted before the Tribunal mentioning that Ld. Lawyer for the company did not get any instruction from the company and then this Tribunal directed the company to show cause mentioning as to why necessary order could not be passed for absence of the company without any step and despite such order as was sent to the company by registered post with A.D., the company M/s. Purbabarh Samabaya Krishi Unayan Samity Ltd. (SKUS) remained absent and never turned up till date.

The company M/s. Purbabarh Samabaya Krishi Unayan Samity Ltd. (SKUS) also adduced both oral and documentary evidence. It examined one Mr. Ramkrishna Jana as O.P.W.-1 and he was also fully cross-examined. The company also adduced documentary evidences which are copies of form No. xxxi containing name of society as Purbabarh Samabaya Krishi Unayan Samity Ltd. (SKUS) and other particulars etc. including mentioning of name of directors etc. including auditor's report etc. (Ext. A).

As per order of reference there are only three issues. The issue No. 1 relates to if the termination of the service of Sri Prabhat Kr. Maity w.e.f. 21.09.1998 by his employer is justified. Specific cases as have been raised by both sides in their respective written statements have already been seen. The petitioner/ workman in his written statement, as for recapitulation, has stated that he was appointed as manager of the company M/s. Purbabarh Samabaya Krishi Unayan Samity Ltd. (SKUS) from 02.01.1979 at a monthly salary of Rs. 100/- only initially and thereafter it was increased to Rs. 250/- per month till 1997 November and he would get this increased salary from the Bank namely Balageria Central Co-operative





Bank Ltd. as also described as central bank and he had been performing his duty sincerely, honestly and without any complaint from any one. He has also stated therein that in 1984, the samity i.e. company M/s. Purbabarh Samabaya Krishi Unayan Samity Ltd. (SKUS) selected him for undergoing a training and for this purpose he was sent to Jhargram cooperative training centre and at that place he had to undergo a training for six months and then he returned to his post. He has also stated that in 1997 the Government of West Bengal by notification abolished the Common Cadre Authority and from the time of that notification his salary was withheld but on 12.02.1998 the chief executive officer of the central bank i.e. Balageria Central Co-operative Bank Ltd. informed this workman that his salary would be paid by his employer i.e. the company M/s. Purbabarh Samabaya Krishi Unayan Samity Ltd. (SKUS) henceforth but the company did not pay him any salary and his salary accordingly remained due from the company M/s. Purbabarh Samabaya Krishi Unayan Samity Ltd. (SKUS) from 01.12.1997 though he continued performing duty till June, 1999 but after that the secretary of the samity i.e. M/s. Purbabarh Samabaya Krishi Unayan Samity Ltd. (SKUS) did not allow him to do any work and also did not pay him salary but no termination letter terminating his service was also given to him. It is also stated that in the meantime the Government of West Bengal provided other financial benefits to the managers of lower level society like the company M/s. Purbabarh Samabaya Krishi Unayan Samity Ltd. (SKUS) all over West Bengal such as puja bonus, ad hoc grant etc. and the workman also became entitled to get those benefits but the society i.e. the company M/s. Purbabarh Samabaya Krishi Unayan Samity Ltd. (SKUS) did not give him anything.

It is the argument of the Ld. Lawyer for the workman as was engaged subsequently by the workman that the workman that though the name of the post given to the workman is mentioned as manager but the workman had to work as clerk and he would have to render physical labour for bringing fertilisers and also selling such fertilizers to probable buyers and had to serve notices as peon to the members of the co-operative society. Ld. Lawyer also stated that in 1983 the workman had to undergo a training as per direction of the samity i.e. company M/s. Purbabarh Samabaya Krishi Unayan Samity Ltd. (SKUS). Ld. Lawyer also raised that in 1986 Government of West Bengal formed a Common Cadre system and the salary of the workman and other samity members used to be paid from this common cadre and accordingly the samity had to deposit 1% of the agricultural loan to the Common Cadre Authority and that Common Cadre Authority used to received that 1% agricultural loan and deposit / invest them in short term deposit, and during that time the salary of the workman was Rs. 250/- per month. Ld. Lawyer for the workman has further raised in his argument that though the company mentioned in the appointment letter of the workman to work in the capacity of manager of the company, yet the workman had to do work as D-group employee, with addition that in 1997 the State of West Bengal cancelled the common cadre system /

scheme and at that time the executive officer of the company one Mr. Madhab Ch. Ghosh and chairman of the company one Mr. S.C. Das stated to the workman that as the common cadre project was not continued and for that reason they did not receive one percent of the deposited amount of agricultural loan, the salary of the workman would be paid by the company itself. Ld. Lawyer for the workman has also raised in his argument that from December, 1997 no salary was paid to the workman even though the workman was allowed to continued his work till September, 1999, after which the workman was not allowed to work and then the workman raised dispute before Labour Commissioner over this matter by sending a letter dt. 01.09.1999 followed by filing an application before the co-operative authority for a direction to disburse the salary to the workman. Ld. Lawyer added that to prove the withdrawal of common cadre system the workman has filed document that has been marked Ext. 2. Ld. Lawyer also raised that as per direction of the company, the workman had to undergo a compulsory course of training including practical training regarding junior basic course in co-operation at, Co-operative Training Centre, Jhargram and after completion of the training successfully the workman returned to his post and resumed his duty. Ld. Lawyer has mentioned in his argument that the workman requested the company to get back his arrear salary and then inspector of co-operative societies wrote a letter to the secretary for this purpose but last of all no salary was paid by taking any action on the basis of those letters and then only the workman submitted a letter in writing to the Assistant Labour Commissioner in Contai mentioning all these. It is also the argument by Ld. Lawyer for the workman that on several times conciliation proceeding took place but without any reason. Ld. Lawyer has also raised that the workman did not have any fault in performing his duties and he continued performing his duties honestly and sincerely with addition that the company M/s. Purbabarh Samabaya Krishi Unayan Samity Ltd. (SKUS) appointed the workman in the company without mentioning any condition regarding formation of any Common Cadre Authority in the way that the Common Cadre Authority would be formed and it would become sole authority for the purpose of conducting the service of the workman in the company or that in case the Common Cadre Authority was withdrawn the service of the workman would be terminated and he would not be paid any salary. Ld. Lawyer for the workman described that the Common Cadre Authority is the idea of the controlling bank i.e. Balageria Central Co-operative Bank Ltd. and it was introduced in the company and it appears that it was the condition between the central bank i.e. Balageria Central Co-operative Bank Ltd. to get a percentage of loan amount to remain deposited with that bank to enable it to invest the deposited money but after that some troubles might have taken place between the company M/s. Purbabarh Samabaya Krishi Unayan Samity Ltd. (SKUS) and that bank i.e. Balageria Central Co-operative Bank Ltd. and no deposit of any portion of the loan amount was deposited with that bank which agreed to bear the expenses of salary in case it received a portion of the loan money but as the company M/s. Purbabarh Samabaya Krishi

Unayan Samity Ltd. (SKUS) stopped depositing any portion of the loan money with that bank i.e. Balageria Central Co-operative Bank Ltd., the company allowed the workman to continue his duty till he was terminated but did not make any payment to the workman citing that it was the duty of the Common Cadre Authority to make payment of salary to the workman and that bank has already withdrawn the Common Cadre Authority system, no salary could be paid to the workman, and describing the Common Cadre Authority as not anything connected with the company M/s. Purbabarh Samabaya Krishi Unayan Samity Ltd. (SKUS), the company cannot raise any question and stop making payment of salary to the workman as the workman was appointed by company without any condition as to involvement of any such Common Cadre Authority which was the brain-child of the bank i.e. Balageria Central Co-operative Bank Ltd. to get enhanced investment from the distributed loan amount and then the termination of the workman for demand of the salary is totally illegal. Ld. Lawyer explained that the Common Cadre Authority was nothing but a matter of understanding between the company M/s. Purbabarh Samabaya Krishi Unayan Samity Ltd. (SKUS) and the bank Balageria Central Co-operative Bank Ltd. and it has no connection with the performance of duty by the workman in the company or to his payment of salary by the company and payment of salary by the company to the workman is nothing but a compulsory requirement legally on the part of the company M/s. Purbabarh Samabaya Krishi Unayan Samity Ltd. (SKUS) independent of existence or non-existence of any such Common Cadre Authority. Ld. Lawyer further explained that the company did not find any fault with the workman in performing his duties and it did not issue any show cause notice or anything like that to the workman, nor did the company order any enquiry against the workman for any fault and thus the salary of the workman continued to become outstanding and the company refused to give him employment when the workman demanded his outstanding / current salaries with other consequential benefits such as bonus, advances etc.

