

I/26340/2018

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

No.Labr./684/(LC-IR)/22015(15)/65/2018

Date : 10.09. 2018

ORDER

WHEREAS under the Government of West Bengal, Labour Department Order No. 1084-IR dated 21.10.2008 the Industrial Dispute between **M/s. Hindusthan Motors, P.O.-Hindmotor, Dist.- Hooghly** and their workman represented by Hindusthan Motors & Hyderabad Industries Ltd. Sangrami Shramik Karmachari Union, Sector-II, Sardapally, Makhla, Dist.- Hooghly 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, Kolkata.

AND WHEREAS, the Judge of the said Second Industrial Tribunal, Kolkata, 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./684/1(5)/(LC-IR)

Date : 10.09.2018

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

1. **M/s. Hindusthan Motors, P.O.-Hindmotor, Dist.- Hooghly**
2. The Secretary, Hindusthan Motors & Hyderabad Industries Ltd. Sangrami Shramik Karmachari Union, Sector-II, Saradapally, Makhla, Dist.-Hooghly.
3. The Assistant Labour Commissioner, West Bengal in-Charge, Labour Gazette,
4. The Labour Commissioner, W.B. New Secretariat Buildings, (11th Floor), 1, K.S. Roy Road, Kol-1.
- ✓ 5. The O.S.D., IT Cell, Labour Department, with the request to cast the Award in the Deptt.'s website.


Deputy Secretary to the
Government of West Bengal

No.Labr./684/2(2)/(LC-IR)

Date : 10.09.2018

Copy forwarded for information to :-

1. The Judge, Second Industrial Tribunal, West Bengal with reference to his Memo No. 1563 -L.T. dated 01.08.2018.
2. The Joint Labour Commissioner (Statistics), West Bengal, 6, Church Lane, Kol - 1.

Deputy Secretary to the
Government of West Bengal

In the matter of an industrial dispute between M/s. Hindustan Motors, P.O. – Hindmotor, Dist. Hooghly and their workman represented by Hindustan Motors & Hyderabad Industries Ltd. Sangrami Shramik Karmachari Union, Sector-II, Saradapally, Makhla, Dist. Hooghly.

(Case No.VIII-56/2008)

BEFORE THE SECOND INDUSTRIAL TRIBUNAL: WEST BENGAL.

PRESENT

SHRI Sribash Chandra Das, JUDGE,

SECOND INDUSTRIAL TRIBUNAL, KOLKATA.

Date of passing award – 31.07.2018

A W A R D

The instant case arose out of an order of reference vide G.O.No.1084-I.R./IR/10L-20/04 dt. 20.10.2008 by which an industrial dispute between M/s. Hindustan Motors, P.O. – Hindmotor, Dist. Hooghly and their workman represented by Hindustan Motors & Hyderabad Industries Ltd. Sangrami Shramik Karmachari Union, Sector-II, Saradapally, Makhla, Dist. Hooghly has been referred to this Tribunal for adjudication.

The issues specified in the order of reference for adjudication are as follows:

I S S U E (S)

- 1) Whether the termination of service of Shri Suvendu Biswas by the management of M/s. Hindustan Motors Ltd. w.e.f. 21.05.2007 is justified?
- 2) To what relief, if any, is he entitled?

This is a case between M/s. Hindustan Motors Ltd. P.O. Hindmotor, Dist. Hooghly and H.M. & H.I.L., Sangrami Shramik Karmachari Union, Sector-II, Saradapally, Makhla, Dist. Hooghly having registration No. 22993 by way of order of reference having No. 1084-IR/IR/10L-20/04 dt. 20.10.2008 by order of the Governor signed by Mr. A.K. Patra, , Deputy Secretary to the Government of West Bengal, Labour Department, I.R. Branch, Writers' Buildings, Kolkata – 700001 in the way that whereas an industrial dispute exists between M/s. Hindustan Motors as mentioned above and their workman represented by Hindustan Motors & Hyderabad Industries Ltd. Sangrami Shramik Karmachari Union as mentioned above relating to the issues as mentioned in this order of reference stated to be being a matter specified in the second schedule to the Industrial Disputes Act, 1947 and then in exercise of the power conferred by Section 10

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of the Industrial Disputes Act, 1947, the Governor was pleased to refer this dispute to this Tribunal stated to be instituted under Notification No. 808-IR/IR/3A-2/57 dt. 11.03.57 for adjudication requiring this Tribunal to submit award to the State Government with six months on the date on receipt of this order of reference by this Tribunal in terms of Sub-section (2A) of Section 10 of Industrial Disputes Act, 1947 subject to other provisions in this Act.

The issues that were framed in the order of reference are,

- A) Whether the termination of the service of Sri Subhendu Biswas by the management of M/s. Hindustan Motors Ltd. w.e.f. 21.05.2007 is justified?
- B) To what relief, if any, is he entitled?

After receiving this order of reference as mentioned above the case proceeding was started as required by law and summons were issued to both parties. Both parties then entered into appearance engaging lawyers and then the union was directed to file written statement I find that the union filed written statement on 30.04.2009 and then as per order of the Court order No. 17 dt. 31.05.2010 regarding amendment the union further filed amended written statement for workman Subhendu Biswas.

In the first written statement filed on 10.02.2009 it has been stated that the union as mentioned earlier is a recognized trade union of the company having certified by Registrar Of Trade Union, Government Of West Bengal. It is further stated that the workman Mr. Subhendu Biswas joined as a workman on 16.07.1995 in the company M/s. Hindustan Motors Ltd., Uttarpara, P.O. Hindmotor, Dist. Hooghly, as also mentioned earlier having its educational qualification as Higher Secondary, Commerce. It is next stated that starting from the time of joining on 16.07.1995 till 21.05.2007 this workman worked in the company efficiently and continuously as a badli workman and his name was also included in the pay role of the company and as a result the workman became a bonafide voter of three bargaining agent of elections of the company as per Trade Union Act (West Bengal Amended Act, 1983) and voters' list as were prepared and was also supplied by the management of the company to the Registrar of Trade Union, Government of West Bengal. It is next stated in this w/s filed by union that on 31.07.2000 the company entered into a bipartite written agreement with the then recognized Trade Unions namely CITU and INTUC to the effect that permanency of badli employees as were in the role would be on 01.04.2000 considering as per seniority and in phases as upto 01.04.2001-50% and up to 01.04.2002 rest 50%. It has been further stated that accordingly the company gave permanency status of 50% of the badli employees / workman within 01.04.2004 but thereafter, it is alleged, the company deliberately violated the aforementioned bipartite written agreement and did not give any

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permanency status to the remaining 50% badli workmen including Mr. Subhendu Biswas. It is stated further that as per Section 2(ra), 25T, 25u and 5th schedule part-I, item No.-9, 10 & 13 of the Industrial Disputes Act, 1947 non-compliance of the bipartite agreement regarding permanency of rest 50% workers by 01.04.2002 is unfair labour practice and therefore punishable. It is also stated that instead of giving permanency, the company suddenly without any reason illegally terminated the workman by way of refusal of employment on 21.05.2007, mentioning such termination of the workman has no connection with the profit and loss of the company. It is also stated that after such termination of the service of the workman, he became unemployed suffering from financial crisis.

With all these it has been prayed by the union to declare the termination of Subhendu Biswas w.e.f. 21.05.2007 as completely unjustified, and his immediate reinstatement, absorption as a permanent workman in the company with full backwages with other consequential benefits since 23.05.2007 are required with costs.

