

I/28939/2018

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/778/(LC-IR)/IR/11L-28/18

Date : 05.10.2018

**ORDER**

WHEREAS under the Government of West Bengal, Labour Department Order No. 77 – IR/7L-13/97 dated 14.01.1997 the Industrial Dispute between M/s Kelvin Jute Co. Ltd., Talpukur, Titagarh, Dist. – North 24 Parganas and Sri Ashok Kr. Chourasia, H.N. 9, 237, near Railway Gate No. II, A.H. Road, Titagarh, Dist. – North 24 Parganas, Pin - 743188 regarding the issue mentioned in the said order, being a matter specified in the Second Schedule to the Industrial Dispute Act, 1947 (14 of 1947), was referred for adjudication to the Judge, 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/778/1(5)/(LC-IR)

Date : 05.10.2018

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

1. M/s Kelvin Jute Co. Ltd., Talpukur, Titagarh, Dist. – North 24 Parganas.
2. Sri Ashok Kr. Chourasia, H.N. 9, 237, near Railway Gate No. II, A.H. Road, Titagarh, Dist. – North 24 Parganas, Pin - 743188.
3. The Assistant Labour Commissioner, W.B. In-Charge, Labour Gazette.
4. The Labour Commissioner, W.B. New Secretariat 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/778/2(2)/(LC-IR)

Date : 05.10.2018

Copy forwarded for information to :

1. The Judge, Second Industrial Tribunal, West Bengal with reference to his Memo No. 1765- LT dated 28.08.18.
2. The Joint Labour Commissioner (Statistics), West Bengal, 6, Church Lane, Kolkata - 700001.

Deputy Secretary

  
09/10/2018

In the matter of an industrial dispute between M/s. Kelvin Jute Co. Ltd., Talpukur, Titagarh, Dist. – North 24-Parganas and their workman Sri Ashok Kr. Chourasia, H.N. 9, 237, Near Railway Gate No. II, A.H. Road, Titagarh, North 24-parganas, Pin-743188.

(Case No. VIII-20/1997)

BEFORE THE SECOND INDUSTRIAL TRIBUNAL: WEST BENGAL

PRESENT

SHRI SRIBASH CHANDRA DAS, JUDGE,

SECOND INDUSTRIAL TRIBUNAL, KOLKATA

Date of passing award –17.08.2018

A W A R D



The instant case arose out of an order of reference vide G.O. No. 77-I.R./IR/7L/13/97 dt. 14.01.1997 by which an industrial dispute between M/s. Kelvin Jute Co. Ltd., Talpukur, Titagarh, Dist. – North 24-Parganas and their workman Sri Ashok Kr. Chourasia, H.N. 9, 237, Near Railway Gate No. II, A.H. Road, Titagarh, North 24-parganas, Pin-743188 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 Ashok Kr. Chourasia is justified?
- 2) To what relief, if any, is he entitled?

It is a case of 1997 and this case arose out of an order of reference dt. 14.01.1997. Going through the case record I find that on 09.06.1997 Ld. Lawyer for the workman filed one petition U/s. 15(2)(b) of the West Bengal Industrial Disputes (2<sup>nd</sup> Amendment) Act, 1980 praying for grant of interim relief, and this petition came up for hearing on contested basis and order on this petition was passed by order No. 189 dt. 28.08.2009 and by that order that petition filed by Ld. Lawyer for the workman for grant of interim relief dt. 09.06.1997 was rejected on contest. It further appears that due to rejection of this interim relief petition dt. 09.06.1997 on contest, the workman, being aggrieved challenged this order of rejection of interim relief by filing a writ petition before Hon'ble High Court, Calcutta, being W.P. No. 17406(W)/2009 and this writ petition came up for hearing before Hon'ble Mr. Justice Girish Ch. Gupta and by order dt. 21.10.2009 his Lordship was very much pleased to stay the operation of the order in question i.e. order

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No. 189 dt. 28.08.2009. (Here one thing is required to be mentioned, in the writ petition as mentioned above it is stated that the order in question was passed by Ld. 5<sup>th</sup> Industrial Tribunal in this case but perhaps by mistake due to inadvertence, it would be Second Industrial Tribunal instead of Fifth Industrial Tribunal and as none of the parties raised any question on this mistake, it is to be read as Second Industrial Tribunal.)

The stay as mentioned above granted by Hon'ble Mr. Justice Girish Ch. Gupta of Calcutta High Court on 21.10.2009 continued till 15.05.2018 when the matter in the writ petition came up for disposal before Hon'ble Mr. Justice Raj Sekhar Manta of High Court, Calcutta as his lordship was pleased to order that the concerned Tribunal, West Bengal shall proceed to finally adjudicate the case and dispose of the same in accordance with the law as expeditiously as possible and not later than 45 days from the communication of a copy of order with further clarification that interim order is only an interlocutory order and the same shall be finally decided along with the main reference. The judgement and order passed by Hon'ble Justice Raj Shekhar Manta was communicated to this Tribunal on 25.05.2018 and accordingly sufficient endeavour has been given to dispose of this case within the time fixed by Hon'ble Court.

As I already mentioned this case arose by way of order of reference No. 77-I.R./IR/7L-13/96 dt. 14.01.1997 by order of the Governor signed by S.R. Chakraborty, Assistant Secretary to the Government of West Bengal, Labour Department in the way that as an industrial dispute exists between M/s. Kelvin Jute Company Ltd., Talpukur, Titagarh, Dist. (N) 24- Parganas and their workman Sri Ashok Kr. Chourasia, H.N. 9, 237, near Railway Gate No. 2, A.H. Road, Titagarh, (N) 24-Paraganas 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, and as it was felt expedient that the said dispute should be referred to an Industrial Tribunal constituted U/s. 7A of the Industrial Disputes Act, 1947, and then, therefore, in exercise of the power conferred by Section 10 read with 2A of the Industrial Disputes Act, 1947. the Governor was pleased to by this order to refer the dispute to this Second Industrial Tribunal stated to be constituted under notification No. 808-I.R./IR/3A-2/57 dt. 11.03.1957 for adjudication requiring this Tribunal to submit its award to the State Government within a period of three months from the date of receipt of 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. The issues that have been framed in that order of reference are,

- 1) whether the termination of service of Sri Ashok Kr. Chourasia is justified, and
- 2) to what other relief, if any, is he entitled.

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After receipt of the order of reference summons were issued to both parties, who then entered into appearance engaging lawyer. I find that workman Ashok Kr. Chourasia filed written statement on 07.08.1997 alongwith list of documents and the company M/s. Kelvin Jute Co. Ltd. filed written statement on 13.11.1997. But on 07.08.1997 Ld. Lawyer for the workman Sri Ashok Kr. Chourasia filed one Petition u/s. 15(2)(b) of the West Bengal Industrial Disputes Rule, (Second Amendment) Act, 1980 praying for grant of interim relief to him and disposing of this interim relief petition order was passed on 28.08.2009 and being aggrieved the workman Ashok Kr. Chourasia preferred the writ petition challenging the order of interim relief petition before Hon'ble High Court, Calcutta as I mentioned earlier.

This specific case as found from the written statement filed by workman Ashok Kr. Chourasia appears to be that the Kelvin Jute Co. Ltd. is a prosperous jute goods manufacturing concern having its factory at Titagarh Park Road under Police Station Titagarh in (N) 24- parganas having its registered office at 6, Old Post Office Street, Calcutta-700001 and it is stated to be a profit earning business concern. It is next stated the workman was appointed by the company with effect from 11.04.1991 as a supervisor trainee on a monthly salary of Rs. 600/- as per letter dt. 16.04.1991 and after joining the company the workman had been serving the company loyally, faithfully, efficiently and there was no adverse report against him during the tenure of his service. It is also stated that the workman was issued identity card of E.S.I Corporation bearing No. 41-317-12 dt. 19.08.1991 and he was also accepted as a member of contributive provident fund in October, 1991. It is next stated that the management of the company then prepared pay slip for 34 days in October 1991 showing gross salary of Rs. 680/-, out of which Rs. 49.00 for P.F., Rs. 15.30/- for E.S.I., Rs. 8/- for F.P., Rs.2/- for P. Tax, totally amounting to Rs. 74.30/- was deducted. It is next stated that the mill manager of the company was so pleased with his sincerity, energetic effort and hard working in his service that he (mill manager) accepted him a supervisor with effect from 16.04.1991 and issued him a certificate on 25.01.1994 wishing him success in his life. It is also stated in the written statement by the workman that though he was designated as supervisor trainee in the appointment letter but he used to work as a supervisor from the date of his joining and he was supposed to be paid Rs. 800/- per month at the time of his joining but he was surprisingly used to be paid Rs. 600/- per month and his salary was enhanced on and from 1992. It is next stated that on and from 1994 the workman used to be paid his salary by the company on voucher and for that reason the workman protested against the company and the management of the company as a result became annoyed and as a result in the month of March, 1994 the name of the workman was struck off from muster role of