Ld. Lawyer for the workman has specially argued that the entire stance of the company in this case is false and explained that the secretary of the company M/s. Purbabarh Samabaya Krishi Unayan Samity Ltd. (SKUS) possessed some important documents and these documents are in favour of the workman but the company has not filed any of those documents before the Tribunal and on that ground the workman filed a petition for production of those documents and it was allowed and the secretary of the company M/s. Purbabarh Samabaya Krishi Unayan Samity Ltd. (SKUS) was directed to appear with those documents and after getting summons to appear as a witness with documents, the secretary of the company M/s. Purbabarh Samabaya Krishi Unayan Samity Ltd. (SKUS) never appeared despite giving him time from 14.08.2015 till the date of argument up to 10.07.2018 and Ld. Lawyer for the workman has added that the secretary of the company M/s. Purbabarh Samabaya Krishi Unayan Samity Ltd. (SKUS) thus did not appear as a witness to produce



documents and the company also started becoming absent without any step. Ld. Lawyer further submitted that had those documents been produced by the secretary of the company M/s. Purbabarh Samabaya Krishi Unayan Samity Ltd. (SKUS), it would have been found that the company has committed illegalities and also illegally terminated the service of the workman, with further addition that to avoid the facing of the court, Ld. Lawyer for the company also did not appear to argue the case though earlier the company adduced evidence of one witness as O.P.W.- 1.

Now the entire matter is required to be decided on the basis of evidences. The workman Sri Prabhat Kr. Maity has examined himself as P.W.-1 and he deposed that on 12.01.1979 he was appointed as manager under the company M/s. Purbabarh Samabaya Krishi Unayan Samity Ltd. (SKUS) and he was getting a salary 100/- per month at that time and he had been working in doing accounts and also by rendering physical labour for bringing fertilizers by himself and also selling those fertilizers to probable buyers. The workman as P.W.-1 also deposed that he was required to serve notices to the members of the company i.e. M/s. Purbabarh Samabaya Krishi Unayan Samity Ltd. (SKUS). P.W.-1 has also deposed that in 1983 the company M/s. Purbabarh Samabaya Krishi Unayan Samity Ltd. (SKUS) sent him to Jhargram for under-going a course of training and he also completed that training successfully and he was declared by the company that the workman had completed the training successfully and then he was again allowed to join the work in the company. From the evidences adduced by company through witness Sri Ramkrishna Jana and also for the written statement filed by the company, it is found that it is the stance of the company that the workman was appointed as a manager of the company and a person occupying a post of manager in the company cannot become a workman legally as per law as given in Section 2(s) of Industrial Disputes Act, 1947 and for that reason also the order of reference by the government has become illegal with addition that the company M/s. Purbabarh Samabaya Krishi Unayan Samity Ltd. (SKUS) being a co-operative society cannot come under the definition of industry legally as per law U/s. 2(j) of the Industrial Disputes Act, 1947 and therefore for all such reasons this Court does not have any jurisdiction to adjudicate the dispute and no appointment was given to the workman by the company M/s. Purbabarh Samabaya Krishi Unayan Samity Ltd. (SKUS) and as a result the assertion of the workman to be a workman in the company is false.

The term industry has been defined in Section 2(j) of the Industrial Disputes Act, 1947 by mentioning that it means any business, trade, undertaking, manufacturing or calling of employers and includes any calling, service, employment, handcraft or industrial occupation or avocation of workman and in Section 2(j) sub-section (ka) industrial establishment or under taking has been described as means of establishment or undertaking in which any industry is carried on provided that where several activities are carried on in an



establishment or under-taking and only one or some of such activities is or are an industry or industries, and then if any unit of such establishment or under-taking carrying on any activity being an industry, is severable from the other of such establishment or under-taking shall be deemed to be a separate industrial establishment and if the predominant activity carried on in the establishment or under-taking or any unit thereof is an industry and the other activity or each of the other activities carried on in such establishment or under-taking or unit thereof is not separable from and is for the purpose of carrying on or adding the carrying on of such predominant activity or activities, the entire establishment shall be deemed to be an industrial or under taking. Ld. Lawyer for the workman has argued that the company M/s. Purbabarh Samabaya Krishi Unayan Samity Ltd. (SKUS) although being a co-operative society resort to commercial activities such as providing loan, purchase of fertilizers and then selling them in open market with addition that the workman was required to bring the packets of fertilizers from other place and sell them in open market to the intending buyers. Ld. Lawyer for the workman also stated that the workman as P.W.-1 has stated one oath that he was required to do clerical work in the company at the instruction of the company, he had to render physical labour for bringing the packets of fertilizer and also to sell them to probable buyers. Ld. Lawyer further explained that though the company M/s. Purbabarh Samabaya Krishi Unayan Samity Ltd. (SKUS) is admittedly known as co-operative society, yet it resorted to commercial activities openly and to promote the commercial activity all the persons in the company from secretary to peon have to engage themselves, and accordingly the company M/s. Purbabarh Samabaya Krishi Unayan Samity Ltd. (SKUS) is nothing but an industry within the meaning of Section 2(j) of the Industrial Disputes Act, 1947. Ld. Lawyer further raised that on behalf of company, one witness Mr. Ramkrishna Jana was examined as O.P.W.- 1 and he has at all not denied doing of such activities i.e. physically of carrying of fertilizer packets by the workman, and taking them to the markets by physically carrying them by workman etc. and the evidences given by P.W.-1 over this aspects have not been challenged, neither have they been discarded by bringing any evidence by the company. Ld. Lawyer for the workman has further pointed out in the argument that in the written statement filed by the company M/s. Purbabarh Samabaya Krishi Unayan Samity Ltd. (SKUS), it has been raised also that a workman legally under the company as required by law in Industrial Disputes Act, 1947 because the company is nothing but a co-operative society, with addition that the O.P.W.- 1 who happened to be the one of the members of the company i.e. M/s. Purbabarh Samabaya Krishi Unayan Samity Ltd. (SKUS) in his evidences has denied giving any appointment letter to the workman by it, with further stance in the way that the workman was a manager of the company and therefore he cannot come within the purview of workman as defined in the Industrial Disputes Act, 1947. Now it is to be decided as per law along with the evidences adduced by both parties. I find that the workman has also adduced documentary evidences and by deposition as P.W.-1 he has stated that he was appointed by the company

M/s. Purbabarth Samabaya Krishi Unayan Samity Ltd. (SKUS) by issuing written appointment letter and the workman as P.W.-1 also produced that letter and then on the basis of evidences of workman as P.W.-1, the appointment letter of the workman has been marked as Ext. 1. Going through the contention of appointment letter issued to the workman Sri Prabhat Kr. Maity, it is found that it was issued by one Mr. Arabinda Gayen on 02.01.1979 in the capacity of holding the post of president of the company M/s. Purbabarth Samabaya Krishi Unayan Samity Ltd. (SKUS) and the contention of the letter is that by that letter he appointed the workman Sri Prabhat Kr. Maity, son of late Nalini Kanta Maity of Vill.-Purbabarth, P.O. – Kalindi, Dist. – Midnapore as manager of the society i.e. company M/s. Purbabarth Samabaya Krishi Unayan Samity Ltd. (SKUS) as per resolution No. 2 dt. 02.01.1979 w.e.f. the date as mentioned in the appointment letter (Ext. 1), the date mentioned in the appointment letter being 02.01.1979 and thus this document (Ext. 1) has corroborated the version of the workman as P.W.-1 who deposed that he was appointed by the company M/s. Purbabarth Samabaya Krishi Unayan Samity Ltd. (SKUS) as manager of the company and also deposed that though in the appointment letter, he was mentioned as manager of the company but actually he had to do work of clerical nature and also had to perform manual work for bringing packets of fertilizers from various places and also to take those packets of fertilizers manually to different markets for selling them to intending buyers and he had also served letters, notices to the chairman, members of the company in the capacity which is akin to the status of a peon or orderly. Going through the cross-examination of this witness i.e. workman as P.W.-1 by Ld. Lawyer for the company, it is found that all these evidences, both oral and documentary including the appointment letter (Ext. 1), but there is at all nothing to challenge such evidences adduced by workman as P.W.-1. Further from the evidences of O.P.W.- 1 Mr. Ramkrishna Jana it is coming out that he has deposed that no appointment letter was issued to the workman by the company M/s. Purbabarth Samabaya Krishi Unayan Samity Ltd. (SKUS) but the O.P.W.-1 Mr. Jana has remained totally silent about the document (Ext. 1) and O.P.W.- 1 also has not denied the authenticity of the appointment letter (Ext. 1). From the evidences of O.P.W.- 1 it is coming out that O.P.W.- 1 Mr. Ramkrishna Jana happens to be the member of the company and at the same time vice-chairman of the company, and having taken such evidences of O.P.W.- 1 with that of the workman as P.W.-1 along with documentary evidence (Ext. 1) it is coming out that O.P.W.- 1 Mr. Jana either does not know anything about the facts and circumstances of the case or he has intentionally lied before this Court, and it is particularly so because O.P.W.- 1 Mr. Jana in his deposition subsequently admitted, by raising allegation against the workman that the workman misappropriated the fund of the company and for that reason a case in Contai Court is pending over the matter. Further the audit report of the company M/s. Purbabarth Samabaya Krishi Unayan Samity Ltd. (SKUS) (Ext. A) shows that the company is a profit earning

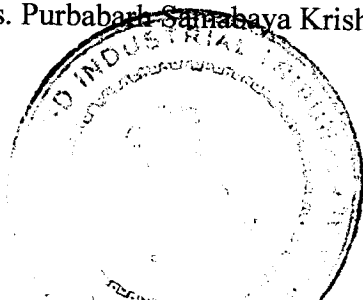
concern as also admitted by O.P.W.- 1 that in the relevant year the company earned profit exceeding Rs. 10,000/-.