The union filed the amended written statement on behalf of workman Subhendu Biswas on 21.06.2010 adding para-7(a), which stated that at the time of illegal termination by way of refusal to give employment of Subhendu Biswas on 21.05.2007 with some vindictive attitude, the company did not comply with 'last come first go' rule as per Industrial Disputes Act, 1947 as the workman Subhendu Biswas happened to be the active and executive member of the then only recognized and elected sole bargaining agent union i.e. H.M. & H.I.L.S.S.K.U. which then issued strike notice against such illegal activities on the part of the company.

The company filed written statement on 22.05.2009 and also filed additional written statement on 12.07.2010. In the first filed written statement by the company on 12.05.2009 it has been stated that allegations made against the company by union in the written statement filed by union are baseless, incorrect and misleading. The rest contention of the written statement filed by company on 22.05.2009 shows that it has two parts. In the first part it has been stated that the reference made by the government is not maintainable and there is no existence of industrial dispute since the union does not have locus standi and any representative character. The company further stated that the workman Subhendu Biswas was a badli workman and for that reason he did not have any legal right or legal character of right which could be enforced by law and he also cannot have right of employment and also is not entitled to get any relief whatsoever. It is also stated by company that reference is not maintainable as no dispute in proper way has been raised so as to assume the shape of an industrial dispute. It is also stated that the reference is also not maintainable for further ground that the appropriate government had

no proper material on the basis of which the reference could be made and as a result the reference suffers from infirmity and non-application of mind with the addition that the reference is nothing but based on incorrect assumption. In part-2 of the written statement filed by company, the company states that it has made paragraph-wise written statement as per written statement filed by union. Denying the contention of para-1 of written statement by union, the company has stated that the union under reference is still not a recognized trade union as has been asserted. Regarding contention of para-2 of written statement filed by union the company has stated that there is no record to show that workman Sri Subhendu Biswas was appointed on 16.07.1999. In respect of para-3 of the contention of written statement filed by union, the company stated that badli workman gets work only in absence of temporary or regular employee and a badli workman cannot have any guaranteed right of employment and it is also not within the knowledge of company that the workman was a voter of bargaining agent election, and the company denied that the workman was efficient and had been in continuous service. The company has next stated that the contention of union in para-4 of its written statement is a matter of record and the application of bipartite written agreement as mentioned in para-4 of written statement filed by union depends on availability of post and vacancy without creating any vested right. It has next stated that in absence of any vacancy or permanent post question of any consideration cannot arise and asserted that the company was passing through critical condition with its survival at stake and there is huge number of surplus workers and for that reason there was no scope for giving any permanent status to rest 50% of the badli workman. Denying the contention of para-6 of written statement filed by union, the company has stated that the allegation of unfair labour practice by the company is baseless and allegation of violations of Section-2(ra), 25T, 25U and 5th schedule part-1, item No. 9, 10 & 13 of the Industrial Disputes Act, 1947 are also baseless and every agreement is subject to supervening impossibility. Denying the contentions of para-7 of written statement filed by union the company has stated that in case of badli workman service is terminable at any point of time and for that reason plea of absence of assignment of reasons has no basis whatsoever and it is well settled that a badli workman has no right to claim employment and such a workman is a casual employee without any right to be employed and there cannot be any termination of service by way of refusal of employment since the two concepts are apparently inconsistent and nothing was done which may be described as illegal unjustified or violative of Section 29 of Industrial Disputes Act, 1947. Denying the contention of para-8 of written statement filed by union, the company has stated that the retention of badli workman is inseparably connected with the condition of the company including the

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matter of profit and loss. Denying contention of para-9 of written statement filed by union the company has stated that it is within the knowledge of company that the workman subhendu Biswas has been gainfully employed and for that reason question of his financial crisis has no basis. In para-10 of the written statement filed by union it has been stated that the union has made the application bona fide and for ends of justice but the company, as next asserted in its written statement, has stated that such contention of the union is not so. The company concluded its written statement with a prayer for dismissal of the claim of the union.

As I mentioned earlier, the union in its amended written statement has stated that at the time of illegal termination by way of refusal to give employment to the workman Subhendu Biswas on 21.05.2007 with some vindictive attitude the company did not comply with the 'last come first go' rule as per Industrial Disputes Act, 1947 as the workman is the active and executive member of the then only recognized and elected sole bargaining agent union i.e. H.M. & H.I.L.S.S.K.U. which issued strike notice for illegal activities of the company, the company has also filed one additional written statement raising that the incorporated amendment does not have any basis and the allegations and statement in the amended written statement of the union are baseless, incorrect and misleading with addition that the company would avert to that statement as material for proper disposal of the reference. In the additional written statement by company, the company has further stated that the amended written statement by union is patently erroneous since the issue referred to his termination of service and not termination by way of refusal of employment. The company has further stated in its amended written statement that the contention about 'last come first go' is misconceived as the badli workman has no right to the post nor can there be any scope for applicability of the principle of 'last come first go', with the addition that a badli workman does not have any particular category and as such the question of applicability of the said principle does not arise with further addition that a badli workman gets work only in absence of a temporary or regular employee and as such a badli workman cannot have any guaranteed right of employment and the plea of 'last come first go' is of no substance. It is further stated in its additional written statement on that contention about recognized and elected sole bargaining agent that it is not only incorrect, misconceived and misleading but also it has no material bearing as far as the issues under reference is concerned. Asserting that the additional incorporated paragraph in written statement by union is totally irrelevant and it has nothing to do in connection with the matter of the issue under reference and no credence should be given to that amended portion of written statement by union.

On behalf of union both oral and documentary evidences have been adduced. I

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find that the workman Subhendu Biswas examined himself as P.W.-1 and he was also fully cross-examined by Ld. Lawyer for the company. Union also examined another Mr. Avash Munsu as P.W.-2 and he was also fully cross-examined by Ld. Lawyer for the company as I find from Order No. 58 dt. 13.06.2013. The union also adduced documentary evidences namely voter list in connection with the bargaining agent election (Ext. 1), a copy of voucher slip for the month of March, 2001 (Ext. 2), copy of pay slip for the month of July, 1996 (Ext. 3), copy of memo of settlement dt. 31.07.2000 (Ext. 4), copy of strike notice dt. 12.03.2007 (Ext. 5), copy of annual return in Form-H, 12 pages (Ext. 6), copy of letter dt. 10.07.2007 by workman Subhendu Biswas to the Head HRM of the company (Ext. 7), copy of letter dt. 30.05.2007 by workman Subhendu Biswas to the Head HRM of the company (Ext. 8) and postal receipt and postal cover of Ext. 8 (Ext. 8/1, Ext. 8/2) respectively. After that opportunity was given to company to adduce evidence on merit in support of the case raised by the company and then company examined one Shyamal Kr. Biswas as O.P.W.-1 in full on 06.08.2013 and on the same day this O.P.W.-1 was partly cross-examined by Ld. Lawyer for the workman and from order No. 61 dt. 06.08.2013 it is found that 03.09.2013 was fixed for further cross-examination of O.P.W.-1. Here it is to be noted that from 03.09.2013 till 31.03.2017 many dates were fixed requiring the company to bring O.P.W.-1 Shyamal Kr. Biswas but Shyamal Kr. Biswas (O.P.W.-1) was not available for further cross-examination by Ld. Lawyer for the company and as I find from the order No. 94 dt. 21.03.2017 there was a prayer by Ld. Lawyer for the workman for expunging the evidences of O.P.W.-1 as he could not be produced by company for further cross-examination by Ld. Lawyer for the workman but on that day no step was taken on behalf of company and on behalf of company none also appeared to move and on that ground and also for interest of justice it was observed that the matter of expunging the evidences given by O.P.W.-1 would be considered later and on next subsequent dates i.e. 11.04.2017 and 15.05.2017 the company remained absent without step and none also appeared to move and after that 12.07.2017 the company appeared and prayed for adjournment and then by order dt. 10.07.2017 the case was further fixed for argument and order was also passed expunging the evidences of O.P.W.-1 on the ground that the company could not make him appear before this Tribunal for cross-examination by Ld. Lawyer for the workman and then argument of the case started on 02.08.2017 and as I find from the case record, this argument continued up to December, 2017, yet there was no attempt to bring the O.P.W.-1 though Ld. Lawyer for the company completely argued the case orally and also filed written notes of argument. The company adduced documentary evidences which are copy of appointment letter of the workman Subhendu Biswas (Ext. B) series, copy of

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memorandum of settlement (Ext. C), absent of permanent employees and badli workers (Ext. D) and copy of letter given to Labour Commissioner (Ext. E).