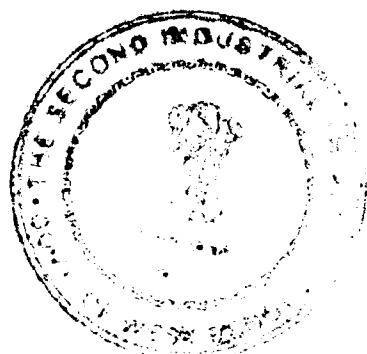
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the company, but the workman then wanted to know the reason for striking off his name from muster role but the company remained silent and then the workman again protested and gave a letter to the company on 01.04.1995 to that effect. But the workman did not get any reply from the company and then he gave a letter to the Assistant Labour Commissioner, Government of West Bengal, 1, K.S. Roy Road, Kolkata - 1 on 29.05.1995 for intervention in the matter and on the basis of this letter of the workman, Assistant Labour Commissioner, Government of West Bengal issued a letter to the company having Memo No. 13/45/1/96/DLC dt. 03.01.1996 and then management of the company also made a reply to the Assistant Labour Commissioner by sending a letter on 15.02.1996 with a copy to the workman. It is next stated that the workman then submitted details statement by sending a letter to the Deputy Labour Commissioner, Barrackpore on 11.03.1996. It is next stated in the written statement by the workman that the manner in which his service was terminated by the company is an instance of unfair labour practice, mala fide colourable exercise of power. The workman has next stated that his service was illegally terminated in spite of his discharging duties up to the satisfaction of the management and in spite of his clear, meritorious, sincere and faithfully discharging of his duties continuously for more than three years. It is next stated that the after such illegal termination of his service the workman has become unemployed and as a consequence he has been facing economic distress and also facing difficulties in maintaining himself and his family members and living under the charity of others. It is also stated that the workman requested the owner of the company again to take him back in his service but he got no response and then after receiving his letter, the Labour Commissioner, Government of West Bengal a conciliation effort was made by him but due to non-cooperation of the management of the company, nothing resulted from the conciliation and only then the order of reference was sent to this Tribunal. It is also stated that the termination of his service by the company is illegal, arbitrary, wrongful and mala fide and in violation of principle of natural justice and it has been prayed to answer the issues in favour of the workman.

In the written statement filed by the management of the company it has been stated that the workman Ashok Kr. Chourasia was engaged in the company as a trainee supervisor since 1991 and for that reason the workman does not come under the definition of workman as per law u/s. 2(s) of the Industrial Disputes Act, 1947 and for that reason the reference is not maintainable. It is next stated that workman Ashok Kr. Chourasia has not at all worked continuously in the company and as trainee supervisor he worked for 16 days in April, 31 days in May, 30 days in June, 30 days in July, 23 days in

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August, nil days in September, 23 days in October, nil days in November, 31 days in December, totally-ing 183 days in 1991, 22 days in January, nil days in February, nil days from February to December, totally-ing 22 days in the year 1992, 31 days in January, nil days from February to June, 31 days in July, 31 days in August, 13 days in September, nil days from the month of October to December totally-ing 103 days in 1993, and 30 days in April, 23 days in May, 6 days in June totally-ing 59 days in 1994, and thus the company asserted that the workman did not work continuously in none of the years mentioned by him in the written statement. It is next stated by the company in the written statement that the workman is not in continuous service during the 12 calender months and thereby before his alleged termination he had not worked for 240 days and for that reason law u/s.25B and also u/s. 25F of the Industrial Disputes Ac, 1947 is not attracted, with the addition that as the workman was engaged as a trainee and had worked in a phased manner without any continuous service within 12 calender months and after being unsuccessful and dissatisfied, the workman left the traineeship of his own on and from 07.06.1994 and also raised that as he did not complete continuous working of 240 days, provisions of Section 25F of the Industrial Disputes Act, 1947 is not attracted. It is next stated by the company that the workman was engaged as supervisor trainee in 1991 and referring the number of days he worked as mentioned earlier the company stated that the workman worked in standard quality control department of the company as trainee and thereafter he was further engaged as a trainee in the batching department of the company and in 1994 he worked in finishing department of the company and he was unsuccessful and being dissatisfied, the workman left the company without any intimation on and from 07.06.1994. Denying the allegations made in the written statement filed by workman and also denying that the company has its registered office as mentioned in the written statement filed by workman, it is stated in the written statement filed by the company that the company is a sick industrial company recognized by the Board for Industrial and Financial Re-construction and it is under rehabilitation process as per BIFR scheme and it is also mentioned in the balance-sheet of the company and the workman has mentioned all these in his written statement falsely and motivatedly and all these requires strict proof. Denying the allegations made in paragraph no. 6 & 7 of the written statement filed by the workman, it has been stated by the company that the assertion by the workman that he had been working in the company as a supervisor till June 1994 from 1991 is not correct but he worked in the capacity of trainee supervisor with a stipend of Rs. 600/- and then on the persuasion of workman this stipend was increased by Rs. 200/- as extra. Denying the assertions of the workman in paragraph-8 of the written statement by him that he would get salary or Rs. 800/- per month, company

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stated that it was stipend of Rs. 800/- and the company has also denied striking off the name of the workman from March, 1994. Further denying the assertions made in paragraph-9, 10 & 11 of written statement filed by the workman, the company urged for strict proof of all these and also denying contention of paragraph-12 & 13 by workman in his written statement, the company asserted that there was no practice of unfair labour practice, mala fideness and colourable exercise of powers on the part of the company and the workman never raised any dispute after his disengagement and for that reason there cannot be any industrial dispute and the reference is not maintainable. In respect of para-14 & 15 by the workman in his written statement, the company asserted that the company is incorporated as a company under Company's Act and it is not a firm so as to have any proprietor. Without admitting the contents of para-16 of the written statement filed by workman and with reference to allegations made in para-17 to para-22 of the written statement filed by the workman, the company has asserted in his written statement that these are all matters of records with the addition that it is not a case of illegal termination deserving any relief as wanted by the workman.

As I mentioned earlier order arising out of filing of petition U/s. 15(2)(b) of the West Bengal Industrial Disputes (2<sup>nd</sup> Amendment) act, 1980 filed on behalf of workman for grant of interim relief was passed on 28.08.2009 after contested hearing and by that order the petition filed by workman for grant of interim relief was rejected, and being aggrieved the workman challenged the order rejecting interim relief by filing writ petition, W.P. No. 17406(W)/2009 and as per order of Hon'ble Mr. Justice Girish Ch. Gupta dt. 21.10.2009 the operation of the order rejecting interim relief was stayed, and thus the further proceeding of this case remained stayed and this stay of the operation of the order as mentioned continued till 15.05.2018 when the above-mentioned writ matter was disposed of finally by Hon'ble Mr. Justice Raj Shekhar Manta holding in the way that this Tribunal shall proceed to finally adjudicate the aforesaid case and dispose of the same in accordance with the law as expeditiously as possible and not later than 45 days from the communication of a copy of this order with clarification in the way that the interim order is only an interlocutory order and the same shall be finally decided along with the main reference. From the case record I find that Ld. Lawyer for the workman filed the judgement dt. 15.05.2018 delivered by Hon'ble Mr. Justice Raj Shekhar Manta in the above-mentioned writ petition before this Tribunal on 25.05.2018 as indicated in order No. 268 dt. 25.05.2018 and Ld. Lawyer for the workman then urged the Tribunal to proceed with the case as per observation and direction of Hon'ble High Court, Calcutta as mentioned in the judgement. Order No. 268 dt. 25.05.2018 shows that on that day the company remained absent without any step and on behalf of the company none also

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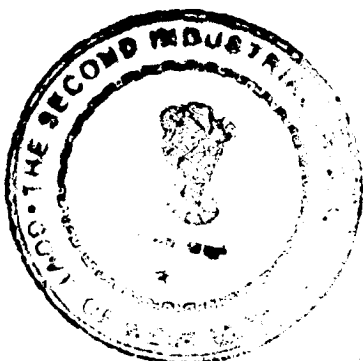


appeared to move, and then in view of the observation and direction of Hon'ble Court as mentioned, 12.06.2018 was fixed for hearing of the case on merit with a further direction to send a copy of the judgement and order of Hon'ble Mr. Justice Raj Shekhar Manta requiring the management of the company to do the needful accordingly. The record further shows that after getting the copy of judgement as per order of this Tribunal dt. 25.05.2018 the company appeared engaging Ld. Lawyer and accordingly evidences on merit commenced on and from 26.05.2018.