Hon'ble Supreme Court of India was very much pleased to deal with a similar matter in co-operative central bank Ltd. Vs. Additional Industrial Tribunal, AIR 1970 Supreme Court 245 and in that case Hon'ble Court was very much pleased to observe that the relevant provisions of the Industrial Disputes Act, 1947 and the local act relating to co-operative societies, as the present one is, that if a dispute is capable of decision by the registrar under the provisions of Co-operative Societies Act, the same cannot be tried by an Industrial Tribunal and the Hon'ble Apex Court was also very much pleased to observe that it recognized that two jurisdictions would be exclusive of each other and on this principle the dispute relating to alteration of conditions of service of the workman could only be granted by Industrial Tribunal deal with industrial disputes and the registrar of a co-operative society is not a competent authority to grant any relief and such a dispute is not contemplated to be dealt with under the co-operative societies act and the Hon'ble Court was pleased to further explain the Co-operative Societies Act enacted by various state legislature is a general one concerning co-operative societies but Industrial Disputes Act , 1947 is a legislation for investigation and settlement of industrial disputes being a special enactment concerning industrial disputes but not other types of disputes, further explaining that nature of dispute to be adjudicated under the co-operative societies Act is limited in scope and is not comprehensive enough to include industrial disputes as per Industrial Disputes Act, 1947. In the present case the workman in his written statement or statement of claim has raised that after he was appointed in the company for doing clerical nature of works and also manual works for shifting packets of fertilizers Common Cadre Authority system was introduced in the company by the Bank i.e. Balageria Central Co-operative Bank Ltd. which then started financing the company on certain terms, inter alia, that the bank i.e. Balageria Central Co-operative Bank Ltd. would finance the company and also pay the salaries to the staff of the company i.e. M/s. Purbabarh Samabaya Krishi Unayan Samity Ltd. (SKUS) including that of the workman on condition that a certain percentage of loan to be allowed by the company i.e. M/s. Purbabarh Samabaya Krishi Unayan Samity Ltd. (SKUS) shall remain deposited with that bank described as central bank to enable the bank to invest that percentage of loan amount so to be deposited with to other sources for earning but after that the bank i.e. Balageria Central Co-operative Bank Ltd. withdrew that Common Cadre Authority and also informed its such action to the company i.e. M/s. Purbabarh Samabaya Krishi Unayan Samity Ltd. (SKUS), after which the company m/s. Purbabarh Samabaya Krishi Unayan Samity Ltd. (SKUS) stopped giving him salary to the workman Prabhat Kr. Maity though the workman Prabhat Kr. Maity continued working in the company with same status till he was refused employment by the company M/s. Purbabarh Samabaya Krishi Unayan Samity Ltd. (SKUS)

and thus salary of the workman and other benefits accordingly remained unpaid and his service found to be refusal of employment thus was terminated.

Now having taken the evidences as discussed above including the documentary evidences it is coming out that the dispute of termination of the workman Prabhat Kr. Maity and non-payment of his salary remained beyond the jurisdiction of the registrar of co-operative societies and it is found to have remained to be mixed with entire activity of the company i.e. M/s. Purbabarh Samabaya Krishi Unayan Samity Ltd. (SKUS) and the dispute and its adjudication as mentioned requires the application of the special law which is the Industrial Disputes Act, 1947 as observed by Hon'ble Supreme Court of India, and accordingly the company M/s. Purbabarh Samabaya Krishi Unayan Samity Ltd. (SKUS) is an industry within Section 2(j) of the Industrial Disputes Act, 1947 and the workman Sri Prabhat Kr. Maity is also a workman within the meaning of Section 2(s) of the Industrial Disputes Act, 1947 which states that workman means any person employed in any industry to do any manual, unskilled, skilled, technical, clerical work including supervisory work provided that in case of supervisory work, his salary does not exceed Rs. 10,000/- per mensem, as found in this case as per deposition of P.W.-1, workman started working under company for a salary of Rs. 100/- per month and had to do clerical and manual works. Further as per order of the Tribunal at the instance of the workman, the secretary of the company M/s. Purbabarh Samabaya Krishi Unayan Samity Ltd. (SKUS) was an essential witness and the workman as per order of the Tribunal after a contested hearing issued summon to him to appear as a witness and to produce document but the company did not take any step to bring him and the witness, secretary of the company M/s. Purbabarh Samabaya Krishi Unayan Samity Ltd. (SKUS) did not appear after getting summon from the Tribunal. Ld. Lawyer for the workman argued that the company knew that it has committed illegality on the workman and to avoid such illegalities being come to light, the secretary of the company has not appeared as a witness. Having taken the facts and circumstances of the case, it appears that despite getting summon the secretary of the company did not turn up and the possibility of the apprehension as raised by Ld. Lawyer for the workman cannot be brushed aside.

In the written statement the workman has mentioned that after the bank i.e. Balageria Central Co-operative Bank Ltd. introduced the Common Cadre Authority system in the company M/s. Purbabarh Samabaya Krishi Unayan Samity Ltd. (SKUS), as per agreement the bank started paying salary to him and by that time his salary was increased from Rs. 100/- per month to 250/- per month and in 1984 the company M/s. Purbabarh Samabaya Krishi Unayan Samity Ltd. (SKUS) selected the workman for under-going a training in Jhargram Co-operative Training Centre and accordingly the company M/s. Purbabarh Samabaya Krishi Unayan Samity Ltd. (SKUS) send the workman for training for about six months and as per certificate of the company M/s. Purbabarh Samabaya Krishi Unayan Samity Ltd. (SKUS),



Contd. Page ...15



the workman successfully completed the training and after return from the training the workman resumed his duties in the company doing same nature of works i.e. clerical and manual but in 1997 the Government of West Bengal abolished that Common Cadre Authority system as was introduced by the financing bank i.e. Balageria Central Co-operative Bank Ltd. and from that time the company M/s. Purbabarh Samabaya Krishi Unayan Samity Ltd. (SKUS) stopped paying his salary, and at that juncture the chief executive officer of the bank Balageria Central Co-operative Bank Ltd. by letter dt. 12.02.1998 informed the workman that his salary would be paid by the employer i.e. M/s. Purbabarh Samabaya Krishi Unayan Samity Ltd. (SKUS) with immediate effect and the workman continued performing his duties but the company M/s. Purbabarh Samabaya Krishi Unayan Samity Ltd. (SKUS) did not pay the salary to him. The workman continued performing his duty till June 1999 and immediately after that the secretary of the company M/s. Purbabarh Samabaya Krishi Unayan Samity Ltd. (SKUS) stopped him from performing his duties and also informed the workman that the company i.e. M/s. Purbabarh Samabaya Krishi Unayan Samity Ltd. (SKUS) would not pay the salary to the workman but the service of the workman was also not terminated, and in the meantime the Government of West Bengal by notification declared some amenities such as puja bonus, ad hoc grant etc. and the workman also became entitled to get all these amenities but the company did not give anything to him. Against all these the company has raised that the workman was appointed by the bank i.e. Balageria Central Co-operative Bank Ltd. which introduced Common Cadre Authority system and for performance of duties the salary of the workman would be paid by that bank and describing the workman as absolute monarch or king of the company M/s. Purbabarh Samabaya Krishi Unayan Samity Ltd. (SKUS), the company has raised allegation that he sanctioned loan to different people without any permission from the company i.e. M/s. Purbabarh Samabaya Krishi Unayan Samity Ltd. (SKUS) and for that reason some adverse resolution were taken against him after getting complaints from some people with addition that after the Common Cadre Authority system was abolished the workman became surplus and for that reason he was stopped from performing his duties and the workman was also dishonest in performing his duties. Ld. Lawyer for the workman argued that both by oral evidence and documentary evidence the workman has become able to prove that he was appointed by the company M/s. Purbabarh Samabaya Krishi Unayan Samity Ltd. (SKUS) by issuing written appointment letter that has constantly remained unchallenged in the entire proceeding of this case and for that reason the stance of the company M/s. Purbabarh Samabaya Krishi Unayan Samity Ltd. (SKUS) that the company M/s. Purbabarh Samabaya Krishi Unayan Samity Ltd. (SKUS) never appointed the workman but he was appointed by central bank i.e. Balageria Central Co-operative Bank Ltd. and for that reason there is no employer-employee relationship between the workman and the company M/s. Purbabarh Samabaya Krishi Unayan Samity Ltd. (SKUS) is nothing but false and a manufactured one and the company also in adducing evidences has not