As I already mentioned this case arose out of an order of reference dt. 20.10.2008 with the following issues,

- 1) Whether the termination of service of Sri Subhendu Biswas by the management of M/s. Hindustan Motors Ltd. with effect from 21.05.2007 is justified?
- 2) To what other relief, if any, is he entitled.?

Decision with reasons

I want to take up issue No. (A) at first. The main matter in the written statement filed by union is that from 16.07.1995 to 21.05.2007 the workman Subhendu Biswas had been workman in the company working efficiently and continuously as badli workman and his name is in the pay role of the company, and as a result of it he was bona fide voter of three bargaining agent election of M/s. Hindustan Motors Ltd. (Uttarpara Unit) as per Trade union (West Bengal Amendment) Act, 1983 in which voters' lists were supplied by the management of the company to the registrar of Trade Union, Government of West Bengal. The company entered into a bipartite written agreement on 31.07.2000 with the then recognized trade union namely CITU and INTUC to the effect that permanency of badli employees then in the role would be as on 01.04.2000 as per seniority and in phases which is mentioned as on 01.04.2001 – 50% / 01.04.2002 – 50%, and accordingly the company gave permanency status of 50% badli employee by 01.04.2001 and then the company deliberately violated that bipartite written agreement without giving permanency status to the remaining 50% badli workmen including the workman Subhendu Biswas. Describing such violation on the part of the company of the requirement of bipartite agreement as illegal, the union has stated that such activities on the part of the company are unfair labour practice and then on 21.05.2007 the company terminated the workman Subhendu Biswas illegally. The union by way of amendment added in the written statement that at the time of illegal termination by way of refusal to give employment to Subhendu Biswas on 21.05.2007 with vindictive attitude, the company did not comply with the 'last come first go' rule as workman Subhendu Biswas is the active and executive member of the then only recognized and elected sole bargaining agent union namely HM & H.I.L.S.S.K.U that issued strike notice-call for illegal activities of the company but the company in its written statement has raised that the reference is itself illegal as workman Subhendu Biwas being a badli workman have no right of employment, with the addition that the company is passing through critical condition and the survival of the company is at stake and there is huge number of surplus man-power and for that reason there is no scope for giving permanent status to badli workman. Denying allegation of

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unfair labour practice by company, the company has raised that the bipartite agreement could not be fully honoured by company due to supervening impossibility. In the additional written statement the company further raised that the amendment matter itself is erroneous and baseless and added that 'last come first go' rule is totally misconceive on the ground that a badli workman has no right to the post nor can there be any scope for applicability of this rule and a badli workman does not come within any category of workman. The company also raised that Subhendu Biswas did not work continuously as he used to be given work in absence of temporary or regular employees and it is also not within the knowledge of the company that Subhendu Biswas was a voter of bargaining agent election.

The Ld. Lawyer for the workman during his argument raised that the union has examined the workman Subhendu Biswas as a principal witness (P.W.-1) and to corroborate the version of P.W.-1, the union has also examined another witness Avash Munshi (P.W.-2) and the union also adduced documentary evidences. Ld. Lawyer for the workman pointed out that it is a case of retrenchment by way of refusal of employment by the company that maintained grudge against the workman as the workman Subhendu Biswas after being appointed in the company on 16.07.1995 was a bonafide voter of three bargaining agent election of M/s. Hindustan Motors Ltd. (Uttarpara Unit) as per union (West Bengal Amendment) Act, 1983 in which voters' lists were supplied by the management of the company to the registrar of Trade Union, Government of West Bengal. Ld. Lawyer further pointed out that on 31.07.2000 the company entered into bipartite written agreement with the then two recognized trade union namely CITU and INTUC to the effect that permanency of badli employees then in the role would be as on 01.04.2000 and accordingly as per seniority the permanency of badli employees would be made by 01.04.2001 up to 50% and the rest by 01.04.2002. Ld. Lawyer further argued that by 01.04.2001 the company gave permanent status to 50% of the badli workman and then refused to do anything to comply with the rest part of the agreement. Ld. Lawyer added that without assigning any reason the company terminated workman Subhendu Biswas on 21.05.2007, and describing this termination of service of the workman Subhendu Biswas as a matter out of grudge by the company mainly for the reason that due to illegalities committed by management of the company by not complying with the tripartite agreement and as a result the union gave a strike-call notice against the company and this workman happened to be the one of the person of the union giving the strike notice. Ld. Lawyer submitted that all these have been described clearly by the workman by adducing evidence of his own as P.W.-1 and this P.W.-1 was cross-examined by the Ld. Lawyer for the company at length but nothing came out in the cross-examination of P.W.-1 to destroy any of the evidences given by the P.W.-1. Ld. Lawyer further submitted that the evidences of P.W.-1 have been fully corroborated by P.W.-2 Avash Munsu and P.W.-2 was also cross-examined by Ld. Lawyer for the company at length but nothing came out against the

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evidences given by P.W.-1 and P.W.-2 and also against the documentary evidences. The Ld. Lawyer for the workman further argued that Ld. Lawyer for the company in support of its written statement brought one witness namely O.P.W.-1 Shyamal Kr. Biswas and he was partly cross-examined by him but after that long time elapsed but the company failed to bring him before the Tribunal to subject him for cross-examination and therefore his evidences cannot be given any standard of credence, notwithstanding he has also supported a version of P.W.-1 and P.W.-2 and also documentary evidences to some extent by admitting that the workman Subhendu Biswas was a worker in the company and he was the badli worker working from 1995 to 2007 and he also admitted that as per agreement most of the badli workers were regularised as permanent worker and O.P.W.-1 further admitted that the company maintains a badli role of badli workers and on the basis of that role the badli workers were made permanent in fresh manner and in the month of November, 2010 some of the badli workers were also made permanent.

Referring the written argument filed by Ld. Lawyer for the company, Ld. Lawyer for the workman has argued that in the written argument filed by the Ld. Lawyer for the company, the Ld. Lawyer has emphasised that on 12.07.1995 the workman Subhendu Biswas applied for badli recruitment in the factory of the company at Hind Motor and he would work against the absence of temporary or regular employee, with the addition that the concept of termination of service and engagement of badli cannot co-exist with reference to document (Ext. A) and Ld. Lawyer for the workman stated that such an argument on the part of the Ld. Lawyer for the company is misconceived. Ld. Lawyer for the workman further argued that as a matter of law Ld. Lawyer for the company has mentioned that unless a badli workman can prove that he has worked 240 days in a year, he has got no protection under the Industrial Disputes Act, 1947 and to support this argument Ld. Lawyer for the workman has stated that this part of the argument made by Ld. Lawyer for the company is also misconceived and this cannot be applied to facts & circumstances of this case. Ld. Lawyer for the workman further referring the argument made by Ld. Lawyer for the company that it is not a case where the respondent has completed 240 days of service during the period of 12 months preceding such termination as contemplated under Section 25F read with Section 25B of the Industrial Disputes Act, 1947 and further that the badli workers thus did not acquired any legal right to continue in service and not even entitled to get production under the Industrial Disputes Act not the mandatory requirement of Section 25F of the Industrial Disputes Act are required to be completed with before terminating his service unless that workman has completed 240 days service within a period of 12 months preceding the date of termination, but such argument on the part of the Ld. Lawyer for the company is also misconceived and Ld. Lawyer for the workman has emphasised that all such argument by Ld. Lawyer for the company are extraneous to the extent of the case. Ld. Lawyer for the workman

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further submitted that in support of the argument made by the Ld. Lawyer for the company, Ld. Lawyer for the company has also cited some case laws and such case laws are also not applicable in the facts and circumstances of the case. Ld. Lawyer for the workman concluded his argument by mentioning the procedure for retrenchment as has been enunciated in Section 25G of the Industrial Disputes Act, 1947 and this part of the argument by Ld. Lawyer for the workman shall be discussed later.