The case record shows that during the stage of adducing evidences on merit workman Ashok Kr. Chourasia examined himself as P.W.-1 and he was also fully cross-examined by Ld. Lawyer for the company and on behalf of workman no other witness was examined. The Ld. Lawyer for the workman also adduced documentary evidences which are,

- 1) letter dt. 16.04.99 addressed to Ashok Kr. Chourasia, H. No. 237, Near of Rly. Gate No. 11, A.H. Road, P.O. Titagarh, Pin- 743188 issued by chief executive of the company M/s. Kelvin Jute Co. Ltd. (Ext. 1)
- 2) certificate dt. 25.01.1994 issued by mill manager of the company M/s. Kelvin Jute Co. Ltd. certifying Sri Ashok Kr. Chourasia, son of Sri Ram Prasad Chourasia etc. as mentioned in the certificate (Ext. 2)
- 3) a medical prescription prescribing medicines like capsule Tetracycline etc. mentioning the name of patient as Ashok Kr. Chourasia having No. 41-9922170 issued by medical officer of Government of West Bengal, E.S.I. (MB) Scheme, ticket No. being 265492 dt. 14.11. (ext. 3), along with gate pass dt. 14.01.1993, two nos. of benefit payment slips having insurance no. 1992270 each (Ext. 3 series),
- 4) one letter addressed to M/s. Ranjan Bagging, 8/1D Gurudas Dutta Garden Lane, Calcutta -700067 issued by president(works) of the company M/s. Kelvin Jute Co. Ltd. having contention – 'we do hereby authorise Sri Ashok Kr. Chourasia to collect 40 bundles of B. Twill bags from you on our behalf. His signature is attested below' along with signature of Ashok Kr. Chourasia (Ext. 4),
- 5) one letter dt. 18.04.1994 addressed to M/s. Bengal Swastic Enterprises, 4, K.B.M. Road, Champdani, P.O. Baidyabati, Dist. Hooghly issued by Kelvin Jute Co. Ltd. having contention 'we do hereby authorise Sri Ashok Kr. Chourasia to collect following bags and twine from you on our behalf and his signature is attested, with further particulars B.Twill Bags 6 X 7, 44 X 26-1.2

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- = 4549 Bags, A. Twill 8 X 9, 44 X26-1/2 = 497 Bags, Sewing Twine = 772 Kgs. and it also contains signature of Ashok Kr. Chourasia (Ext. 5),
- 6) one letter dt. 01.04.1995 addressed to the president of works, Sri Durga Prasad Nathani, The Kelvin Jute Co. Ltd. etc. Calcutta – 1 by Ashok Kr. Chourasia having reference as illegal termination of service etc. (Ext. 6),
  - 7) E.S.I. Corporation I.D. Card in the name of Ashok Kr. Chourasia (Ext. 7),
  - 8) Salary slip of January, 1992 having name Ashok Kr. Chourasia (Ext. 8),
  - 9) Salary slip for October, 1991 having name Ashok Kr. Chourasia (Ext. 9)
  - 10) One order showing name of Ashok Kr. Chourasia as complainant dt. 25.09.2007 passed by regional P.F. Commissioner II, along-with a letter addressed to Mr. Jaideep Chakraborty, R.P.F. Commissioner to Titagarh, Kolkata -119 by S.K. Natani, member, committee of management, M/s. Kelvin Jute Co. Ltd., further with a letter addressed to Ashok Kr. Chourasia by Assistant Provident Fund Commissioner, Barrackpore dt. 27.05.2008, also with one letter addressed to Secretary (BOT), Titagarh and also to the General Manager (P&A), Titagarh by Regional P.F. Commissioner I, Barrackpore dt. 19.11.2017 along-with a further letter addressed to The Secretary (BOT), Kelvin Jute Co. Ltd. Workers' Provident Fund, Titagarh and also addressed to The General Manager (P&A), Trend Vyapaar Ltd. dt. 28.02.2018 by Assistant P.F. Commissioner, Barrackpore with a further letter addressed to Ashok Kr. Chourasia, Secretary, Bengal Chatkal Majdoor Morcha (WB), Kolkata by Regional P.F. Commissioner dt. 27.03.2018 (Ext. 10 collectively)

The case record shows that during the stage of hearing of the case on merit after the evidences on behalf of workman were closed, no fresh evidence by the company was adduced. Order No. 276 dt. 02.07.2018 shows that on that day Ld. Lawyer for the company filed one petition to treat the evidences adduced by workman Ashok Kr. Chourasia as P.W.-1 during the hearing of the case for disposing of the interim relief prayer petition U/s. 15(2)(b) of West Bengal Industrial Disputes (2<sup>nd</sup> Amendment) Act, 1980 as evidences on behalf of the company on merit and after hearing both sides it was allowed, further from order No. 273 dt. 04.07.2018 it is coming out that on that day also Ld. Lawyer for the company filed one petition to treat the entire evidence as was given by one Mr. Anjan Kr. Kar on behalf of company during the stage of hearing of petition U/s. 15(2)(b) of West Bengal Industrial Disputes (2<sup>nd</sup> Amendment) Act, 1980 as O.P.W.-1 on 31.07.2008 and Ld. Lawyer for the workman raised objection against him but after hearing both sides it was allowed and accordingly evidences of Anjan Kr. Kar as O.P.W.-1 on behalf of company on 31.07.2008 was allowed to be treated as evidences on merit

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on behalf of company and it was specially done so due to observation of Hon'ble Mr. Justice Raj Shekhar Manta, High Court, Calcutta in finally disposing of the W.P. No.17406(W)/2009 dt. 15.05.2018 in the way that it is further clarified that the interim order is only an interlocutory order and the same shall be finally decided along-with the main reference.

Thus, it is coming out that excepting the adopting of evidences by the company as mentioned earlier the company had not adduced any evidence either orally or by way of documents or otherwise. Going through the case record I find that on 13.11.1997 Ld. Lawyer for the company filed a list of documents such as attendance-sheets maintained by the company in respect of workman Ashok Kr. Chourasia and payment vouchers of the company for Ashok Kr. Chourasia only mentioning that the company would rely all these documents during the time of hearing but I find that the company did not either at the time of disposal of the interim relief petition U/s. 15(2)(b) of West Bengal Industrial Disputes (2<sup>nd</sup> Amendment) Act, 1980 or during the time of hearing of the case on merit as per direction of Hon'ble High Court, Calcutta adduce any evidence.

#### Decision with reasons

As per order of reference there are only two issues, as I mentioned earlier the first one is whether the termination of Sri Ashok Kr. Chourasia is justified or not and the other one is to what relief, if any, is he entitled. By order no. 189 dt. 28.08.2009 interim relief petition U/s. 15(2)(b) of West Bengal Industrial Disputes (2<sup>nd</sup> Amendment) Act, 1980 was disposed of and by that order the petition U/s. 15(2)(b) of West Bengal Industrial Disputes (2<sup>nd</sup> Amendment) Act, 1980 was rejected on contest, and as I mentioned earlier also, the workman challenged the legality of this order by filing W.P. No. 17406(W)/2009 and though the operation of the order was initially stayed by Hon'ble Mr. Justice Girish Gupta of Hon'ble Calcutta High Court, it was finally disposed of on 15.05.2018 by Hon'ble Mr. Justice Raj Shekhar Manta with the observation and clarification that the interim order is only an interlocutory order and the same shall be finally decided by this Tribunal along-with the main reference. Therefore, the issue No. 1 relating to whether the termination of Sri Ashok Kr. Chourasia is justified or not is to be considered with the above observation and clarification of Hon'ble Mr. Justice Raj Shekhar Manta dt. 15.05.2018 as also mentioned earlier.

Now the issue No. 1 as per order of reference is to be decided accordingly.

Therefore, the entire matter relating to the disposal of the petition U/s. 15(2)(b) of West Bengal Industrial Disputes (2<sup>nd</sup> Amendment) Act, 1980 is to be seen in details. In the petition U/s. 15(2)(b) of West Bengal Industrial Disputes (2<sup>nd</sup> Amendment) Act,

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1980. This interim relief petition was filed on 09.06.1997 on behalf of workman wherein it was stated that the workman was terminated from service on and from March, 1994. The last wages drawn by the workman was Rs. 800/- per month and the workman in spite of his best efforts could not secure any other employment and he is still unemployed. Order for interim relief is required for the subsistence of the workman as well as meeting legal expenses, and these are the main grounds for prayer for interim relief. This interim relief petition was contested on behalf of workman by filing written objection mentioning mainly that the workman was engaged in the company as trainee supervisor in 1991 and for that reason he cannot be treated as a workman U/s. 2(s) of the Industrial Disputes Act, 1947 and his such prayer cannot be adjudicated for want of jurisdiction. It is also stated that provisions of Section 25B(1) and (2)(a) of the Industrial Disputes Act is not attracted and as he was a trainee supervisor, question of his termination did not arise with the addition that the workman himself abandoned his trainee-ship. It is also stated by the company in objection that as a trainee supervisor, the workman would get Rs. 600/- per month as stipend though sometimes he used to be given Rs. 200/- extra but it was not a salary. It is also stated by company in the objection that there is no prima facie case in support of his interim relief petition and the interim relief petition was liable to be rejected.