become able to prove such as stance of the company and the appointment letter issued by the company to the workman has remained immune from any legal defect or from any other legal technicalities explaining that the central bank i.e. Balageria Central Co-operative Bank Ltd. did not maintain any relation with the company M/s. Purbabarh Samabaya Krishi Unayan Samity Ltd. (SKUS) so far as the administration of the company is concerned as the administration of the company remained technical and guided by statutes for that purpose, with addition that the bank i.e. Balageria Central Co-operative Bank Ltd. only came into picture for financial support on certain terms and conditions that it would get a percentage of the loan amount and the company would invest the same for earning money and also agreed to make payment of salaries to a few workers in the company including the workman, which was described as Common Cadre Authority but the workman being appointed by the company M/s. Purbabarh Samabaya Krishi Unayan Samity Ltd. (SKUS), the company totally remained liable for salary and other financial benefits of the workman and subsequent withdrawal of the Common Cadre Authority by the bank i.e. Balageria Central Co-operative Bank Ltd. is nothing but a matter of breach of conduct or an understanding between the company M/s. Purbabarh Samabaya Krishi Unayan Samity Ltd. (SKUS) and nothing else and it cannot take away the liability of the company to pay salary to the workman with other financial benefits. Ld. Lawyer for the workman further raised that the workman was simply a clerk and also worked by using his manual capacity and whatever he did, did with the approval of the company M/s. Purbabarh Samabaya Krishi Unayan Samity Ltd. (SKUS) in consonance with the statutes guiding the same. Ld. Lawyer for the workman also raised that although the company M/s. Purbabarh Samabaya Krishi Unayan Samity Ltd. (SKUS) has raised allegations against the company but it did not resort to conduct any enquiry over the matter against the workman, even did not issue any show cause notice to him, and as has been stated by company witness i.e. O.P.W.- 1 that the workman was the king like person in the company and he did all sorts of illegality such as keeping loan to his own persons / people, or taking loan by himself and then become defaulter are nothing but manufactured one and the company M/s. Purbabarh Samabaya Krishi Unayan Samity Ltd. (SKUS) never resorted to take him any step to prove anything against the workman and the workman was dismissed from the service completely illegally without bothering the requirement of law. Ld. Lawyer for the workman also raised that the workman wanted some documents from the custody of the company m/s. Purbabarh Samabaya Krishi Unayan Samity Ltd. (SKUS) and also wanted to examine the secretary of the company and this prayer of the workman was allowed by the court after a contested hearing and the secretary of the company also received summon to appear as a witness and to produce certain documents but he never appeared, neither did he produce the documents and Ld. Lawyer for the company states that such an act on the part of the company i.e. withholding the document and also not producing the secretary of the company as a witness is a deliberate attempt on the part of the management of the company

to suppress the truth and also to remain get rid of from being caught of all the illegalities, falsities done by the company.

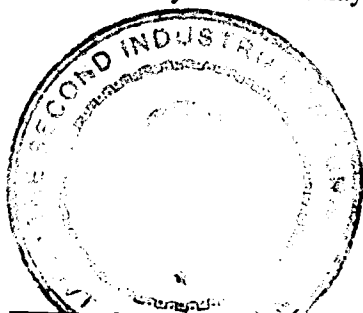
The workman as P.W.-1 deposed that on 02.01.1979 he was appointed in the company at a monthly salary of Rs. 100/- and even though he was appointed mentioning his post as manager of the company, he had to do clerical works and manual works, he had to do manual works for bringing packets of fertilizers and taking them to market / other places or keeping them in the company premises etc. and then he had to sell them to different probable customers. P.W.-1 also deposed that he had to serve notices to the members of the company M/s. Purbabarh Samabaya Krishi Unayan Samity Ltd. (SKUS). P.W.-1 also deposed that in 1983 the management of the company required him to undergo a practical training at Jhargram training centre and as per order of the training centre at Jhargram, the workman completed the training successfully. P.W.-1 also deposed that in 1986 management of the company introduced / framed a Common Cadre system and at that time his salary was increased from Rs. 100/- to Rs. 250/- per month and as per rules of the company M/s. Purbabarh Samabaya Krishi Unayan Samity Ltd. (SKUS), he was a D-group employee despite mentioning his designation as manager in the appointment letter issued by the company. P.W.-1 also deposed that in 1997 the Common Cadre Authority system was abolished and he was informed by the executive officer of the company Mr. Madhab Ch. Ghosh and chairman of the company Mr. S.C. Das that he would get his salary every month from company i.e. M/s. Purbabarh Samabaya Krishi Unayan Samity Ltd. (SKUS) but he could not get any salary from the company despite requesting the company by him to release his outstanding salary immediately but the company did nothing, and though his salaries were been given by the company, the company also did not terminate his service and he continued working as a clerk and also as a manual labour till September, 1999 and immediately after that the management of the company M/s. Purbabarh Samabaya Krishi Unayan Samity Ltd. (SKUS) did not allow him to work and immediately thereafter he raised dispute before Labour Commissioner by writing letter dt. 01.09.1999. The P.W.-1 proved a letter dt. 12.02.1998 issued to him by the authority informing him that the Common Cadre project were withdrawn and the workman would not get any salary from that authority and on the basis of his such evidence the letter was marked Ext. 2. The P.W.-1 also adduced evidence with documents that the management of the company M/s. Purbabarh Samabaya Krishi Unayan Samity Ltd. (SKUS) sent him for a training at cooperative training centre, Jhargram (Ext. 3) and also proved a letter issued by Mr. G.P. Kar, principal of cooperative training centre, Jhargram for starting the training from 31.10.1983 (Ext. 3/1) and also produced document for final assessment after completion of training dt. 13.04.1994 (Ext. 3/2) and also produced and proved a release letter by which he was released from the training centre (Ext. 3/3). P.W.-1 also proved a document which is a certificate dt. 16.02.1981 to establish that he



participated training in the cooperative training camp (Ext. 4). P.W.-1 also deposed that Common Cadre system was withdrawn and he was given no salary was given to him despite he raised the matter before the management of the company M/s. Purbabarh Samabaya Krishi Unayan Samity Ltd. (SKUS) and he also filed supporting documents (Ext. 5, Ext. 6), and after that he raised disputes over all these matters before Assistant Labour Commissioner, Contai and also filed document to support the same (Ext. 7), and on that basis conciliation proceeding took place on several dates but no settlement could be reached at and then the P.W.-1 filed another letter before Assistant Labour Commissioner (Ext. 7/1) as he mentioned in his deposition and P.W.-1 also deposed that over this matter on 01.07.1999 state nominee director Mr. Laxmi Kanta Panda wrote a letter to the secretary of the company M/s. Purbabarh Samabaya Krishi Unayan Samity Ltd. (SKUS) and it was received by it on 01.07.1999 (Ext. 8). P.W.-1 also deposed that he also filed further document to show that he worked in the company continuously (Ext. 9 series).

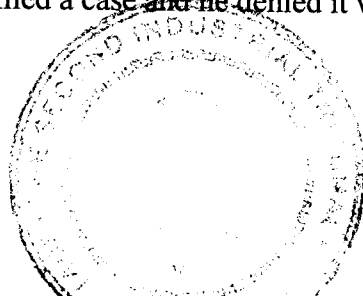
I already mentioned Ext. 1 with particulars therein, it is the appointment letter given to the workman describing his post as manager of the company. Ext. 2 is a document issued by chief executive officer of the company M/s. Purbabarh Samabaya Krishi Unayan Samity Ltd. (SKUS) on 12.02.1998 having memo No. 1311/HO, it is addressed to the workman informing the workman that in response to a letter written by workman dt. 06.02.1998 the chief executive officer of the company has mentioned in the letter that Common Cadre Authority has been abolished w.e.f. 27.11.1997 and for that reason the Common Cadre Authority cannot disburse the salary to the workman and prevented the workman from collecting a portion of the loan money with addition that the bank i.e. Balageria Central Co-operative Bank Ltd. has also circulated informing abolishing the Common Cadre Authority (Ext. 2) which has an enclosure from which it is found that it is dt. 06.01.1998 having reference No. 1116 (120) with the heading that bank i.e. Balageria Central Co-operative Bank Ltd. at Midnapore informed the secretary of the company M/s. Purbabarh Samabaya Krishi Unayan Samity Ltd. (SKUS) that Common Cadre Authority system was abolished by government w.e.f. 27.11.1997 mentioning that the matter relating to appointment, pay and allowances, conduct, discipline, misconduct, disciplinary action, other conditions of services of the employees of all categories of the company i.e. M/s. Purbabarh Samabaya Krishi Unayan Samity Ltd. (SKUS) would be guided by as per statutes, further mentioning that the bank i.e. Balageria Central Co-operative Bank Ltd. would not pay salary to any worker thenceforth. As deposed by workman as P.W.-1, the company M/s. Purbabarh Samabaya Krishi Unayan Samity Ltd. (SKUS) send the workman for training (Ext. 3) which shows that it has a subject as practical training of the trainees of the 44<sup>th</sup> session of junior basic courses in cooperation at cooperative training centre, Jhargram and it required that the persons enlisted in the document (Ext. 3) were deputed to for the purpose of training including