Thus it is coming out from the argument made by Ld. Lawyer for the workman that the workman was appointed in the company and then he worked in the category of badli workman and he was terminated by the company arising out of a grudge in the way that a bipartite agreement was executed by the company for absorbing the badli workman in a fresh manner and though the company absorbed more than 50% of that category of workers, yet last of all the company did not like to honour that agreement, as a result of which a strike call notice was issued against the company by union that included the workman and as a result the company maintained grudge against this workman and retrenched him by refusing employment to him.

Now it is to be seen as to how far the evidences brought before the Tribunal have proved this aspect of the matter as raised by Ld. Lawyer for the workman. Going through the evidences adduced by workman as P.W.-1 and the written statement filed by Ld. Lawyer for the company, the appropriate position that has been established is that workman Subhendu Biswas was appointed in the company as badli worker. As P.W.-1 Subhendu Biswas has deposed that he joined the company on 16.07.1995 in the Uttarpara union of the company and his employee No. is 602640. As P.W.-1 has further deposed that as per voters list prepared by the company for bargaining agent election and on the basis of this evidence it was marked Ext. 1 P.W.-1 further deposed that from 16.07.1995 to 21.05.2007 he worked in the company efficiently and continuously and his name is in the pay role of the company and as a result he was a bona fide voter of three bargaining agent of M/s. Hindustan Motors Ltd. as per Trade Union (West Bengal Amendment) Act, 1983 in which voters' list were supplied by the management of the company to the Registrar of Trade Union, Government Of West Bengal and at that time he worked in the new C.I. Foundry department of the company and this workman as P.W.-1 also proved the vouchers slip for the month of March, 2001 and it was marked Ext. 2. P.W.-1 further deposed that on 31.07.2000 the company entered into a bipartite written agreement with the then two recognized trade union, CITU and INTUC to the effect that permanency of badli employees then in the role as would be as on 01.04.2000 would be made to the extent of 50% and the rest 50% by 01.04.2002 and on the basis of evidence of P.W.-1 his pay slip for the month of July, 1996 was marked Ext. 3 and the memorandum of bipartite written agreement dt. 31.07.2000 was marked Ext.4. P.W.-1 also deposed that the company gave permanency status of 50% badli

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workman within 01.04.2001 but thereafter without assigning any reason the company deliberately violated the terms of bipartite written statement (Ext. 4) and did not give permanency status to the remaining 50% badli workman including P.W.-1. P.W.-1 further deposed that he came to know that in the year 2010 the company gave permanency status to remaining 50% badli workmen as per that written agreement (Ext. 4) excepting this P.W.-1 and P.W.-1 also deposed that those company intentionally victimized this P.W.-1 by resorting to unfair labour practice. P.W.-1 also deposed that instead of giving him permanency status, all on a sudden and without assigning any reason the company illegally terminated him by way of refusal of employment and then this P.W.-1 filed one written complaint to that effect in Uttarpara Police Station and also reported Deputy Labour Commissioner, Hooghly and also gave the same to the management of the company. P.W.-1 also deposed that at the time of such illegal termination of him by way of refusal to give employment on 21.05.2007, the company with some vindictive attitude did not comply with the rule – ‘last come first go’ as per Industrial Disputes Act, 1947 as, P.W.-1 further deposed, he was the active and executive member of the then only recognized and elected sole bargaining agent union which is H.M. & H.I.L.S.S.K.U. declared by Registrar of Trade Union, Government of West Bengal which issued strike notice dt. 12.03.2007 demanding permanency of remaining badli workman and this strike notice dt. 12.03.2007 was made Ext. 5. P.W.-1 also deposed that by the time of filing this case as many as more than 17 workmen namely Biswanath Chakraborty and Others who joined the company as badli workers after joining of this P.W.-1 were made permanent by the company and this P.W.-1 alongwith those workman namely Biswanath Chakraborty and Others also worked together in the New C.I. Foundry department. P.W.-1 also deposed that the voters list for bargaining agent election prepared by company and supplied to the Registrar of Trade Union, Government of West Bengal to show that those workman namely Biswanath Chakraborty and others were junior to those P.W.-1. Denying the contents of written statement filed by the company he also deposed that he has remained unemployed and suffering from financial crisis. Going through the cross-examination of this P.W.-1 I find that Ld. Lawyer for the company wanted to establish that the P.W.-1 was appointed by the company as a badli worker and he did not complete continuous working for 240 days during the year immediately preceding his termination of service and P.W.-1, as I find from the cross-examination of P.W.-1, has admitted the same and there is nothing else in the cross-examination of P.W.-1 against the evidences given by him. The union has examined another witness namely Avash Munshi, son of late Budhadev Munshi, of 8B, Radhika Charan Chatterjee Lane of Hooghly as P.W.-2 and he deposed that he is the secretary of H.M. & H.I.L. Sangrami Shramik Karmachari Union and the workman Subhendu Biswas (P.W.-1) is the executive committee member of that union. P.W.-2 also deposed that from 16.07.1995 to 21.05.2007 Subhendu Biswas had been working in that company efficiently and continuously

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as badli workman and his name was in the pay role of the company and as a result he was a bona fide voter of three bargaining agent election of the company as per Trade Union (West Bengal Amendment) Act, 1983, in which voter list were supplied by the management of the company to the Registrar of Trade Union, Government of West Bengal. This P.W.-1 further deposed that as per agreement dt. 31.07.2000 Subhendu Biswas is entitled to become permanent but the company without assigning any reason terminated him by way of refusal employment as he is the active member of that union and only recognized and elected sole bargaining agent as per law. P.W.-2 also deposed that a number of workman namely Biswanath Chakraborty and others who joined the company after workman Subhendu Biswas as badli workman in the year 2007 were made permanent. Thus I find that version of P.W.-2 had been corroborating the version of workman Subhendu Biswas (P.W.-1) without any deviation. Going through the cross-examination of P.W.-2 it is found that P.W.-2 was subject to lengthy cross-examination but I find that there is at all nothing in the cross-examination of P.W.-2 to distort any of the evidences given by P.W.-1 and P.W.-2. From the documentary evidences the electoral role in the elections for recognition of trade unions of the company (Ext. 1) shows that the workman Subhendu Biswas is an employee No. 602640 and his date of joining in the company is 16.07.1995. As per deposition of P.W.-1 and P.W.-2, a number of employees namely Biswanath Chakraborty and others who were also appointed as badli workers by the company were junior to the workman Subhendu Biswas and those Biswanath Chakraborty and others were made permanent by the company leaving this workman and this Ext. 1 shows that Mr. Biswanath Chakraborty, employee No. 602657 joined the company on 09.02.1997, and therefore by document (Ext. 1) it is being established that the workman Subhendu Biswas happened to be senior to Biswanath Chakraborty and others who were also appointed as badli workers but they were made permanent as deposed by P.W.-1 and P.W.-2 leaving the workman Subhendu Biswas. From the cross-examination of P.W.-1 and P.W.-2 there is nothing against this documentary evidence (Ext., 1). As per deposition of P.W.-1 Ext. 2 is the pay slip of workman Subhendu Biswas and I find that the authenticity of this document is unchallenged. Ext. 3 is another document produced by workman / union, it is found to be pay role and it shows that workman Subhendu Biswas had been in the category of badli workman. As per deposition of P.W.-1 and P.W.-2 the memorandum of settlement (Ext. 4) was executed between management of the company and their workman represented by Hind Motor and Hyderabad Industry Employees Union, Hind Motor, Hooghly and out of others in that settlement (Ext. 4), there is further terms of settlement regarding badli which states that though the then market situation is not justifiable to increase of man-power yet as a good-will gesture it has been mutually agreed that permanency of badli employees then in the rules would be as on 1st April, 2000 considered as seniority and in phases the permanency would be done up to 50% by 1st April, 2001 and the rest 50% by 1st April, 2002, and thus both