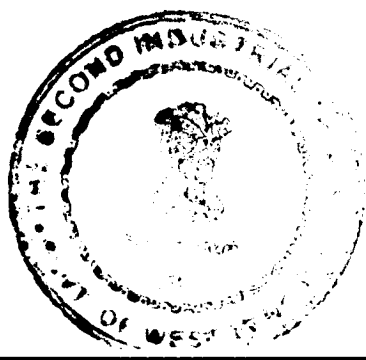
During hearing of the interim relief petition U/s. 15(2)(b) of West Bengal Industrial Disputes (2<sup>nd</sup> Amendment) Act, 1980 as indicated in order No. 181 dt. 28.08.2009 by which the above-mentioned petition was disposed of, it is found that on behalf of the workman / applicant it was raised that he was terminated from service w.e.f. March, 1994 and then the workman raised the dispute before the management of the company but as company did nothing the case came to this Tribunal by way of order of reference for adjudication. It was also raised that the workman could not effort to get any other job to maintain the livelihood and to support his livelihood the interim order was required and it was also necessary for him to meet legal expenses for further proceeding in this case. It was also raised that the application for interim relief was within the jurisdiction of the law U/s. 15(2)(b) of West Bengal Industrial Disputes (2<sup>nd</sup> Amendment) Act, 1980. It was also urged on behalf of the workman that interim relief should be paid from the month of March, 1994. It is also found that during hearing at that time the company raised that applicant / employee was appointed in the Jute mill of this company in the year 1991 as trainee supervisor and this designation of trainee supervisor does not come within the scope of definition of workman U/s. 2(s) of the Industrial Disputes Act, 1947, and for that reason the order of reference by the appropriate government is not maintainable and question of granting interim relief to the workman did not arise. The

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company also raised that due to legal technicalities as raised by the company, the interim relief petition itself ought not to have come for hearing in any way. The company also raised during that time that he worked as a trainee supervisor and he would be given stipend of @ Rs. 600/- initially and after that it was raised to Rs. 800/-. It is also found that during that time the company also raised that the workman never completed continuous service for 240 days and prior to the completion of training period he left the company by himself and for all these reasons the interim relief petition of the workman was required to be rejected. It is found that the order disposing of the interim relief petition was passed by the then Ld. Judge Mr. S.B. Mitra and from the order it is found that Ld. Judge Mr. Mitra observed that the appointment letter of the workman was marked Ext. 1 and as per that letter of appointment (Ext. 1), the workman was appointed as supervisor trainee. Ld. Judge quoting the deposition of workman as P.W.-1 at that time also observed that the workman was appointed and the appointment letter was received by him on 16.04.991 but it was actually effected from 11.04.1991 with the addition that in the appointment letter there was no mentioning of tenure of service of workman as supervisor trainee and the workman was not made permanent in his service with further addition that no exact date of month of March, was stated. Referring the deposition of workman as P.W.-1 at that time Ld. Judge Mr. Mitra observed that no exact date of termination of the workman was mentioned in any document, and the workman used to be given salary on vouchers and after his termination from service, he could not get any employment and he was depending on charity of friends. Ld. Judge Mr. Mitra referring the deposition of workman (P.W.-1) also observed that the workman did not explain the nature of duty he used to perform as serviceman at that time in the company and the workman either in his petition for interim relief or in his written statement did not mention and explain the nature of work / duty that used to be given to him by the company and also observed that workman did not mention the exact date of termination from his service and he also did not mention the same in his protest letter after the terminating. Referring the evidence of O.P.W.-1 as was examined at that time on behalf of company, Ld. Judge Mr. Mitra observed that O.P.W.-1 was at that time a personnel manager in the company and O.P.W.-1 would also know the workman working in the company as trainee supervisor and Ld. Judge also observed that the workman worked in the company from 1991 to 1994 and there was also no record in the company to show that he was promoted from trainee supervisor to supervisor. Ld. Judge also observed that the company was sick company as per order under BIFR and describing the nature of deposition of O.P.W.-1 Ld. Judge Mr. Mitra observed that O.P.W.-1 could not say if any sort of pay slip was given to the workman after payment of salary but the workman was a

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member of ESI with further addition that O.P.W.-1 never denied that applicant was never terminated from service from the post of supervisor.

The Ld. Judge Mr. Mitra dealt with documentary evidences and regarding Ext. 2 Ld. Judge observed that it is a certificate issued by mill manager of the company in favour of the workman describing the workman as supervisor in SQC department of the company on and from 16.04.1991 and over this document Ld. Judge Mr. Mitra stated in the order that in the absence of any letter regarding promotion of the workman by the company, such letter / certificate (Ext. 2) issued by mill manager of the company cannot be accepted but in this regard while rejecting the certificate (Ext. 2) Ld. Judge did not mention any argument over this document made by Ld. Lawyers of either side. It is further found that regarding ESI papers (Ext. 3 series) Ld. Judge Mr. Mitra observed that with the help of those documents (Ext. 3 series) the workman cannot come within the definition of Section 2(s) of the Industrial Disputes Act, 1947. Regarding documents (Ext. 4 and Ext. 5) which are letters authorising the workman who receives some materials by the company, the Ld. Judge observed that such letters does not have any relevancy. Ld. Judge Mr. Mitra quoting the averment in the pleading of workman that he was transferred to batching department with enhanced salary @ Rs. 800/- per month observed that there was not document by the workman to show his promotion and Ld. Judge rejected this matter of assertion by the workman regarding his promotion. It is further found that at that time during his argument Ld. Lawyer for the workman urged the Tribunal that the workman became able to prove a prima facie case with his evidences and against that argument as I find from the order in question Ld. Lawyer for the company raised that the workman did not speak about the nature of duty performed by the workman in the company and for that reason he could not be given any interim relief and also cited one ruling

in 2000(2) – CLR – 593 observing by Hon'ble Court in that case that trainee cannot come within the domain of Industrial Disputes Act, 1947, Ld. Judge came to a finding that the ruling cited by Ld. Lawyer for the company was acceptable and came to conclusion that the workman failed to prove any prima facie case and rejected the application for grant of interim relief as was prayed by the workman U/s. 15(2)(b) of West Bengal Industrial Disputes (2<sup>nd</sup> Amendment) Act, 1980. After that the case was fixed for evidence on merit and being aggrieved the workman filed the writ before Hon'ble High Court, Calcutta and Hon'ble Mr. Justice Girish Gupta was very much pleased to grant stay of the operation of the order passed by Ld. Judge Mr. Mitra and this stay continued till 25.05.2018 as I also mentioned earlier.

The above-mentioned matter of writ has been finally decided by Hon'ble Mr.

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Justice Raj Shekhar Manta of Hon'ble High Court, Calcutta and on the above order passed by Ld. Judge Mr. Mitra rejecting the application U/s. 15(2)(b) of West Bengal Industrial Disputes (2<sup>nd</sup> Amendment) Act, 1980 praying for interim relief by the workman, Hon'ble Justice was very much pleased to observe and clarify that the order passed by Ld. Mr. Mitra regarding interim relief is only an interlocutory order and further observed that the same shall be finally decided along with the main reference.

Now I come to the issue which is issue No. 1 as mentioned in the order of reference vis. a vis. the order of Ld. Judge Mr. Mitra rejecting the prayer for interim relief as mentioned earlier. From the written statement filed by both sides, specific case raised by each of them has already been seen. For the purpose of recapitulation, it appears that these are required to be mentioned in brief. As specific case the workman has stated that he was appointed by the company w.e.f. 11.04.1991 as supervisor trainee on a monthly salary of Rs. 600/- as per company's letter dt. 16.04.1991. After joining the company as supervisor trainee, he served the company loyally, faithfully and efficiently without any adverse report by the company against him and he was also given ESI identity card having No. 41-3171-12 dt. 19.08.1991 and he was also accepted as a member of Contributive Provident Fund in October, 1991. In October, 1991 the company gave him pay slip for 34 days showing gross salary of Rs. 680/- deducting Rs. 4900/- of P.F., Rs. 15.30/- for E.S.I., Rs. 8/- for F.P. and Rs. 2/- for P. Tax from that amount. His further case is that the mill manager of the company was very much pleased with his sincerity and hard-work and as a result the mill manager accepted him a supervisor w.e.f. 16.04.1991 and also issued him a certificate on 25.01.1994 to that effect. He has also raised that though he was initially appointed as supervisor trainee as mentioned in the appointment letter, he used to work as supervisor from the date of his joining and as a result he was supposed to be paid salary @ Rs. 800/- per month but he was given salary he was actually given Rs. 600/- per month but it was enhanced from 1992. He has further stated that in 1994 he found that he was being paid salary by the company on voucher, for which he raised protest against the company and the management of the company became annoyed for his such protest and from the month of March, 1994 the company struck off his name from the muster roll of the company, after which he raised protest by sending letters etc. As per written statement the gist of specific case by company is that the management of the company admitted that the workman was appointed as trainee supervisor in the company from 1991 and as he was a trainee supervisor, he does not come within the definition of workman U/s. 2(s) of the Industrial Disputes Act, 1947. The company also raised that the workman did not work continuously and mentioned that he worked 183 days in 1991, 22 days in 1992, 133 days in 1993 and 59 days in 1994, and

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thus he never worked continuously for 240 days in the year preceding the time of alleged termination and provisions of Section 25B / Section 25F of Industrial Disputes Act, 1947 are not attracted. The management of the company further says that the workman was not successful accordingly and he left the company without intimation from 07.06.1994 with the addition that he would never be given any salary but only monthly stipend.

Ld. Lawyer for the company has argued the case at length and Ld. Lawyer has also filed written notes of argument but Ld. Lawyer for the workman only made oral argument without filing any written argument. The entire matter of arguments by both sides will be considered stage by stage along-with discussions of evidences adduced by the parties, both oral and documentary.