practical training under the supervision of inspector of cooperative societies to undergo the training on matters concerning loan statement and submission to bank, preparation of annual return, examining books on records, distribution of profits, filing of disputes, distraint cases and statutory audit of the company M/s. Purbabarah Samabaya Krishi Unayan Samity Ltd. (SKUS) and the list of persons mentioned therein includes the workman Sri Prabhat Kr. Maity to whom a copy of this document (Ext. 3) was given with direction on him that he must follow the program in the training. Ext. 3/1 shows that it is a document issued by cooperative training centre, Jhargram, Midnapore with subject as 44<sup>th</sup> session of junior basic course in cooperation for employees of the cooperative societies starting from 31.10.1983 till 13.04.1984 and by this document Ext. 3/1 the management of the company M/s. Purbabarah Samabaya Krishi Unayan Samity Ltd. (SKUS) was required compulsorily to send its workers to undergo the training and it is also found that by memo No. 5736/44/30 dt. 03.10.1983 the workman was similarly directed by the company M/s. Purbabarah Samabaya Krishi Unayan Samity Ltd. (SKUS) as also deposed by P.W.-1 as found earlier. Ext. 3/2 is the performance report of the workers prepared by principal, cooperative training centre, Jhargram and from this document (Ext. 3/2), it is found that the workman Mr. Prabhat Kr. Maity successfully completed this practical training scoring 488 marks with distinction mentioned as Fair, that comes after two other distinctions namely excellent and very good, and Ext. 3/3 is found to be a certificate which says that it was issued by principal, cooperative training centre, Jhargram on 13.04.1984 mentioning that the workman Prabhat Kr. Maity was released from the training after successful completion of the training and for this performance by the workman the executive officer of the Contai cooperative society. Ext. 4 is a document which is found to be a certificate issued by executive officer of the Contai Cooperative union mentioning that the workman Prabhat Kr. Maity had undergone a training from 04.02.1981 to 16.02.1981 and he successfully completed the training as was also deposed by the workman as P.W.-1. Ext. 7 is a letter addressed to the Assistant Labour Commissioner, Contai by the workman and in that letter the workman is found to have raised a dispute mentioning that he had not been getting salary from the month of December, 1997 and in that letter the workman prayed for getting outstanding salary with other consequential relieves, ad-hoc grant etc., and Ext. 7/1 is also found to be a letter of complaint filed by workman before Assistant Labour Commissioner, Contai mentioning that he is a worker in the company M/s. Purbabarah Samabaya Krishi Unayan Samity Ltd. (SKUS) after getting written appointment letter, his initial scale of pay was Rs. 100/- per month and it was enhanced to Rs. 250/- per month and after introduction of Common Cadre Authority in cooperation with the bank i.e. Balageria Central Co-operative Bank Ltd., he was getting salary from that Common Cadre Authority and he also successfully completed the training as per direction of the management of the company M/s. Purbabarah Samabaya Krishi Unayan Samity Ltd. (SKUS) but this Common



Cadre was abolished and he was not getting salary from December, 1997 but he was allowed to continue performing his duty up to December, 1997 without any salary paid to him and he also signed the attendance register regularly and he was also not given other consequential benefits.

The oral evidences of the workman as P.W.-1 have already been mentioned and after going through the above documentary evidences adduced by workman it is coming out that the documentary evidences are corroborating the versions of P.W.-1 in toto. The P.W.-1 was cross-examined by Ld. Lawyer for the company. Ld. Lawyer for the company wanted to know from the workman (P.W.-1) as to whether he mentioned anything about loan petitions prepared by him in the written statement and P.W.-1 replied that he has filed some documents on the matter of loan petitions and these have been marked as Ext. 9 series and he also mentioned his grievances before A.R.C.S. in writing and also requested the A.R.C.S. to disburse his salaries as his salary was not being paid from December, 1997 by the employer. The Ld. Lawyer for the company also wanted to know about the appointment letter by which he was appointed in the company i.e. M/s. Purbabarh Samabaya Krishi Unayan Samity Ltd. (SKUS) and the P.W.-1 replied that the company M/s. Purbabarh Samabaya Krishi Unayan Samity Ltd. (SKUS) gave in the appointment letter in writing and the appointment letter is dated as 02.01.1979 and he has also produced that letter during the time of his evidence and it was marked Ext. 1 with addition that he used to get salary of Rs. 100/- per month from his employer M/s. Purbabarh Samabaya Krishi Unayan Samity Ltd. (SKUS) on and from 02.01.1997. Ld. Lawyer for the company also wanted to know if at that time the company M/s. Purbabarh Samabaya Krishi Unayan Samity Ltd. (SKUS) maintained any letter-pad or not and the P.W.-1 replied that at that time the company did have any letter-pad. Ld. Lawyer for the also wanted to know from the workman (P.W.-1) as to how many times the workman was sent for training at Jhargram and also at Contain Cooperative Union and the workman replied that the company / employer sent him twice for training. Ld. Lawyer for the company made a suggestion to the P.W.-1 that he himself took agricultural loan from the employer and the P.W.-1 replied in negative, and he added that he did not make any payment of loan money to the employer and for that reason the employer had already filed a case against him for recovery of the loan money with further mentioning that the employer heard that case by itself and passed an order against him with the addition that over the matter of payment back of loan money the employer started a number of proceedings against him and he paid part of the loan money back to the employer but he could not make payment to the full satisfaction. Ld. Lawyer for the company also suggested that the P.W.-1 disbursed loan money to his relatives but the P.W.-1 denied it. Ld. Lawyer for the company also made a suggestion to the P.W.-1 that against the wife of the P.W.-1 the employer M/s. Purbabarh Samabaya Krishi Unayan Samity Ltd. (SKUS) filed a case and he denied it with the addition that the wife of



the P.W.-1 filed a case against the employer M/s. Purbabharh Samabaya Krishi Unayan Samity Ltd. (SKUS) and in that case the judgement was given in favour of the wife of the P.W.-1. Replying to questions raised by Ld. Lawyer for the company, P.W.-1 deposed that he raised grievances against the company before the assistant registrar of cooperative society but he could not afford to know the result of that case, he submitted letters and documents ventilating grievances and also raising industrial dispute before the conciliation officer mentioning that his grievance was that he was not being given salary for the previous 2/3 years despite rendering service continuously and he was suddenly stopped from doing duty by the company and he was not given salary for his continuous work starting from December, 1997 to June, 1999. Ld. Lawyer for the company also suggested to the P.W.-1 that there was at all no proper conciliation by the conciliating authority in respect of the dispute raised by him and the P.W.-1 denied it. The P.W.-1 in cross also stated that he was simply a D-group employee, and to a suggestion by Ld. Lawyer for the company to the P.W.-1 that the P.W.-1 had suppressed some truths in filing in this case with the addition that for that reason he cannot get any relief and the P.W.-1 denied it.

Thus, from the cross-examination of the P.W.-1 by Ld. Lawyer for the company there is nothing at all to distort what the P.W.-1 has deposed in examination-in-chief. In the cross-examination Ld. Lawyer for the company has wanted to raise an allegation in the way that the P.W.-1 intentionally provided loan to his relatives. I find that Ld. Lawyer for the company during his argument has also mentioned that the workman (P.W.-1), being a service holder in the company M/s. Purbabharh Samabaya Krishi Unayan Samity Ltd. (SKUS), had been in the habit of giving loans to his own relatives and for that reason proceedings were initiated against him by the management of the company and after that he was discharged from the service, with the addition that being a D-group employee in the company, he exercised powers as if he was king-like person in the company and did not like to bother the management of the company and he did all these and disbursed loan to his own persons and for that reason it was required that his service should be taken away. Against all these Ld. Lawyer for the workman has raised that the workman was appointed for doing clerical and manual works and in the capacity of manual works he had to carry in person the fertilizer bags to different markets after bringing them to the company manually and thus it was not possible on his part to do anything illegal such as giving loan to any person or to his relatives by doing any favour. Ld. Lawyer for the workman mentioned that the company has to follow certain rules and regulations and accordingly whenever anyone applied for any loan from the company, it became necessary on the part of the company to consider the same in a meeting by the board members of the management of the company and accordingly if that loan is granted by passing any resolution, then only loan could be given to that person who applied for that same and there is no possibility on the part of the workman to give any loan to any

relative by doing any favour by passing such process of holding meeting and passing resolution for this purpose. In the cross-examination of the P.W.-1 by Ld. Lawyer for the company M/s. Purbabbarh Samabaya Krishi Unayan Samity Ltd. (SKUS) has raised that the company has to follow certain rules and regulations and in case of grant of any loan to anyone, it becomes necessary to place the same before board members for discussion and then to take resolution as to whether such loan should be given or not and accordingly loan applications are disposed of. Admittedly and at the same time it has come in the evidence that the workman had been working in the company in the capacity of a clerk and he had also worked in the company manually for bringing fertilizer packets from different places by his own person and also to take them to different places to sell the same to intending buyers and thus he was a clerk doing works clerically and at the same time manually and it appears that his status of service is nothing but a workman, akin to that of a peon / D-group service holder though in the appointment letter it has been mentioned that the workman was appointed as manager of the company M/s. Purbabbarh Samabaya Krishi Unayan Samity Ltd. (SKUS), and under such circumstances and specially for the reason that he was a D-group serviceman, it was impossible on his part to do any favour in giving any loan to anyone whatsoever including his relatives as grant of loan depends upon the passing of resolution in a board meeting by its members and it is unthinkable on the part of any prudent man that having such rules and regulations in existence involving the board members of the company that the workman was the king like person in the company to do any favour to anyone and all such allegations as have been raised against the workman are nothing but simply cut and dried and it appears that Ld. Lawyer for the company has wanted to make out something out of nothing at all.