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P.W.-1 and P.W.-2 uniformly also stated the same regarding that settlement (Ext. 4). Ld. Lawyer for the company as I have already discussed cross-examined of both P.W.-1 and P.W.-2 and I find that there is at all nothing against the matter of settlement as has been proved by P.W.-1 and P.W.-2 and also by the settlement itself (Ext. 4). As per deposition of P.W.-1 and P.W.-2 the workman Subhendu Biswas happened to be an active member of the union with his status as executive committee member and P.W.-1 and P.W.-2 both deposed uniformly that the company did not comply with the 'last come first go' of the settlement by making permanent of the remaining 50% of the badli workers including the workman Subhendu Biswas and thus the company resorted to unfair labour practice and a consequence the union issued notice to call a strike and as the workman Subhendu Biswas was the executive member of the union, company maintained grudge against him and last of all terminated him. This notice has been made Ext. 5 which shows that it contains call for strike continuously from 13.03.2007 by sole bargaining agent union on demands of permanency of badli workers as per settlement and it was issued on 12.03.2007. therefore, it is established that both P.W.-1 and P.W.-2 deposed on this matter of strike call mentioning that the workman Subhendu Biswas being executive member of the union of the part in calling the strike against the management of the company and as a result the management of the company maintained grudge against the workman Subhendu Biswas that resulted ultimately his termination from the service. Ld. Lawyer for the company as I find cross-examination both P.W.-1 and P.W.-2 but there is nothing in the cross against such evidences of P.W.-1 and P.W.-2 and the documentary evidences (Ext. 5). Ext. 6 is found to be the annual return for the year ending 31st December, 2005 under Section 29 of the Indian Trade Union Act, (Act-XVI of 1962) showing the name of trade union as Hindustan Motors and Hyderabad Industries Ltd. Sangrami Shramik Karmachari Union as deposed by P.W.-1 and P.W.-2 with list of election office bearers dated 29.04.2006 and includes the name of the workman at serial No. 72 with certificate by chartered accountant Rajesh K. Jhunjhunwala and Company dt. 29.04.2006 certifying that the accounts of the union are true and fair. As per deposition of P.W.-1, he issued notice to the management of the company demanding reinstatement in his service by the company dt. 10.07.2007 and it also contains on endorsement on the part of the company mentioning that it was received by the company on the same day, it has already marked Ext. 7 as per evidence of P.W.-1. It contains that (Ext. 7) workman Subhendu Biswas by that notice informed the management of the company that on 21.05.2007 the company refused him to be permanent for punching log and terminated him from service without any notice and by that notice he also raised protest against his such termination. It is also mentioned in that notice (Ext. 7) as per agreement he demanded before the company for making permanent of all the badli workmen and for his such stands before the company he was terminated and he also demanded his reinstatement and also him making permanent in this post. In the cross-examination of P.W.-1 and P.W.-2 there is nothing against the contention of this document in any way.

I have already seen the case raised by the company in the written statement filed on behalf of the company. The main matter in the written statement filed by the company is that though the company appointed the workman Subhendu Biswas, he was made simply a badli worker and he did not have any right to get any work excepting the work given to him in the absence of permanent worker or temporary worker and as per law under Industrial Disputes Act, 1947 he has no right to get any work and he also does not have any protection under the Act simply for the reason that he was a badli workman and he did not complete 240 days of work continuously during the preceding one year repeatedly before the time of his retrenchment. As I mentioned earlier that it is the admitted position that the workman Subhendu Biswas was appointed in the company as badli worker and it is also the admitted position that during the preceding one year immediately preceding the time of retrenchment he did not complete working 240 days continuously. In the written argument Ld. Lawyer for the company also has wanted to emphasis this matter of fact and law by repeatedly mentioning that as the workman Subhendu Biswas was a badli workman and did not complete 240 days of continuous work during the preceding one year reportedly before his termination he at all cannot get any protection under the Industrial Disputes Act, 1947. Ld. Lawyer also cited a few case laws in support of his such argument.

Both P.W.-1 and P.W.-2 in their evidences mentioned that the workman Subhendu Biswas had been working continuously and efficiently but in the written statement filed by the company the same has been denied by the company but I find such accretion in the written statement filed by the company does not have any support of any evidence. From the case record I find that the company on 06.08.2013 examined one Mr. Shyamal Kr. Biswas as O.P.W.-1, his examination-in-chief was completed and then he was partly cross-examined and after that till the time of argument of this case by both sides, the company failed to bring him back to subject him for cross-examination to see the truthfulness of his evidences. Therefore, by applying the principle of evidences when this witness O.P.W.-1 did not want to face the cross-examination his evidences are doubtful and carry any valuation, notwithstanding I find that he has admitted that he happened to be the ex-employee of the company and retired from the company as Assistant General Manager. O.P.W.-1 deposed that workman Subhendu Biswas is known to him and he worked in the company from 1995 to 2007 but the workman did not complete work continuously for 240 days. O.P.W.-1 also admitted that as per agreement of 2000 the badli workers were regularised as permanent workers in a fresh manner and in the month of November, 2010 badli workers became permanent in the second phase. These are the clear-cut admissions on the part of O.P.W.-1 who happened to be the Assistant General Manager of the company and thus occupied him position in the company and even though he has not appeared to face full cross-examination yet such admission on the part of this Assistant General Manager of the company

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(O.P.W.-1) have been supporting the case of the workman / union in toto without any deviation.

Thus the union has become able to prove clearly that the workman Subhendu Biswas was appointed in the company as badli workman in 1995 and from that time he continued working till 2007. It is further coming that this workman Subhendu Biswas also happened to be the executive member of the union that issued strike notice against the company on demand of complying with the conditions of bipartite agreement (Ext. 4) by giving permanency status to the remaining 50% of the employees within the time stipulated in the agreement (Ext. 4) and as a result it cannot be set aside that the company maintained a grudge against the workman Subhendu Biswas and consequently the company reflected the same by retrenching him from service by way of refusal of employment. At the same time it has come out that the workman Subhendu Biswas did not complete continuously working 240 days during the preceding one year immediately before the time of retrenchment.