The workman Ashok Kr. Chourasia examined himself as P.W.-1 during the hearing of the case on merit on and from 20.06.2018 and it is found that he also examined himself as P.W.-1 during the time of hearing of his petition praying for grant of interim relief U/s. 15(2)(b) of West Bengal Industrial Disputes (2<sup>nd</sup> Amendment) Act, 1980 on and from 07.08.2000. As P.W.-1 the workman Ashok Kr. Chourasia during the hearing of the case on merit deposed that he worked in the company from 11.04.1991 till the month of February, 1994 continuously without any break and in March, 1994 without showing any reason terminated his service. P.W.-1 also deposed that though he was designated as supervisor, he had no authority to act as supervisor and he used to do the job of clerical and manual in nature. P.W.-1 also deposed that he was the member of employee state insurance and also Employees' Provident Fund. P.W.-1 also deposed that the termination of his service by the company w.e.f. March, 1994 was in clear violation of mandatory provision of Industrial Disputes Act, 1947 and he is entitled to get reinstatement with full back-wages with other consequential benefits. P.W.-1 also deposed that he prays for declaration that action of termination is illegal and unjustified. P.W.-1 further deposed that he is a Graduate and after dismissal from service he did not find any work and he is unemployed. During the time of examination of P.W.-1 Ashok Kr. Chourasia his documents which were Ext. 1 to Ext. 8 during the time of interim relief proceeding were marked Ext. 1 to Ext. 9 collectively on merit as per his evidence-in-chief and another document containing 7 pages was marked Ext. 10(series) collectively on the basis of his examination-in-chief. This P.W.-1 Ashok Kr. Chourasia during the time of hearing of the case on merit was cross-examined by Ld. Lawyer for the company at length starting from 20.06.2018 till 04.07.2018 in three phases. In cross-examination P.W.-1 deposed that he had been in the service of the company from 1991 to 1994 before his dismissal. To a question by Ld. Lawyer for the company to the P.W.1 that he abandoned the service,

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P.W.-1 deposed that he did not leave the service but he was illegally terminated and after that he could not afford to find any work. In cross P.W.-1 also deposed that he does not have any order from the company to show that he was illegally terminated by the company. I find that Ld. Lawyer for the company cross-examined this P.W.-1 to ascertain regarding presence of any document in the custody of this P.W.-1 to show that he worked continuously in the company from 11.04.1991 till the month of February, 1994 without any break and P.W.-1 deposed that he does not possess any such document but this document is within the possession of the company. At this stage as I find Ld. Lawyer for the company suggested to the P.W.-1 that he had never been in the continuous service of the company and he himself abandoned his service in the company and the witness P.W.-1 denied it. Ld. Lawyer for the company also suggested to the P.W.-1 that he had been working in the company as a trainee supervisor and not in the capacity of clerical-job-holder in the company and the P.W.-1 denied. Regarding the documents proved on the basis of oral evidence of workman Ashok Kr. Chourasia as P.W.-1, Ld. Lawyer for the company suggested that the contentions of all his documents exhibited are not correct and the P.W.-1 denied it. At this stage as I find Ld. Lawyer for the company put a suggestion to the P.W.-1 raising that whatever he deposed during the time of his examination during hearing of his interim relief petition and contention of his document proved during that time were not correct and the P.W.-1 denied. Ld. Lawyer for the company also suggested to the P.W.-1 that he was not entitled to get any interim relief as he was working in the capacity of trainee supervisor and P.W.-1 denied. To a suggestion by Ld. Lawyer for the company to the P.W.-1 that P.W.-1 has been doing services at present in as many as three companies namely M/s. Empire Jute Mill, M/s. Eastern Manufacturing Ltd. and M/s. Titagarh Jute Mill, P.W.-1 denied it and I find that to this suggestion by Ld. Lawyer for the company, Ld. Lawyer for the workman raised objection as found in the deposition.

As per prayer by Ld. Lawyer for the company, the evidences that came out in the cross-examination of workman Ashok Kr. Chourasia as P.W.-1 during the time of consideration of his interim relief prayer U/s. 15(2)(b) of West Bengal Industrial Disputes (2<sup>nd</sup> Amendment) Act, 1980 and also the evidences of O.P.W.-1 Mr. Anjan Kr. Kar who happened to be the personnel manager of the company were adopted as per prayer by Ld. Lawyer for the company. I find that workman Ashok Kr. Chourasia at that time was examined on and from 07.08.2000 to 19.03.2008 which goes to show that he was subjected to examination for as long as 8 years, and at that time he deposed that he joined the company on 11.04.1991 as a trainee supervisor in S.Q.C. department of the company as per appointment letter dt. 16.04.1991 issued by the company and the appointment letter was marked Ext. 1 without any objection, he also deposed to clarify that he had been

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verbally directed to resume duty and accordingly he joined the service of the company by order of the competent authority of the company to assured him that his appointment letter would follow and according he received the appointment letter from the company on 16.04.1991. He also deposed that though he was appointed as supervisor trainee, he had to perform various kinds or works in the company including works of technical nature. P.W.-1 also then (07.12.2001) deposed that as per his appointment letter, he was appointed as a supervisor trainee but how long he would remain a supervisor trainee in the service was not mentioned in his appointment letter and there was also no note in the appointment letter as to how long he would have to work as a supervisor trainee and also as to when his service would be treated permanent in nature. At that time, he (P.W.-1) also deposed that the mill manager of the company has given him a certificate mentioning his sincerity and diligency in discharging his duties towards the company as per terms of employment and at that time the certificate of the mill manager of the company given to the workman (P.W.-1) was produced, it is found to be dt. 25.01.1994, P.W.-1 also deposed that he produced certificate of the mill manager of the company M/s. Kelvin Jute Co. Ltd. from his custody mentioning that it was prepared by the company and it was given to him while he was in service in the company and P.W.-1 also deposed that he is well acquainted with the signature of the mill manager on the certificate dt. 25.01.994 and then it was marked Ext. 2. From the marking in the deposition it is found that Ld. Lawyer for the company raised objection against the marking of the certificate (Ext.2). Here one thing is required to be mentioned that at that time Ld. Judge Mr. K.K. Chatterjee and at the stage of examination up to marking of Ext. 2, hot altercations started between lawyers of both sides and Ld. Mr. K. K. Chatterjee (Judge) suo moto adjourned the case. Then (10.02.2003) P.W.-1 also deposed and produced documents describing them to be prescriptions of E.S.I. benefit scheme and these were marked Ext. 3(series) and formal proof dispensed with, and two letters of the company M/s. Kelvin Jute Co. Ltd. dt. 13.04.1994 addressed to Mr. Ranjan Bagging and another letter dt. 18.04.1994 written by company M/s. Kelvin Jute Co. Ltd. addressed to M/s. Bengal Swistik Enterprises were marked Ext. 4 and Ext. 5 respectively. Then (10.02.2003) P.W.-1 also deposed that being satisfied by his work as supervisor trainee the company enhanced his salary from Rs. 600/- to Rs. 800/- per month and though he was previously / initially had been working in SQC Department of the company as trainee supervisor, he was subsequently transferred to batching department of the company with the designation as supervisor along with the enhancement of salary as he stated. P.W.-1 also deposed that he was terminated from the service from the month of March, 1994 and then he protested and produced a protest letter dt. 01.04.1995 deposing that he submitted this letter to the

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president of the works of the company Sri Durga Prasad of Kelvin Jute Co. Ltd., the letter is dt. 01.04.1995 having 2 pages and it was marked Ext. 6 but after that the company never sent any letter mentioning anything. Then P.W.-1 Also deposed that the company neither issued any show cause notice to him or charge-sheet nor any domestic enquiry was held against him at the behest of the company and he was a member of E.S.I. and also produced E.S.I. Identity Card and it was marked Ext. 7. P.W.-1 also deposed that he was working in the finishing department of the company and he would also be sent by the company on tour for purpose of company. Then (07.02.2008) P.W.-1 also deposed that he was not working as a supervisor and he used to work and did his job by applying his own hand and no worker was working under his control during his service in the company. P.W.-1 also deposed that his last drawn salary was Rs. 800/- per month and also produced the salary slip for the month of January, 1992 and it was marked Ext. 2. Then P.W.-1 deposed that prior to his termination from service he had to draw salary on the basis of voucher by putting his signature on a register on revenue stamp and also deposed that after termination he did not get any job and he is a bachelor and depends on charity of friends and for that reason he prayed for interim relief. This is the entire examination-in-chief of this P.W.-1 then and I find that he was subjected to cross-examination at that time from 07.02.2008. During cross-examination then Ld. Lawyer for the company wanted to know from the P.W.-1 about issuance of letter by the company to show that he was promoted to supervisor from the post of supervisor trainee and P.W.-1 replied that there was no such letter by the company to him. In cross he also stated that he would do his work / job in the company by his own hands and he had to work in different departments such as SQC department on demand by the company and he would not be given any HRA / DA and would be given to other workers and as per his salary slip he would be given salary showing consolidated amount of Rs. 800/- per month and he orally prayed for getting D.A. to the company. Then (19.03.2008) he also deposed that though he did not submit any letter to make his service permanent but he orally demanded before the company for permanency of his service and the company assured him to look into the matter. In cross P.W.-1 also deposed that there were about 2000 / 2500 workers in the company and P.W.-1 did not know as to how the attendance of those workers were being maintained by the company and also did not know as to how the salaries to those other workers is to be disbursed. P.W.-1 also stated in cross then that there was no exact date of his termination and Ext. 4 and Ext. 5 were the letters subsequent to his termination and he also submitted protest letter after his termination from the month of March, 1994. Then P.W.-1 also deposed that the certificate (Ext. 2) was given to him by the company without any demand / pressing by him from his end. At this stage as I find in his cross-

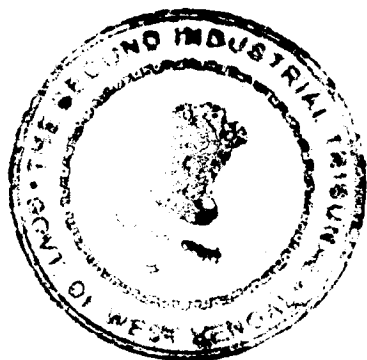
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examination by Ld. Lawyer for the company suggested to the P.W.-1 that all through during his service period he remained as supervisor trainee and he would not be given any salary but stipend and the P.W.-1 denied and asserted that he was not so and also denied as a further suggestion by Ld. Lawyer for the company that he was not a workman in the company and did not have any entitlement to get anything and the P.W.-1 denied.