Ld. Lawyer for the company has also raised that the workman himself has taken loan from the company and he became defaulter as he did not pay back that loan money to the company and for that reason the company initiated proceedings against him and also passed orders against him and P.W.-1 has also admitted the same and for that reason the workman was sacked from the service. Ld. Lawyer for the workman has raised that if anyone had defaulted in paying the loan money to the company then legal course becomes open against him and the outstanding loan could be recovered by an order of court arising out of appropriate proceeding for this purpose and admittedly the management of the company M/s. Purbabbarh Samabaya Krishi Unayan Samity Ltd. (SKUS) has at all not raised filing of any such case against the workman and taking of loan and paying back the same is a matter of legal process independent of the service of the workman in the company. From the evidences I find that the workman as P.W.-1 has admitted that he took loan from the company and has also partly made payment of the same. The Ld. Lawyer for the company has not filed anything in the form of binding contract that matter of defaulting loan by the workman shall



give over the management of the company to sack him from service as admittedly stated to have been done by the management of the company against him and under such circumstances such allegations against the workman as mentioned above are nothing but superfluous and does not have any bearing on the service of the company or salary of the workman which is admittedly stated to have not been given. In case the workman has not paid back any loan money, then the option on the part of the management of the company is to go for recovery of the same by process of law such as attachment etc. but there is nothing over this matter by the company.

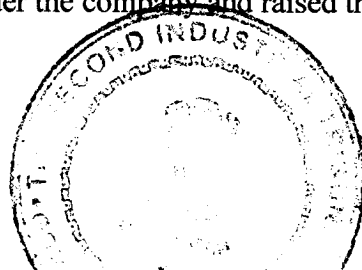
Further the company has also adduced oral evidence by bringing one Mr. Ramkrishna Jana who was examined as O.P.W.- 1. Mr. Jana as O.P.W.- 1 deposed that he happens to be the one of the members of the company M/s. Purbabarh Samabaya Krishi Unayan Samity Ltd. (SKUS) and holds the position of vice-chairman in that company, and he deposed that the company M/s. Purbabarh Samabaya Krishi Unayan Samity Ltd. (SKUS) did not give any appointment letter to the workman Prabhat Kr. Maity but he was appointed by the bank namely Balageria Central Co-operative Bank Ltd. O.P.W.- 1 also deposed that the farmers of the locality are members of the M/s. Purbabarh Samabaya Krishi Unayan Samity Ltd. (SKUS) which used to give loans to the members and similarly the workman Prabhat Kr. Maity and his wife were also members of the M/s. Purbabarh Samabaya Krishi Unayan Samity Ltd. (SKUS). O.P.W.- 1 also deposed that whenever any loan used to be given by the company to any member, the workman used to work as a manager of the company M/s. Purbabarh Samabaya Krishi Unayan Samity Ltd. (SKUS) and accordingly he used to verify loan papers, filled in form for this purpose and thus the workman used to do everything in connection with grant of loan to any member. O.P.W.-1 also deposed that the workman himself took loan from the company and did not repay the same and there is allegation against him for misappropriation of money of the company M/s. Purbabarh Samabaya Krishi Unayan Samity Ltd. (SKUS) to the extent of Rs. 37,000/- and also a further amount of Rs. 1,50,000/- comprising principal plus interest and over this matter of misappropriation of company's money by the workman a case in the Court was started.

Over this much evidence of O.P.W.- 1 in the capacity of the chairman of the company M/s. Purbabarh Samabaya Krishi Unayan Samity Ltd. (SKUS), Ld. Lawyer for the workman has submitted that the O.P.W.- 1 in the capacity of the chairman of the company stated all lies and Ld. Lawyer for the pointed out that the workman Prabhat Kr. Maity was appointed by the company M/s. Purbabarh Samabaya Krishi Unayan Samity Ltd. (SKUS) by issuing written appointment letter that has been proved in this case and marked Ext. A, and not by the Bank Balageria Central Co-operative Bank Ltd. and the O.P.W.-1 has deposed telling lies purposefully. Ld. Lawyer for the workman also raised that during the course of service by the workman in the company where he worked as a clerk and also worked by applying his

manual labour, the workman was sent to undergo training by the company M/s. Purbabarh Samabaya Krishi Unayan Samity Ltd. (SKUS) for a number of times and O.P.W.- 1 as the chairman of the company has not denied it by stating that he cannot say anything about it. None appeared on behalf of company to argue the case and as I mentioned earlier on the basis of an application filed by workman, there was a direction on the secretary of the company by this Tribunal after contested hearing to appear as a witness and also to produce some documents as were in the custody of the company and then the company stopped taking step and also did not send the secretary of the company as witness and the wanted documents as were ordered were also not produced by the company. Now from such conduct regarding flouting from order on the part of the company and existence of appointment letter as was issued by the company M/s. Purbabarh Samabaya Krishi Unayan Samity Ltd. (SKUS) to the workman proved that the O.P.W.- 1 stated all the above falsely and nothing-else.

O.P.W.- 1 also deposed that he cannot say anything about the letters dt. 19.07.1999, 29.11.1999, 01.02.2000, 01.03.2000, 17.04.2003 & 30.05.2003 as were given by the workman to the assistant registrar of cooperative societies (ARCS). Further it is also the deposition of O.P.W.- 1 as chairman of the company that loan can be sanctioned with the support of the board and the Common Cadre system as was introduced by bank namely Balageria Central Co-operative Bank Ltd. in the company M/s. Purbabarh Samabaya Krishi Unayan Samity Ltd. (SKUS) and it was subsequently abolished and O.P.W.- 1 cannot say number of employees in the company and he (O.P.W.- 1) also cannot say if the service of the workman became surplus or not and also cannot say the mode of payment of salaries. O.P.W.- 1 also deposed that one Mr. Krishna Maity sent a letter to O.P.W.- 1 who was the chairman of the company and he also admitted that he cannot say who filed case against the workman. O.P.W.- 1 Mr. Ramkrishna Jana is found to have admitted in cross that he cannot say whether there is any document to the effect that the workman Prabhat Kr. Maity was appointed in the company as a manage by the company M/s. Purbabarh Samabaya Krishi Unayan Samity Ltd. (SKUS) and he also admitted that the previous board of the company has no knowledge and it inform the bank i.e. Balageria Central Co-operative Bank Ltd. that workman Prabhat Kr. Maity has been an employee under the company, with further admission that a member of the company is entitled to get loan from the company on mortgage of his properties and even landless members were also entitled to get loan from the company and the loan is always sanctioned by the board of the company. O.P.W.- 1 also admitted that he cannot say whether any show cause was issued to the workman Prabhat Kr. Maity for any illegality and he also admitted that he cannot say whether there was any resolution by the company M/s. Purbabarh Samabaya Krishi Unayan Samity Ltd. (SKUS) to the effect that the workman Prabhat Kr. Maity became surplus and O.P.W.- 1 also admitted that whether any attendance register and acquittance register were maintained by the company during the relevant period i.e. in 1997-

1998 and also admitted that whether one Mr. Krishna Maity took any loan from the company and O.P.W.- 1 also admitted in cross that a case was filed against the board of the company, with further admission that there are six directors in the board of the company including one Mr. Asit Baran Sasmal and all of them have taken loan from the company through the Bank Balageria Central Co-operative Bank Ltd. and O.P.W.- 1 also admitted that it was the duty of the secretary of the company to make reply to the letters. O.P.W.- 1 also mentioned in cross-examination that one Mr. Sanjoy Kr. Jana is the secretary of the company M/s. Purbabarh Samabaya Krishi Unayan Samity Ltd. (SKUS) and Mr. Nirmal Kr. Mondal is the chairman of the company and this O.P.W.- 1 Mr. Ramkrishna Jana is the vice-chairman of the company and Amitabha Karan, Goutam Maity and Asit Sasmal are the director of the board and another Mr. Ajit Kr. Bera and one Miss Nebadita Maity are the government nominees and another Mr. Manas Senapati is the Panchayat nominee and O.P.W.- 1 also admitted that he does not have any knowledge about any settlement between the workman Prabhat Kr. Maity and board of the company M/s. Purbabarh Samabaya Krishi Unayan Samity Ltd. (SKUS) and he (O.P.W.- 1) also cannot say whether the company M/s. Purbabarh Samabaya Krishi Unayan Samity Ltd. (SKUS) had already received outstanding money from the workman and also cannot say anything about deposition of money by the members in the company and O.P.W.- 1 also admitted that all these are known to the secretary of M/s. Purbabarh Samabaya Krishi Unayan Samity Ltd. (SKUS). O.P.W.- 1 in cross stated that the company M/s. Purbabarh Samabaya Krishi Unayan Samity Ltd. (SKUS) suffered huge loss during the year 2008-09 but when a document was shown to the witness as was marked Ext. A on admission, this witness O.P.W.- 1 Mr. Ramkrishna Jana then changed his version regarding suffering huge loss by the company M/s. Purbabarh Samabaya Krishi Unayan Samity Ltd. (SKUS) and admitted by deposing that the document (Ext. A) is the audit report of the company M/s. Purbabarh Samabaya Krishi Unayan Samity Ltd. (SKUS) for the year 2008-09 and it is in the audit report that during that year the company earned net profit of Rs. 13418.67/- in the year and this audit report was prepared by the board of the company and also admitted that the company maintains attendance register and acquittance register but he cannot say if the name of the workman Prabhat Kr. Maity appears in those registers or not. O.P.W.- 1 further admitted that he cannot say whether there was any discussion in the board of the company regarding termination of the workman Prabhat Kr. Maity was discussed or not along with his non-payment of salary and also admitted that there are employees in the company and one Mr. Nirmal Kr. Mallick occupying the post of peon has been getting Rs. 700/- per month and the O.P.W.- 1 cannot say whether the company M/s. Purbabarh Samabaya Krishi Unayan Samity Ltd. (SKUS) has been paying salaries to the employees or not by itself and O.P.W.- 1 also admitted that he cannot say that the workman was manager of the Common Cadre Authority or not and O.P.W.- 1 also admitted that he cannot say if the workman had been doing his duty under the company and raised that it is within the



knowledge of the secretary of the company and the secretary of the company would come as a witness and give all these details.