Ld. Lawyer for the workman has wanted to apply the law under Section 25G of the Industrial Disputes Act, 1947. Over this matter it is to say that on 13.05.2010 a petition was filed on behalf of union for amending the written statement filed by union by inserting that at the time of illegal termination by way of refusal to give employment to workman Subhendu Biswas on 21.05.2007 with some vindictive attitude, the company did not comply with the 'last come first go' rule as per Industrial Disputes Act, 1947 as he is the active and executive member of the then only recognized and elected sole bargaining agent union i.e. H.M. & H.I.L.S.S.K.U. which union issued strike notice for illegal activities by the company. The case record shows that after hearing both sides it was allowed and then on behalf of union additional written statement was filed and opportunity was also given to company to file written statement against this amendment matter in the written statement, and company simply mentioned in its additional written statement that application of such a rule 'last come first go' is misconceived and a badli workman has no right to the post nor can there be any scope for applicability of this rule of 'last come first go' with the addition that a badli workman gets work only in the absence of temporary or regular employee and as such that type of employee cannot have any guaranteed right of employment with further addition that a badli workman does not have any particular category. Ld. Lawyer for the workman during his argument on the principle laid down in Section 25G of the Industrial Disputes Act submitted that admittedly the workman had been working in the company as a badli workman and he had not been working continuously for 240 days during preceding last year immediately before the time of retrenchment and raised that even then these are not bar against the application by this principle as laid down in Section 25G of the Industrial Disputes Act, 1947. Ld. Lawyer added that in this case as per law the workman is not required to prove that he had worked for a period of 240 days during the 12th calendar months preceding the termination of his service and it is sufficient for him to plea and prove that while the effecting the

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retrenchment the employer violated the rule of 'last come first go' without any tangible reason. Ld. Lawyer explained that an employer is permitted by the Act to effect retrenchment of workman but there are certain conditions preceding which he must comply with in effecting such retrenchment, and in the first instance as per requirement of the Act the employer shall have to comply with the requirement of Section 25F or Section 25N as the case may be of the Industrial Disputes Act, 1947 before he can validly retrench a workman, and in addition to such requirement the employer has also to comply with the requirement of Section 25F of the Act which, as explained by Ld. Lawyer, which is independent of Sections (SS), 25F and 25N. Ld. Lawyer further stated that Sections 25F and 25N of the Act stipulated conditions to be precedent to be complied with while effecting retrenchment, section 25G casts and application to follow the procedure prescribed therein. Ld. Lawyer added that the rule of "last come first go" can be altered, motivated and completely abrogated by an agreement between employer and each of the workman or workman as a whole by making a provision in the contract of service but, Ld. Lawyer further submitted, there is no such agreement to bypass the requirement of provisions of Section 25G of the Industrial Disputes Act, 1947. Ld. Lawyer emphasised that it is the admitted position that on 31.07.2000 the company entered into a bipartite written agreement with the union to the effect that permanency of badli employees presently in the rule would be made by 01.04.2000 up to 50% of the list of badli workmen and the rest 50% would be made permanent by 01.04.2002 and the company complied with the agreement by making 50% of that category of workman by 01.04.2000 but after that the company deliberately violated the bipartite agreement and did not give permanency status to the remaining 50% of badli workmen including the workman Subhendu Biswas. Ld. Lawyer further submitted that in the year 2010 the company further gave permanency status to the remaining 50% of the badli workman in view of the bipartite agreement. The Ld. Lawyer emphasised that when the company refused to comply with the agreement by not making the last 50% of the badli workers permanent by 01.04.2002 the union issued a strike call notice and that union included workman Subhendu Biswas who happened to be the executive member of the union and for that reason only the company maintained a grudge against this workman and then last of all retrenched him by way of refusal to give employment to him. Ld. Lawyer further argued that there is at all no valid reason on the part of the company to deviate from applying the rule 'last come first go' as required by Section 25G of the Act. Ld. Lawyer for the workman / union has further argued that Ld. Lawyer for the company has never raised anything denying the workman to be a citizen of India, that the company M/s. Hindustan Motors Ltd. is not an industrial establishment with the meaning of Section 2(j) of the Act and that there is no agreement between the employer and the union contrary to the procedure of 'last come first go'. Ld. Lawyer for the union further argued that for retrenching the workman by way of refusal of employment, the company has not assigned any

reason and Ld. Lawyer emphasised that it is the onus on the part of the employer to justify as to why he has debarred from the rule 'last come first go' but the employer in this case has done nothing at all. Referring the additional written statement filed by the management of the company Ld. Lawyer for the union has submitted that in the additional written statement, Ld. Lawyer for the company has mentioned that a badli worker does not have any particular category and describing this as totally baseless Ld. Lawyer for the workman has further submitted that as per requirement of law the company is required to maintain a list of badli workmen as this is necessary for the purpose of providing work to them in absence of permanent or temporary workmen and also for other purposes and therefore the company cannot deny that a badli workman does not have any particular category. The Ld. Lawyer for the workman concluded his submission by mentioning that in the written argument filed by Ld. Lawyer for the company, it has been raised that the workman being in the category of badli cannot have any protection under the Act but in this present case the employer cannot deny the provisions of Section 25G in any way as this has given a good right to such category of employee and it cannot be taken away by the employer excepting the procedure as has been laid down therein.

I have already mentioned that Ld. Lawyer for the company has filed written argument and also cited case laws. In this written argument Ld. Lawyer for the company has mentioned that workman Subhendu Biswas was appointed as a badli workman and he never completed continuously working at least for 240 days during the year preceding the alleged termination in question. It is also mentioned in the argument that this workman Subhendu Biswas was never illegally terminated from his service by the company. It has also mentioned in the argument that it is the settled law that unless a badli workman can prove that he has worked 240 days in a year, he has got no protection under the Industrial Disputes Act, 1947 and also under Section 25F of the Act. Ld. Lawyer for the company also mentioned that though Ld. Lawyer for the union has wanted the Tribunal to invoke the principles laid down in Section 25G of the Industrial Disputes Act, yet the workman cannot get any benefit of that section for the only reason that he never completed work continuously for 240 days in the year preceding the matter of retrenchment. Ld. Lawyer for the company has also mentioned a few case laws and that shall be dealt with later.

Now it is to be seen as to the application of the law 'last come first go' as the matter of procedure of retrenchment as given in Section 25G of the Industrial Disputes Act, 1947. In *Dinesh Kr. Vs. Union of India*, 1993 LAB I.C. 678 (RAJ), it was observed by Hon'ble Court that a workman employed in a project of temporary nature including civil works like construction of building would be governed by the provisions of Section 25G of the Act. Further in *Food Corporation of India Workers' Union Vs. F.C.I.* - (1993) - I - LLJ - 359 - (CAL) the Hon'ble High Court, Calcutta was also very much pleased to observe that the provisions of Section 25G of the Act providing procedure for retrenchment are not confined to factories only but they apply

with equal force to all industrial establishment of certain magnitudes. In the written statement filed by the company I find that in para-15, it has been admitted on the part of the company that the company is passing through a critical condition and the survival of the company is at stake and there is huge number of surplus man-power and the allegation to the effect of violating of the bi-partite agreement is baseless and there was no scope for giving permanent status of 50% of badli workmen. Thus the company has taken a plea for surplus workmen. As I have seen the workman by Ld. Lawyer for the union that in 2010 as per bipartite agreement the company gave permanency status to the remaining 50% of the badli workmen and the workman Subhendu Biswas has stated the same as a witness both in chief and also as witness in cross-examination and admittedly to controvert this position established by the union the company has not at all adduced any evidence and this version of the workman P.W.-1 is also corroborated fully by avash Munshi (P.W.-2). O.P.W.-1 Shyamal Kr. Biswas who was examined by company to support the stance raised by the company did not come for cross-examination yet as O.P.W.-1 he also admitted that as per agreement which took place in the year 2000 the badli workers were regularised as permanent workers and he also admitted that the company maintains a badli rule for the badli workers and on the basis of existence of said badli rule the badli workers were made permanent phase-wise and O.P.W.-1 also admitted that in the month of 2010 badli workers became permanent in second phase. This O.P.W.-1 further deposed that the workman Subhendu Biswas was not made permanent with the addition that there was a bipartite agreement between the company and the union. It is the admitted position by both sides that as per agreement (Ext. 4), (Ext. C) the badli workmen were to have been made permanent in a fresh manner and as per P.W.-1 and P.W.-2 the first 50% of the badli employees are made permanent as per agreement by 01.04.2000 and the rest 50% were to have been made permanent by 01.04.2000 but the company refused to do that and as a consequence strike call notice was issued by the union but last of all as O.P.W.-1 also admitted in the year 2002 rest 50% of the badli employees were also made permanent but during the time of making permanent of the first 50% of the employees the workman Subhendu Biswas was left out and it has already come in the evidence that this workman Subhendu Biswas happened to be the executive member of the union holding the post of secretary and he was also part of the union which issued the strike call notice and all these only go to establish nothing excepting that the company maintain a grudge for his activities as a executive secretary of the union and for that reason he was left out during the time of making permanent of the first 50% of the badli employees. O.P.W.-2 has tried to raise that the workman Subhendu Biswas was not terminated but he abandoned the service. This O.P.W.-2 did not come before the Tribunal to face cross-examination and therefore valuation of his sole such evidence cannot be given any credence by applying principle of evidence as there is nothing either oral or