It is further found that during the hearing of the interim petition U/s. 15(2)(b) of West Bengal Industrial Disputes (2<sup>nd</sup> Amendment) Act, 1980 Ld. Lawyer for the company examined one witness, and on 31.07.2008 the company brought one Mr. Anjan Kr. Kar who is found to be the personnel manager of the company. This personnel manager of the company Mr. Kar as O.P.W.-1 deposed that he is the personnel manager of the company and the workman Mr. Ashok Kr. Chourasia is known to him and he (workman) was working in Kelvin Jute Mills as trainee supervisor and this O.P.W.-1 also deposed mentioning that the workman had been working under the company from 1991 to 1994. O.P.W.-1 also deposed that there is no record in the company to show that workman Ashok Kr. Chourasia was terminated from his service in March, 1994 and also no record in the company to show that the company promoted Ashok Kr. Chourasia from trainee supervisor to supervisor and the workman would get salary as consolidated amount of Rs. 800/- per month. He also deposed that the company is a sick company. Cross-examination of O.P.W.-1 started from 31.07.2008 and O.P.W.-1 deposed that workman Ashok Kr. Chourasia used to take his salary by putting his signature on the payment register and at that stage the salary slip (Ext. 8) was shown to the witness (O.P.W.-1) and he deposed that he cannot ascertain if such documents (Ext. 8) used to be given by the company and O.P.W.-1 asserted that he (O.P.W.-1) needs to verify company's record to say regarding issuance of such pay slips (Ext. 8). O.P.W.-1 after seeing Ext. 7 deposed that workman Ashok Kr. Chourasia was a member of E.S.I. scheme. In further cross-examination on 25.08.2008 O.P.W.-1 deposed that he joined the company on 24<sup>th</sup> June, 2002 as personnel manager and he further clearly deposed that the certificate (Ext. 2) was issued to the workman Ashok Kr. Chourasia mentioning that then he (Ashok Kr. Chourasia) had been working as supervisor in the SQC department of the company from 16.04.1991. O.P.W.-1 Sri Anjan Kr. Kar also admitted that P.F. contribution to the extent of Rs. 680/- was deducted from the salary of Ashok Kr. Chourasia the salary slip of October, 1990 was shown to the witness O.P.W.-1 Anjan Kr. Kar and it is found that the O.P.W.-1 admitted this document (Ext. 9) mentioning that it was prepared by computer and it does not contain the signature of the cashier. To a suggestion to this O.P.W.-1 by Ld. Lawyer for the workman that the workman Ashok Kr. Chourasia was promoted to supervisor in the company subsequently, O.P.W.-1 denied the

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same and also denied a further suggestion to him by Ld. Lawyer for the workman that the workman Ashok Kr. Chourasia was terminated from the post of supervisor. Admitting that he does not have any knowledge of the entire part of written statement filed by the company, he (O.P.W.-1) further deposed in cross that he only had knowledge over the contents of the written statement filed by the company only partly and also admitted that he cannot remember whether in the written statement filed by the company there is any mentioning that Ashok Kr. Chourasia was terminated from the service of the company as supervisor.

Ld. Lawyer for the company M/s. Kelvin Jute Mill has argued the case orally and has also filed written notes of arguments on behalf of the company as I also mentioned earlier. Both in oral and written argument Ld. Lawyer for the company has strongly emphasised that the workman Ashok Kr. Chourasia was working as a supervisor trainee during the tenure of his service and trainee is not a workman under the Industrial Disputes Act, 1947. Ld. Lawyer for the company further emphasised that during the passing of the interim order the Ld. Earlier Judge of this Tribunal also came to a same finding and interim relief to the workman as per his petition U/s. 15(2)(b) of West Bengal Industrial Disputes (2<sup>nd</sup> Amendment) Act, 1980 was rejected. In support of his such argument Ld. Lawyer for the company has given a brief explanation of the written statement filed by workman Ashok Kr. Chourasia mentioning that in his written statement the workman has alleged that he was appointed by the company w.e.f. 11.04.1991 as supervisor trainee at a monthly salary of Rs. 600/- by the letter dt. 16.04.1991 with a further case that though he was designated as supervisor trainee in the appointment letter but he has to work as a supervisor from the date of his joining and he was supposed to be paid Rs. 800/- per month as salary at the time of his joining but he would be given actually salary @ Rs. 600/- per month which was enhanced on and from 1992. Ld. Lawyer for the company has added that in his written statement the workman has raised allegation that his service was illegally terminated by the company. In his argument Ld. Lawyer for the company also referred the contentions of written statement filed by the company mentioning that workman Ashok Kr. Chourasia was engaged in the company as a trainee supervisor from 1991 and trainee supervisor does not come within the ambit and regulation of workman U/s. 2(s) of the Industrial Disputes Act, 1947 and as a result the order of reference is not maintainable with further addition that from 1991 in a phase manner during the short period of engagement, the workman worked as a trainee supervisor with a stipend of Rs. 600/- initially and it was enhanced to Rs. 800/- and the workman was neither a permanent employee nor did he complete 240 days of his service as requirement of the law with the addition that prior to the completion of his training

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Ld. Lawyer for the company M/s. Kelvin Jute Mill has argued the case orally and has also filed written notes of arguments on behalf of the company as I also mentioned earlier. Both in oral and written argument Ld. Lawyer for the company has strongly emphasised that the workman Ashok Kr. Chourasia was working as a supervisor trainee during the tenure of his service and trainee is not a workman under the Industrial Disputes Act, 1947. Ld. Lawyer for the company further emphasised that during the passing of the interim order the Ld. Earlier Judge of this Tribunal also came to a same finding and interim relief to the workman as per his petition U/s. 15(2)(b) of West Bengal Industrial Disputes (2<sup>nd</sup> Amendment) Act, 1980 was rejected. In support of his such argument Ld. Lawyer for the company has given a brief explanation of the written statement filed by workman Ashok Kr. Chourasia mentioning that in his written statement the workman has alleged that he was appointed by the company w.e.f. 11.04.1991 as supervisor trainee at a monthly salary of Rs. 600/- by the letter dt. 16.04.1991 with a further case that though he was designated as supervisor trainee in the appointment letter but he has to work as a supervisor from the date of his joining and he was supposed to be paid Rs. 800/- per month as salary at the time of his joining but he would be given actually salary @ Rs. 600/- per month which was enhanced on and from 1992. Ld. Lawyer for the company has added that in his written statement the workman has raised allegation that his service was illegally terminated by the company. In his argument Ld. Lawyer for the company also referred the contentions of written statement filed by the company mentioning that workman Ashok Kr. Chourasia was engaged in the company as a trainee supervisor from 1991 and trainee supervisor does not come within the ambit and regulation of workman U/s. 2(s) of the Industrial Disputes Act, 1947 and as a result the order of reference is not maintainable with further addition that from 1991 in a phase manner during the short period of engagement, the workman worked as a trainee supervisor with a stipend of Rs. 600/- initially and it was enhanced to Rs. 800/- and the workman was neither a permanent employee nor did he complete 240 days of his service as requirement of the law with the addition that prior to the completion of his training