These are all the admissions on the part of the witness of the company (O.P.W.- 1) who happens to be the vice-chairman of the company M/s. Purbabarh Samabaya Krishi Unayan Samity Ltd. (SKUS) and though he raised allegation against the workman that the workman Prabhat Kr. Maity being a D-group employee / workman in the company had been exercising power in a manner as if he was the king of the company and he i.e. workman did illegalities by illegally sanctioning loan to his known persons by doing favour to them and misappropriated money of the company to a tune of Rs. 1,50,000/- or more and also he did favouritism in granting loans to his relatives and also the workman took loans from the company and never paid back the same and over that matter court case was started but subsequently in the cross-examination he has deviated totally from his such versions and admitted that he cannot say if any settlement between the workman and the company M/s. Purbabarh Samabaya Krishi Unayan Samity Ltd. (SKUS) has taken place or not and out that settlement, if the workman has made payment to the company or not, further admitting that all these are known to the secretary as Sanjoy Kr. Jana and this O.P.W.- 1 in the capacity of the vice-chairman of the company further admitted that the management of the company M/s. Purbabarh Samabaya Krishi Unayan Samity Ltd. (SKUS) never issued any show cause notice to the workman and no official process holding board meeting was taken to find out whether the workman Prabhat Kr. Maity became surplus or not and also admitted that he cannot say if the company gave salary to the workman for his works in the company and raised that all these are known to the secretary of the company Mr. Sanjoy Kr. Jan. O.P.W.- 1 is found to have changed his version about the economic condition of the company and first he stated that the company had been suffering huge loss but when the audit report (Ext. A) was placed before him, O.P.W.- 1 in the capacity of vice-chairman of the company admitted that the company had not been incurring any loss but it has been earning profit and in the year 2008-09 the company also earned profit which he mentioned as more than Rs. 10,000/-.

Ld. Lawyer for the company did not turn up to forward any argument and as I mentioned earlier, on the basis of a petition filed by the workman to issue summon on the secretary of the company Mr. Sanjoy Kr. Jana to appear as a witness and also to produce document, this Tribunal granted the prayer of the petition of the workman and summon was issued to the secretary of the company M/s. Purbabarh Samabaya Krishi Unayan Samity Ltd. (SKUS), Mr. Sanjoy Kr. Jana but despite providing several opportunities to the company to produce the secretary Sanjoy Kr. Jana as a witness with documents, the company did not do anything and the record shows that after that the company started becoming absent without any step and Ld. Lawyer for the company also did not appear. Ld. Lawyer for the workman argued that the workman never committed any illegality and also submitted that once the



workman took a loan from the company as per rule of the company and after that there was a settlement between the management of the company and the workman and out of that settlement the workman deposited entire outstanding money in the company and no money is due from the workman to the company. Ld. Lawyer for the workman has also raised that the workman had been performing his duties as a clerk and also manually by bringing packets of fertilizers and carrying them to different markets / places for selling them but the company stopped paying his salary although the workman continue doing his duty and the company did so mentioning that his salary would be given by Common Cadre Authority created by Bank Balageria Central Co-operative Bank Ltd. within the management system of the company which was subsequently abolished. Ld. Lawyer for the workman also raised that it is the stance of the management the workman committed illegalities but the management of the company did not take any step either by issuing show cause notice or by starting any enquiry proceeding against the workman. Ld. Lawyer pointed out that Mr. Ramkrishna Jana happens to be the vice-chairman of the company and he examined himself as O.P.W.-1 and during his examination-in-chief, O.P.W.- 1 tried to raise that the workman was dishonest person and he misappropriated the money of the by illegally granting loans to his relatives and he was not the employee of the company. the Ld. Lawyer for the workman has further argued that the workman has already proved that the company M/s. Purbabarh Samabaya Krishi Unayan Samity Ltd. (SKUS) issued the appointment letter to him and it was marked Ext. - 1 and this document (Ext. 1) has remained totally unchallenged by the company and also pointed out that during the cross-examination the vice-chairman of the company as O.P.W.-1 admitted that he cannot say anything about the letters submitted by the workman to the company and also to the Labour Commissioner and also admitted that he (O.P.W.- 1) cannot say taking of any resolution by the company against the workman regarding allegations that the workman committed any illegality or granted loan illegally to his relatives and O.P.W.- 1 further admitted that all such matters are within the knowledge of the secretary of the company Mr. Sanjoy Kr. Jana adding that Sanjoy Kr. Jana in the capacity of the secretary of the company would be brought as a witness by the company and he would state all about it as all these are within the knowledge of the secretary of the company Mr. Sanjoy Kr. Jana. Ld. Lawyer for the workman further raised that the company did not produce the secretary Mr. Sanjoy Kr. Jana as a witness and then the workman filed a petition before the Court to examine the secretary Mr. Sanjoy Kr. Jana of the company and also to produce some documents but despite direction by the court, the secretary Mr. Sanjoy Kr. Jana did not appear, neither did he produce the documents as were wanted and at that stage the management of the company abandoned the further proceeding of the case by becoming absent without any step and for that reason adverse presumption automatically comes against the company in the way that had the secretary of the company Mr. Sanjoy Kr. Jana been examined as witness and produce documents, it would have been revealed that the workman

Prabhat Kr. Maity never committed any illegality and the company would have been caught red handed that the management of the company M/s. Purbabarh Samabaya Krishi Unayan Samity Ltd. (SKUS) had illegally terminated the service of the company and did not pay his salaries. Ld. Lawyer further pointed out that O.P.W.- 1 admitted that whenever there is a prayer for grant of any loan by any one, the same is placed before the board of the company and the loan is granted by resolution of the board and no body has any authority to interfere in the matter and it was out of any question that the workman Prabhat Kr. Maity working in the D-group capacity in the company illegally sanctioned loan to anyone or did any favouritism by granting loan in favour any of his relatives and citing the document (Ext. 9) Ld. Lawyer argued that it contains the names of all members of the company entitled to get any loan and whenever any petition is made before the company for getting any loan the same is mentioned in the document (Ext. 9) and then it is placed before the board to consider the loan matter whether it is to be granted or rejected as has been admitted by the vice-chairman of the company Mr. Ramkrishna Jana as O.P.W.- 1 and in the capacity of a clerk, the workman was given the duty to maintain the register (Ext. 9) before the board of the company M/s. Purbabarh Samabaya Krishi Unayan Samity Ltd. (SKUS) and grant or rejection of loan matter are / were considered by board of the company without any participation by the workman Mr. Prabhat Kr. Maity. As had already been found, last of all during cross-examination of the O.P.W.-1 by Ld. Lawyer for the workman, the O.P.W.- 1 in the capacity of the vice-chairman of the company has admitted that he cannot say anything about any misappropriation of any money by the workman or any illegality committed by him or sustaining of any loss by the company mentioning that the company as per audit report (Ext. A) earned profits during the relevant year i.e. 2008-09 and O.P.W.- 1 also admitted that all such matters are in details known to the secretary of the company Mr. Sanjoy Kr. Jana further admitting that Sanjoy Kr. Jana would be brought by the company as a witness. To mention further Mr. Sanjoy Kr. Jana, the secretary of the company was never produced by the company's witness and he also did not appear when on prayer of workman, he was summoned to appear with documents. Ld. Lawyer for the workman has raised a principle of evidence that under such circumstances adverse presumption comes against the company M/s. Purbabarh Samabaya Krishi Unayan Samity Ltd. (SKUS) and having seen the admissions by the vice-chairman of the company, the O.P.W.- 1, who clearly admitted that he cannot say anything about that any illegality on the part of the workman and all the matters in details are known to the secretary of the company Mr. Sanjoy Kr. Jana and the company would examine him as a witness but the company did not do so and he was also not available after sending summon to him to appear as a witness and to produce certain documents as were wanted by the workman. From the case record it is found that once the Ld. Lawyer for the company raised that the documents as were wanted by the workman to be produced by secretary of the company Mr. Sanjoy Kr. Jana were not in the company office but the vice-

chairman of the company already admitted that all the matters are in detail are in the company and within the knowledge of the secretary of the company Mr. Sanjoy Kr. Jana and the subsequent behaviour of the company that the company did not produce the secretary of the company as a witness and abandoning the case at that stage by the company, go to show that the role of evidence regarding adverse presumption clearly and sufficiently come into existence in the way that had the secretary of the company been examined as a witness with production of documents, it would have been proved that there is no fault at all on the part of the workman and the workman was dismissed from the service completely illegally and his salaries with other consequential benefits thereto were withheld for no reason.