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documentary to support such assertion on the part of the company. Going through the cross-examination of P.W.-1 and P.W.- 2 I find that there is also nothing to support that the workman Subhendu Biswas abandoned his service. Therefore assertion of abandonment on the part of workman Subhendu Biswas appears to be imaginary by the company.

In Ram Sahai Patel Vs. M.P. Pollution Control Board (2003)-4-LLJ-863(M.P.), per Arun Mishra (J) similar position arose and it was raised that a badli workman does not come in any category of workman as per act, the Hon'ble Court was very much pleased to observe that even a daily wager is a category of workman, and therefore, the assertion by the Ld. Lawyer for the company as he mentioned in the written statement also that the workman in this case cannot be of any category being badli and having not completed 240 days of work during the year preceding the time of retrenchment is nothing but bogus and does not have any support of law.

As per observation of Hon'ble Court in Kashmira Singh Vs. Haryana State of Electricity Board, 1976 – LAB I.C. 348, the requirement of the application of the principles of 'last come first go' as emphasised in Section 25G of the Industrial Disputes Act, 1947 requires additions to be satisfied that the person claiming protection under Section 25G of the Act should be workman within the meaning of Section 2(s) of the Act, and at the same time he should be a citizen of India, the industrial establishment employing such workmen should be an industry within the meaning of Section 2(j) of the Act, the workman should belong to a particular category workman in that establishment and there should be no agreement between the employer and the workman / union contrary to the procedure of 'last come first go' as also explained by Ld. Lawyer for the workman / union as I mentioned earlier, and going through the cross-examination of P.W.-1 and P.W.-2 who have been examined by union in support of its case I find that Ld. Lawyer for the company has raised nothing touching all these requirement and at the same time the O.P.W.-2 who happened to be the Assistant General Manager of the company also found to be remained silent to say anything against these requirements or to raise any objection as mentioned. At the same time the company also admitted as found in its written statement that there was a huge surplus of man-power and tried to express that they were required to be retrenched but this appears to be simply baseless when the witness of the company O.P.W.-2 himself who happened to be the Assistant General Manager of the company admitted in examination-in-chief itself that in the year 2010 also the rest 50% of the badli employees were made permanent.

It is thus coming out that the union has become able to prove its case by both oral evidence and documentary evidence and most part of the same have become at the same time admitted by O.P.W.-2 who happened to be Assistant General Manager of the company in his examination-in-chief itself even though he did not turn up to face cross-examination. Ld. Lawyer for the company as I mentioned earlier has cited rulings. The first one is 2005-3-SCC-409 and its argument of Ld. Lawyer for the company that in this case the workman being badli and at the

same time having not completed 240 days of work in the year preceding before retrenchment it cannot get any benefit of the act as observed by Hon'ble Court in that case. Going through this ruling I find that the workman in that case was terminated by a specific order on the ground that his services were at all not satisfactory. But in the present case no proceeding against the workman was drawn up by the company and even no allegation against the workman was raised. It is the specific case of the union that he was retrenched by way of refusal. Therefore, the ratio of this cited ruling cannot be applied in this case. Ld. Lawyer also cited another ruling in (2009) – 17 – SCC – 473 and Ld. Lawyer argued that a badli workman is not in a position to get any protection of the Act. Ld. Lawyer for the workman raised that this ruling is not applicable in this case because of its factual position. Going through this ruling it is found that the respondent was appointed as badli contractor and disciplinary enquiry was conducted against him. Thus it was a case of disciplinary action. In the present case there is at all no allegation of disciplinary nature against the workman and Ld. Lawyer for the workman rightly submitted that this cannot be applied in this case. Ld. Lawyer for the company cited another ruling in 2013 – (4) – CHN – (CAL) – 488 and submitted that badli works are required to work in absence of regular employee and are really a casual workman or a probationer without any right to be employed unless he comes within the purview of continuous service, the Ld. Lawyer added that as per observation of Hon'ble Court in that case, workman cannot get any benefit of the Act. Ld. Lawyer for the workman submitted that in the cited ruling the factual position is that the workman became continuous long absent but in the present case there is no allegation against the workman and he worked continuously till he was refused to be taken into employment by the employer. Going through the cited ruling I find that workman was a registered badli and he was given twist job. But after that his name was struck off from the list of badli workman because he became continuous long absentee. As per evidences as I mentioned earlier given by P.W.-1 and P.W.-2, the workman of this case did not become any absentee for long and there is no contrary evidence by the company. Therefore, here lies the difference of factual position and the ratio of this ruling cannot be applied in the present case.

One aspect of the case is that leaving the workman in this case his juniors were made permanent by the company. Ld. Lawyer for the company raised that the workman did not complete 240 days of continuous work as required by law and against this Ld. Lawyer for the workman / union raised that such requirement of completion of 240 days of continuous work is legally baseless. As per observation of Hon'ble Supreme Court in AIR – 2010 – S.C. – 1116, (Harinder Singh Vs. Punjab Warehousing Corporation) that for attracting the applicability of Section 25G of Industrial Disputes Act, 1947 the workman is not required to prove that he had worked for a period of 240 days continuously during 12 calendar months preceding the termination of his service and it is sufficient for him to plead and prove that while effecting

retrenchment the employer violated the rule of 'last come first go' without any tangible reason. In the instant case also as per evidence the company has raised no tangible reason at all for refusing employment to the workman and though it has been raised that the workman himself abandoned the service, it is found to be not supported by any evidence in any way, and the observation of Hon'ble Supreme Court in that case appears to be applicable in this case. Again in Central Bank of India Vs. Gas Sattiyam -1996 – Air – S.C.W 3138 Hon'ble Court was pleased to observe that the distinction in regard to illegality of the order of termination in a case where Section 25F of the Act applies on the one hand and a situation where Section 25G thereof applies on the other and further observed that whereas in a case where section 25F of the Act applies the workman is bound to prove that he had been in continuous service for 240 days during the 12 months preceding the order of termination, in a case where he invokes provision of Section 25G he intended to establish the same. The admission on the part of company as mentioned in para-15 of his written statement that the company is passing through critical condition and there is huge number of surplus man-power and further admission on the part of witness of the company O.P.W.-1 Shyamal Kr. Biswas as Assistant General Manager of the company that the company maintains a badli role for the badli workers and on the basis of that ruling the badli workers were made permanent phase-wise and in the month of November, 2010 some of the remaining badli workers were also made permanent for justifying the invocation of the provisions of Section 25G of Industrial Disputes Act, 1947 and the further deposition of company witness O.P.W.-1 Shyamal Kr. Biswas, an Assistant General Manager of the company that in the month of November, 2010 the remaining badli workers were also made permanent in the second phase and his such admission has rendered some version of para-15 of written statement filed by company that in the absence of availability of vacancy or permanent posts, there does not arise any question of consideration of permanency and further there was no scope for giving permanent status to remaining 50% of workers is nothing but lies. This has at the same time supported the case of union that the workman junior to him were then made permanent leaving the workman without any reason and this specific case raised by union for the workman is found to be admitted by Assistant General Manager of the company O.P.W.-1 Mr. Shyamal Kr. Biswas by mentioning that as per agreement the remaining 50% of the workman were made permanent in 2010 and the name of the workman Subhendu Biswas was left and as a ground it has raised that he abandoned the service which is found, as discussed earlier, baseless and altogether bogus. Before Hon'ble Supreme Court of India in Director, Fishery Second Terminal Division Vs. Vhikubhai Meghajibhai Chavda, AIR – 2010 –S.C. – 1236 the legal effect of making junior permanent in the service leaving the senior was discussed by Hon'ble Court in the way that when the services of some employees junior to the respondent as in that case was continued after the

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respondent as in that case was discharged from his service, then the procedure laid in Section 25G has not been followed. Thus the union has become able to show that by making the juniors to the workman permanent leaving the workman altogether who was discharged by refusal of employment, all illegality has been committed by the company.