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period he left his job in the company and the company never terminated the service of workman Ashok Kr. Chourasia and for that reason also the reference issued by the appropriate authority is not maintainable and is also not entitled to get any relief. The argument of the Ld. Lawyer for the company also mentioned evidences adduced by workman Ashok Kr. Chourasia as P.W.-1 and mentioned that as P.W.-1 workman Ashok Kr. Chourasia stated in his examination-in-chief that he was appointed as trainee supervisor in SQC department of the company and on the basis of his evidence the appointment letter of the workman was marked Ext. 1. Ld. Lawyer argued that the appointment to the workman Ashok Kr. Chourasia also shows that the workman was appointed by the company as supervisor trainee. Ld. Lawyer further referred to the evidence of workman Ashok Kr. Chourasia mentioning that the appointment letter was received by workman on 16.04.991 but the effect of such appointment was given from 11.04.1991 and he was appointed as supervisor trainee but in the letter of appointment there was no note as to the tenure of his service as supervisor trainee. It was the workman made permanent in his service. Ld. Lawyer also argued that the workman was terminated, as asserted by the workman, from his service in March 1994 but no exact date of the month of March was mentioned by the workman either in his deposition as P.W.-1 or in his written statement. Referring to the cross-examination of workman Ashok Kr. Chourasia as P.W.-1 Ld. Lawyer for the company has mentioned that Ashok Kr. Chourasia as P.W.-1 has stated that he did not state the details of his duty performed by him in his written statement and he also did not mention either any written statement or in his oral evidence the exact date of month of March 1994 on which he was terminated from the service by the company. Ld. Lawyer for the company has also mentioned in his argument that the workman Ashok Kr. Chourasia during his cross-examination as P.W.-1 has also stated that he was appointed as supervisor trainee and the company did not give him any letter showing that he was promoted to supervisor from the post of supervisor trainee and he also mentioned in his examination that he had to work in different department of the company and also in SQC department as per requirement of the company with the addition that the other workers used to be given house rent allowance by the company but this workman Ashok Kr. Chourasia was not given any House Rent Allowance and he would also not be given any dearness allowance by the company as the company would give the same to all workers of the company and his salary was consolidated to Rs. 800/-, and with the support of such evidences of workman Ashok Kr. Chourasia as P.W.-1, the Ld. Lawyer for the company has argued that all these evidences on the part of the workman as P.W.-1 reveal that the workman was in his traineeship as supervisor trainee with a consolidated salary of Rs. 800/-.

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salary of Rs. 800/- without any House Rent Allowance, Dearness Allowance and other allowances as were / are given to other workman and Ld. Lawyer for the company pointed out that all these go to show that the workman Ashok Kr. Chourasia had been working in the company as a supervisor trainee and not as a workman. Referring the evidences of witness of the company Mr. Anjan Kr. Kar as O.P.W.-1 Ld. Lawyer for the company has also argued that the status of the O.P.W.-1 is that he was a personnel manager and in that capacity O.P.W.-1 Mr. Kar also stated that he would know the workman Ashok Kr. Chourasia and O.P.W.-1 also deposed that Ashok Kr. Chourasia was working in the Kelvin Jute Mill as the trainee supervisor and in that capacity, as O.P.W.-1 Mr. Kar further stated, that Ashok Kr. Chourasia had been working in the company starting from 1991 to 1994 in that capacity. In his argument Ld. Lawyer for the company further referred the evidences of O.P.W.-1 Mr. Kar and stated that as per evidence of O.P.W.-1 there is no record in the company to show that workman Ashok Kr. Chourasia was terminated from the company as a supervisor in March, 1994 or to show that he was promoted from the trainee supervisor to supervisor and the company as per evidences of O.P.W.-1 Mr. Kar is under BIFR. Ld. Lawyer for the company referring the evidences of O.P.W.-1 Mr. Kar also argued that workman Ashok Kr. Chourasia used to get his salary in case by putting his signature in the payment register and O.P.W.-1 also denied a suggestion given to him by Ld. Lawyer for the workman to the effect that workman Ashok Kr. Chourasia was promoted from the post of supervisor trainee to supervisor and the further suggestion that the workman was terminated from the post of supervisor, with the addition that O.P.W.-1 further stated in his evidences that letter of appointment (Ext.1) was delivered to the workman.

To substantiate all his such arguments as mentioned above Ld. Lawyer for the company has cited one case laws in 2006 – LLR – Page-223 and 2004 – LLR – 387 and submitted that since workman Ashok Kr. Chourasia was a supervisor trainee during his entire period of service, and a trainee is not a workman under the Industrial Disputes Act, 1947 and in this connection Ld. Lawyer for the company further raised that Ext. 2 is a certificate issued by the Mill manager of the company in favour of Ashok Kr. Chourasia mentioning that workman Ashok Kr. Chourasia was a supervisor in the statistics and quality control (SQC) department of the company on 16.04.1991 and Ld. Lawyer over this document (certificate issued by the mill manager of the company in favour of workman Ashok Kr. Chourasia – Ext. 2 is not supported by any letter of promotion by the company from trainee supervisor to supervisor and for that reason the certificate (Ext. 2) as has been given by mill manager of the company in favour of workman Ashok Kr. Chourasia mentioning that workman Ashok Kr. Chourasia was promoted from trainee

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supervisor to supervisor from 16.04.1991 should not be accepted and the certificate (Ext. 2) shall not have any effect in this case. Ld. Lawyer for the company during his oral argument also raised that banking on this certificate (Ext. 2) issued by general mill manager of the company in favour of Ashok Kr. Chourasia, workman Ashok Kr. Chourasia also filed the interim relief petition praying for grant of interim relief to him U/s. 15(2)(b) of West Bengal Industrial Disputes (2<sup>nd</sup> Amendment) Act, 1980 and the company also similarly filed written objection against the same mentioning all as mentioned in the written statement filed by company and as also mentioned by Ld. Lawyer for the company during his argument and the then Ld. Judge Mr. Mitra was very much inclined to consider the same and rejected the importance of the certificate (Ext.2) given by mill manager of the company by observing that the certificate (Ext.2) did not have any importance and not acceptable, and Ld. Lawyer in his argument now before this Tribunal has emphasised that that observation by earlier Ld. Judge Mr. Mitra is as per law and it cannot be changed now as evidences have come to state that the company did not issue any letter of promotion from trainee supervisor to supervisor to the workman Ashok Kr. Chourasia. Explaining the case laws as mentioned above Ld. Lawyer for the company explained that in the cited case the petitioner was taken in the respondent company as a trainee steno clerk expeditor initially for six months and his further training was extended for another month and at the end of that another month he was informed that his services were not required and accordingly a dispute was raised and the Industrial Court held him to be not a workman within the meaning of Section 2(s) of the Industrial Disputes Act, 1947 and rejected his claim and this finding of that Court was challenged by Hon'ble High Court, Delhi and the Hon'ble Court, Delhi was very much pleased to observe that he was appointed to enable him to undergo a training for a specific period and as a result he could not be treated as workman under Industrial Disputes Act, 1947, and Ld. Lawyer urged this Tribunal to apply this case law in this case mentioning that the factum of the case in the cited ruling is similar to the present case and for that reason this ruling is also acceptable and applicable in this case.

Ld. Lawyer for the workman has also made argument answering the questions raised by Ld. Lawyer for the company in his argument. But Ld. Lawyer for the workman has not filed any written argument as has been filed by Ld. Lawyer for the company. At the beginning only, Ld. Lawyer for the workman discussed the judgement delivered by Hon'ble Mr. Justice Raj Shekhar Manta of Calcutta High Court in W.P. No. 17406(W)/2009 dt. 15.05.2018 mentioning that it was submitted before Hon'ble Court during hearing of the writ petition that the main reference has not yet been answered finally by the Tribunal and it is the observation of Hon'ble Court in that judgement that in

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such circumstances the concerned Tribunal, West Bengal shall proceed to finally adjudicate the case and to dispose of the same in accordance with law expeditiously as possible and not later than 45 days from communication of the judgement and it was further observation by Hon'ble Court that it is clarified further that the interim order is only an interlocutory order and the same shall be finally decided along with the main reference, and Ld. Lawyer for the workman emphasised that the interim order by which the petition U/s. 15(2)(b) of West Bengal Industrial Disputes (2<sup>nd</sup> Amendment) Act, 1980 was rejected by earlier Ld. Judge of this Court mainly making some observations on certificate (Ext.2) cannot be accepted to be final as emphasised by Ld. Lawyer for the company and Ld. Lawyer for the workman explained that when that order disposing of the petition U/s. 15(2)(b) of West Bengal Industrial Disputes (2<sup>nd</sup> Amendment) Act, 1980 was filed by workman praying for grant of interim relief is to be considered a fresh on the basis of evidences that have come during the stage of hearing of the case on merit and pointed out that such submission on the part of Ld. Lawyer for the company over the certificate (Ext.2) is not supported by any law and this Tribunal is now duty bound to consider the same with fresh evidences that have come before this Tribunal during the hearing of the case on merit.

As seen, the appointment letter issued by the company to the workman Ashok Kr. Chourasia has come into question by Ld. Lawyers of both sides. On the part of the company, it is the admitted position that the workman was given the appointment letter by the company on 16.04.1991 mentioning that workman Ashok Kr. Chourasia was appointed only as supervisor trainee in the SQC department of the company w.e.f. 11.04.1991, and as seen Ld. Lawyer for the company has all along maintained that the workman Ashok Kr. Chourasia has worked in the company as supervisor trainee and he continued working as supervisor trainee till he left the service by himself without completing his training period as supervisor trainee in the SQC department of the company to the satisfaction of the company in any way. Ld. Lawyer for the company explained that as the workman remained supervisor trainee during the entire period of his service, he cannot get any benefit in any way under the Industrial Disputes Act, 1947. Ld. Lawyer for the workman has raised strong challenge over the matter of contention in the appointment letter in the way that in the appointment letter it has been certainly mentioned that the workman was appointed in the SQC department of the company as supervisor trainee without mentioning as to how long the workman would remain trainee in the company. Ld. Lawyer for the workman explained that the assertion by the Ld. Lawyer for the company that the workman Ashok Kr. Chourasia has all along remained supervisor trainee is not legally tenable and it is so only for the reason that the

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appointment letter must be as per law and for that reason it was necessary on the part of the company as appointing authority to mention as to how long the workman would remain in the capacity of supervisor trainee. Ld. Lawyer further raised that it has been mentioned in the pleading by the workman that though the workman appointed as supervisor trainee he started working in the company as supervisor on and from 16.04.1991 and accordingly the assertion by the company that the workman remained a supervisor during the entire period of his service is not legally tenable. Ld. Lawyer for the workman further argued that it was legally essential on the part of the company to mention a particular time as to how long the workman would remain as supervisor trainee and for want of the same, the company cannot now raise that the workman remain a supervisor trainee during the entire period of his service in the company.