From the evidences of P.W.-1 and also from the entire evidences of O.P.W.- 1 Mr. Ramkrishna Jana who is the vice-chairman of the company, it has become clear and at the same time proved that the company M/s. Purbabharh Samabaya Krishi Unayan Samity Ltd. (SKUS) interfered with the rights of the people such as issuing notice to persons to make payment and in case of failure to give direction on them and thus it can interfere in incarcerating with the rights of the people affecting their rights, both fundamental and legal, and thus the company M/s. Purbabharh Samabaya Krishi Unayan Samity Ltd. (SKUS) is an authority to be described as state within the provisions of article 12 of the Constitution of India and therefore it was compulsorily required on the part of the company to see that the right of the workman is not unnecessarily interfered with but the evidences have proved that the management of the company has done so without bothering the requirement of law and its consequences as evidences have proved that the workman committed no illegality at all. As P.W.-1 the workman Prabhat Kr. Maity has deposed that immediately after his dismissal, he raised dispute with the Labour Commissioner by sending letter of complaint (Ext. 7, Ext. 7/1), and the Labour Commissioner also issued notice to the company conciliation but to no effect. Ext. 7 shows that it is a letter of complaint to the Assistant Labour Commissioner, Contai by workman Prabhat Kr. Maity mentioning that his service was dismissed illegally and at the same time he was being given salaries from December, 1997 and similar contention is also mentioned in the Ext. 7/1 and O.P.W.- 1 has not denied all such letter of complaint by the workman to the Labour Commissioner and initiation of proceeding for conciliation by Labour Commissioner by calling the company. It is one of the stance by the company that the workman never raised any dispute with the company and after such evidences (Ext. 7, Ext. 7/1) and matter of conciliation such stance of the company has no legal basis in any way. It appears from the evidences that the workman after his illegal termination took necessary step for conciliation to get his service back with all outstanding wages but the company, being a state within Article 12 of Constitution of India, has remained unmindful.

Having considered all such evidences on the part of the workman as P.W.-1 as found to have been admitted by vice-chairman of the company (O.P.W.- 1) along with documentary

evidences as produced by workman as P.W.-1 and as produced by O.P.W.- 1 (Ext. A) it has become clear that the termination of the service of the workman Mr. Prabhat Kr. Maity w.e.f. 21.09.1998 by his employer i.e. M/s. Purbabarh Samabaya Krishi Unayan Samity Ltd. (SKUS) is illegal and cannot be justified.

The other two issues are if the employer M/s. Purbabarh Samabaya Krishi Unayan Samity Ltd. (SKUS) is justified by denying the salary dues to workman Prabhat Kr. Maity since November, 1997 and whether the workman is entitled to get any other relief. Ld. Lawyer for the workman argued that workman Prabhat Kr. Maity was appointed by the company M/s. Purbabarh Samabaya Krishi Unayan Samity Ltd. (SKUS) by giving appointment letter in writing that has been proved (Ext. 1) and the company did not adduced any contrary evidence to nullify the same though in the written statement the company vaguely raised that the company never appointed the workman and also raised that the workman has adduced oral and documentary evidences and all such evidences have remained immune despite cross-examination and at the same time admitted by vice-chairman of the company (O.P.W.- 1) Mr. Ramkrishna Jana, who also raised that all the details are within the knowledge of the secretary of the company Mr. Sanjoy Kr. Jana and the company would produce the secretary Mr. Sanjoy Kr. Jana as a witness but the company did not do so and when on being ordered by court, the workman issued summon to him to appear as a witness with some documents as were wanted by the workman, the secretary Sanjoy Kr. Jana never appeared and the company also did not take any step to produce him as witness or to produce the documents as were wanted for administering justice in this case and also raised that at that stage the company started becoming absent without any step and abandoned the case altogether. Ld. Lawyer further raised that the documents as were wanted by the workman from the secretary of the company are in the office of the company under the custody of the secretary of the company Mr. Sanjoy Kr. Jana as were admitted by the vice-chairman of the company Mr. Ramkrishna Jana as O.P.W.-1 and all these are grounds for adverse presumption against the company. Ld. Lawyer for the workman also argued that the workman is a poor person living hand to mouth and he committed no illegality and he was put into circumstances compulsorily requiring him to run from pillar to post, and last of all to this court at huge cost, labour and agony and he also requires compensation. As mentioned earlier after the issuing of summon to the secretary of the company M/s. Purbabarh Samabaya Krishi Unayan Samity Ltd. (SKUS) Mr. Sanjoy Kr. Jana, Sanjoy Kr. Jana was not available and documents were also not produced as were wanted by workman and order by court though O.P.W.- 1 admitted that all are known to that secretary. This aspect of the matter has already been discussed earlier and it is already found that such evidences on the part of O.P.W.- 1 that documents as were wanted by workman and ordered by court are in the office of the company under custody of the secretary of the company and all are within the knowledge of

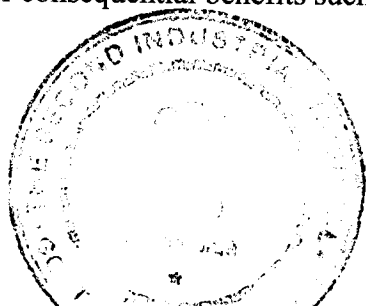


the secretary of the company, and non-appearance of secretary of the company as a witness and non-production of wanted documents and other such evidences clearly established adverse presumption against the management of the company. However, the evidences adduced by the workman are found to be clear and sufficient and at the same time these are admitted tacitly by the vice-chairman of the company Mr. Ramkrishna Jana as O.P.W.- 1. It is therefore to say that the rest issues i.e. issue No. 2 and issue No. 3 as per order of reference go in favour of the workman. It cannot be, having taken the evidences adduced in this case and other facts and circumstances as have come to existence thereby, denied that the workman being a clerk and at the same time doing manual work in the company suffered mental agony and shock after he was illegally dismissed from service much ahead of his attaining age of superannuation for no reason and at the same time keeping his salary withheld for months together despite his kind approach to the company to get them back, and under such circumstances it is to say that by way of any other relief workman deserves to get a cost against the company additionally which may be fixed at Rs. 5000/-.

In the summing up, it is to say that the workman was dismissed from service by the company M/s. Purbabarh Samabaya Krishi Unayan Samity Ltd. (SKUS) for no reason at all and the company, being a state within article 12 of Constitution of India, appears to have failed in maintaining the legal rights of the workman knowing fully well its consequences, with further observation that the conduct on the part of its secretary as found in this case is highly deplorable and the company is required to see his fitness in that post in the organization having status of a state. It is therefore,

### ORDERED

that the termination of the service of the workman Sri Prabhat Kr. Maity, son of late Nalini Kanta Maity, Vill. – Purbabarh, P.O. – Kalindi, P.S.- Ramnagar within district Purba Medinipore w.e.f. 21.09.1998 by his employer M/s. Purbabarh Samabaya Krishi Unayan Samity Ltd. (SKUS), registered under the West Bengal Co-operative Society's Act, represented through its secretary, having office at Vill. – Purbabarh, P.O. – Kalindi within district Purba Medinipore (O.P.W.- 1) / Assistant Registrar of Co-Operative Societies (ARCS) – II, Purba Medinipore, formerly Medinipore – III, Contai, P.O. – Contai within district Purba Medinipore is not justified and it is declared inoperative and illegal and the employer is not justified in denying his salary dues since November, 1997, and accordingly O.P.W.- 1 M/s. Purbabarh Samabaya Krishi Unayan Samity Ltd. (SKUS) as mentioned above and O.P.W.- 2 The Assistant Registrar of Co-operative Societies (ARCS) – II, Purba Medinipore, formerly Medinipore – III, Contai, P.O. – Contai within district Purba Medinipore as also mentioned above, are directed to pay entire amount of salary /outstanding salary / arear salary with other consequential benefits such as ad hoc payment, Puja bonus /

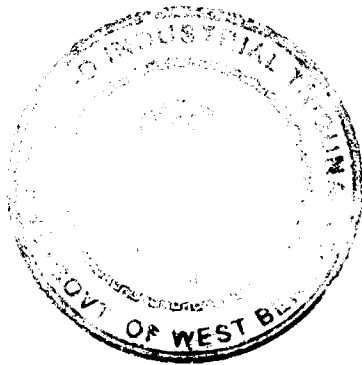


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government grants etc. as per order / notification etc. as were issued in this regard, to the workman Prabhat Kr. Maity immediately with cost of Rs. 5000/- (Rupees Five thousand only) in default the workman Prabhat Kr. Maity shall be entitled to get interest @ Rs. 10% p.a. on the entire outstanding amount starting from that date i.e. 21.09.1998 till realization. The order of reference vide No. 574-I.R./IR/11L-154/2000 dt. 13.05.2008 by order of Governor signed by Mr. Hazarilal Mondal, Assistant Secretary to the Government of West Bengal, Labour Department, I.R. Branch, Writers' Buildings, Kolkata -700001 is disposed of on contest accordingly and this order and direction is to be treated as award of this Tribunal. Necessary number of copies of this award be prepared and send to the appropriate government i.e. Principal Secretary to the Government of West Bengal, Labour Department, New Secretariat Buildings, 12<sup>th</sup> floor, 1, K.S. Roy Road, Kolkata – 700001 immediately.

Dictated & corrected by me.

sdlr  
Judge



sdlr  
Judge  
2<sup>nd</sup> Industrial Tribunal  
26.12.2018