The case law cited by Ld. Lawyer for the company as are found to be not applicable in this case after detailed discussion are based on the concept which requires departure from the rule justifying retrenchment but in the pleadings on behalf of the company no matter attracting departure from the rule has been made and no evidences in support of the same otherwise also appeared.

Thus the union has become able to clearly bring sufficient evidences to come to nothing but to only conclusion that as the workman being the executive secretary of the union which issued strike call notice due to violation of bipartite agreement (Ext. 4) on the part of the company, the management of the company maintained grudge against him and then abruptly retrenched him by refusal of employment in violation of law procedure for retrenchment as laid down in Section 25G of the Act and admittedly no case of departure from this rule in this case was pleaded on the part of the company. Therefore, it is to say that the issue No. A in the order of reference is decided in favour of the union and it is held that the termination of service of Sri Subhendu Biswas by the management of M/s. Hindustan Motors Ltd. with effect from 21.05.2007 is unjustified and illegal ab initio.

Issue No. 2:- To what relief, if any, is he entitled?

The case over this issue as raised in the written statement filed by union that the workman Subhendu Biswas happened to be poor person and he has become incomeless immediately he was retrenched from the service by way of refusal of employment. Against this case of the union, the company as raised that in para-19 of its written statement has raised that the workman Subhendu Biswas is gainfully employed elsewhere and he does not have financial crisis. In his argument Ld. Lawyer for the union has raised that the workman is a poor person and due to his retrenchment he has been facing extreme financial crisis as he does not have any other source of income and therefore he should be reinstated with full backwages. Ld. Lawyer for the company in his written argument has stated that the union has failed to prove that the workman has been facing financial crisis and workman himself as a witness has admitted that he is gainfully employed. Going through the cross-examination of P.W.-1 who is the workman Subhendu Biswas himself I find that to a suggestion given to me by Ld. Lawyer for the company that he is employed in another company has been denied by him and there is also no evidence at all by the company to show that workman Subhendu Biswas is employed in any other place. Therefore, I find that the assertion by the company that the workman Subhendu Biswas has been earning

money by employing himself in any other company is baseless. But in this cross-examination the workman as P.W.-1 has admitted he has got earning from his own family.

It has already been proved as discussed and found earlier, that dismissal of workman Subhendu Biswas from his service by way of refusal of employment to him is nothing but found to be a clear case of victimization after resorting to unfair trade practice on the part of the company.

Hon'ble Supreme Court in Swadesamitram Ltd. Vs. workman (1960) – 1 – LLJ – 504 – (SC), Hon'ble Justice Jajendra Gadlar was very much pleased to observed that once it is found that the retrenchment is unjustified and improper, then Tribunal is required to consider the matter of relief that to be given to him with the addition that if a workman is found to be improperly and illegally retrenched, he has entitled to claim reinstatement and the fact that in the meanwhile the employer has engaged other workman would not necessarily deviate the claim of reinstatement of the retrenched workmen, nor can the fact that the protracted litigation in regard to the dispute has inevitably meant delay, deviate such claim of reinstatement. In Om Oil & Oil Seeds Exchange Ltd. Vs. workman, AIR – 1996 – S.C. – 1657 Hon'ble Justice Shah was very much pleased to observe that in such cases as mentioned earlier when retrenchment was not properly made, direction for reinstatement and also an order for payment of remuneration of the period during which the employee remained unemployed may appropriately made. Further in Alok K. Pathak Vs. V.C. Rani Durgawati Vishwa Vidyalaya, (2002) – 3 – LLN – 983 – (M.P.) Hon'ble Court was observed that where certain employees who were senior were terminated retaining junior and found that the termination offended the Section 25G of the Industrial Disputes Act, 1947 as well as Article 14 and 16 of the Constitution, reinstatement is necessary with all benefit.

It has already been established by union that the company resorted to unfair labour practices and maintained a grudge against the workman who happened to be the executive secretary of the union that issued strike notice against the management of the company for violation of bipartite agreement and the company without following the requirement of law suddenly terminated his service by refusing of employment and thus it is established to be nothing but a clear case of victimization and after that juniors to that workman were made permanent. The company has failed to show that the workman had been earning money by employing himself in any other company. The workman further admitted that he did not have any other income excepting his family income. Under such circumstances and having taken the observations of Hon'ble Court as mentioned earlier and having taken the facts and circumstances of the case specially the matter of victimization on the workman by the company including that the others who were junior to him having been permanent as also admitted by O.P.W.-1, which

rendered some of the assertion of company in its written statement as deliberate false, I am of opinion that the workman Subhendu Biswas is required to be reinstated with 80% backwages.

In the summing up it is to say that the evidence, both oral and documentary adduced on behalf of workman are found to be uniform as also mostly admitted by Assistant General Manager of the company as O.P.W.-1 Mr. Shyamal Kr. Biswas, and all these go to prove nothing but excepting with all preponderance of probability that the company in an attempt to victimise the workman for his union activities resorted to unfair labour practices and though the company asserted that it has huge number of surplus workman as found to be false as per evidences of company i.e. O.P.W.-1 Shyamal Kr. Biswas, an Assistant General Manager of the company and gave permanency status to remaining 50% of the employees junior to the workman leaving the workman for no reason and application of Section 25G has become inevitable without any departure in any way as he was retrenched by refusal of employment. It is, therefore,

ORDERED

that this Tribunal is satisfied that order of discharge or dismissal or termination of the workman Sri Subhendu Biswas with effect from 21.05.2007 by way of refusal of employment was not justified and it is declared illegal ab initio and it is hereby set aside and the prayer for workman Subhendu Biswas for immediate reinstatement in the service is allowed by way of entitlement and accordingly the company is directed to reinstate him immediately and also to absorb him as permanent workman and the workman Subhendu Biswas is also entitled to get his back wages with effect from 21.05.2017 till his reinstatement and absorption as permanent workman as directed above and the company is directed to give him 80% of the backwages immediately. There is no order for cost. This is the award of this Tribunal in view of order of reference No. 1084-I.R./IR/10L-20/04 dt. 20.10.2008 by an order of Governor, signed by Mr. A.K. Patra, Deputy Secretary to the Government of West Bengal, Labour Department, I.R. Branch, Writers Buildings, Kolkata – 1. It is also directed that requisite number of copies of this judgement and award be prepared and necessary copies as provided in the rules be sent to appropriate government i.e. the Principal Secretary to the Government of West Bengal, Labour Department, New Secretariat Buildings, 1, Kiran Sankar Roy Road, Kolkata – 1.

Dictated & Corrected by me.

sd/-

Judge

sd/-

(Sribash Chandra Das)

Judge

Second Industrial Tribunal

31.07.2018