From the written statement filed by the workman Ashok Kr. Chourasia it is found that regarding the matter of appointment letter issued to the workman Ashok Kr. Chourasia it has been contended that he was appointed by the company w.e.f. 11.04.1991 as a supervisor trainee at a monthly salary of Rs. 600/- per month as per letter dt. 16.04.1991, with the addition that though the workman was designated as supervisor trainee as per appointment letter but he used to work as supervisor from the date of his joining and accordingly he was supposed to be paid Rs. 800/- per month at the time of his joining but surprisingly the workman used to get salary @ Rs. 600/- per month and subsequently it was enhanced on and from 1992. As already mentioned the stance of the company over the appointment letter to the workman Ashok Kr. Chourasia is that Ashok Kr. Chourasia remained a trainee supervisor during the entire period of his service and he did not complete the period of training and he himself abandoned the service.

From the evidences I find that the workman Ashok Kr. Chourasia examined himself as P.W.-1 during the hearing of the case on merit and in his examination-in-chief he mentioned that he worked in the company from 11.04.1991 till the month of February, 1994 continuously without any break and the company terminated his service from March, 1994 without assigning any reason and added that though he was designated as supervisor he was not allowed to act accordingly as supervisor but he used to do clerical job and job of manual nature. As P.W.-1 workman Ashok Kr. Chourasia proved some documents including the appointment letter and the appointment letter was marked Ext. 1 without any objection from the side of Ld. Lawyer for the company. I also find that this workman as P.W.-1 was subject to cross-examination by Ld. Lawyer for the company and in the cross-examination also the workman as P.W.-1 deposed that he had been in service in the company from 1991 to 1994 before his dismissal and he did not leave the service but he was illegally terminated. Going through the entire cross-examination of

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P.W.-1 I find that Ld. Lawyer for the company has not touched the contention of the appointment letter (Ext. 1) and he denied a suggestion that he would work in the company as a trainee supervisor but not in the capacity of clerical job. As already seen Ld. Lawyer for the workman has raised strong challenge raising that as per law it was compulsory on the part of the company to mention a specific time for working in the capacity of a supervisor trainee and by not mentioning the same the company has committed a gross mistake and now the company cannot get any benefit of its own mistake regarding non-mentioning of any specific time as to how long the workman would work in the capacity of supervisor trainee.

Scrutinising the appointment letter (Ext.-I) it is found that it is type-written on the letter-head of the company M/s. Kelvin Jute Company Ltd., it is dt. 16.04.1991, it is addressed to Sri Ashok Kr. Chourasia, H. No. 237, Near of Rly. Gate No. 11, A.H. Road, P.O. Titagarh, Pin.- 743188. It is found to be signed by chief executive of the company M/s. Kelvin Jute Co. Ltd. The contention in the letter (Ext. 1) is that 'with reference to your application dated nil and subsequent interview with us, we are pleased to appoint you as - supervisor trainee - in SQC department in our Mill w.e.f. 11.04.1991. You will be paid as stipend of Rs. 600/- (Rupees Six Hundred) per month during your training period' (exact language in the appointment letter - Ext. 1 quoted). Thus it is conspicuous in the appointment letter that it has been only mentioned that the workman Ashok Kr. Chourasia was appointed as supervisor trainee in the SQC department of the company without any mentioning in the appointment letter (Ext. 1) as to how long supervisor trainee period by workman Ashok Kr. Chourasia would continue, and now as Ld. Lawyer for the workman raised that such non-mentioning of training period specifically in the appointment letter is a gross mistake by the company and now the company cannot get any benefit by asserting that the workman Ashok Kr. Chourasia remained supervisor trainee during the entire period of his service starting from 1991 to 1994 which is described by Ld. Lawyer for the company as a very long period of time in the life of a man.

Going through the written argument filed by Ld. Lawyer for the company, I find that Ld. Lawyer for the company has not mentioned anything as to whether the company has committed gross mistake by not mentioning specifically the period for which the workman Ashok Kr. Chourasia would remain supervisor trainee as mentioned in the appointment letter (Ext. 1). Similar question arose before Hon'ble Court in *Mana Thoma Gonsalves v. Concept Pharmaceuticals (P) Ltd.*, (2002) IV LLJ (Supp) Bomb 1996. What happened in that case is that the workman was appointed as trainee without mentioning the specific period as to how long the workman would remain as trainee and

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after his dismissal it was asserted by the company before Hon'ble Court in appeal stage the workman simply worked in the capacity of trainee and for that reason he could not get any benefit of the Industrial Disputes Act, 1947. and it is the observation of Hon'ble Court in that case that the workman could not be continued as a trainee for such a long period and therefore Hon'ble Court decided that the workman was a workman U/s. 2(s) of the Act. In the present case Ld. Lawyer for the company has cited case law, 206 LLR p.223 and asserted that the ratio of the cited case law is applicable in this case but Ld. Lawyer for the workman has raised strong objection that the ratio of this case cannot be applied in this case because of difference of factual position. Going through the cited case by Ld. Lawyer for the company as mentioned above I find that in that case the workman was appointed as a trainee steno clerk expeditor only for six months and then his service was extended for one month and at the end of that extended one month he was informed that his service was not required. Therefore, it is coming out from the cited ruling by Ld. Lawyer for the company that in the cited case the specific period of training was mentioned and it was only for six months and after which it was extended also specifically by another one month but it is not the case in the present one. As I have mentioned that the appointment letter given to workman Ashok Kr. Chourasia only contains that Ashok Kr. Chourasia would work in the capacity of supervisor trainee without mentioning as to how long he would work in such capacity of supervisor trainee and thus it does not contain any specific time for working in the capacity of supervisor trainee. Thus, I find that the observation of Hon'ble High Court in *Mana Thomas Gonsalves v. Concept Pharmaceuticals (p) Ltd.* is an answer on the legality of appointment letter in such a position and the ratio of this case appears to be also applicable in the present case and the ruling cited by Ld. Lawyer for the company cannot be applied in this case. Thus, it is to say that it was necessary on the part of the company to mention a time specifically as to how long the workman Ashok Kr. Chourasia would have to work in the capacity of supervisor trainee in the company as mentioned in the appointment letter and by not mentioning so the company has committed gross legal mistake and now the company as asserted by Ld. Lawyer for the company that the workman Ashok Kr. Chourasia did not complete his training period and remained a supervisor trainee cannot get any benefit in any way and by applying the observation of Hon'ble Court in *Mana Thomas Gonsalves v. Concept Pharmaceuticals (p) Ltd.* as mentioned earlier the workman Ashok Kr. Chourasia is a workman U/s. 2(s) of the Industrial Disputes Act, 1947.

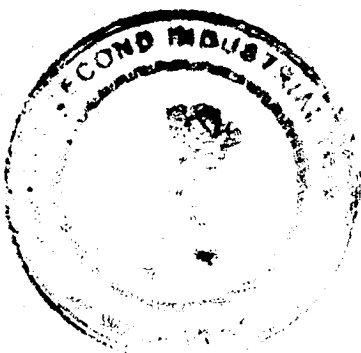
The workman has asserted in his written statement that he continuously worked in the company from the date of his appointment from 16.04.1991 till February, 1994

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without any break and he continuously worked under the company from the time of his appointment till February, 1994 after which he was terminated by the company. The workman has further raised that after he was selected for the service the company asked him to join w.e.f 11.04.1991 and the appointment letter was issued to him from 16.04.1991. In his written statement, the workman has further asserted that he had been serving the company loyally, faithfully and efficiently and there was no adverse report against him during the tenure of his service and it has been further asserted that for his such loyalty, faithfulness the Mill manager of the company was very much pleased and accepted the workman Ashok Kr. Chourasia as supervisor w.e.f. 16.04.1991 and the Mill manager also issued him i.e. workman Ashok Kr. Chourasia a certificate dt. 25.01.1994 to that effect also wished him success. It is the further assertion by the workman in his written statement that though he was designated as supervisor trainee in the appointment letter but he used to work as supervisor from the date of his joining with the addition that on and from 1994 the workman used to be paid salary by company on voucher and the management of the company became annoyed on him for his protest to the effect that he was getting salary on voucher and for that reason as the company became annoyed, the name of the workman Ashok Kr. Chourasia was struck off from muster role of the company w.e.f. March, 1994 and thus the company retrenched him from the service which the workman described as illegal on the part of the company. I find that the company has raised challenge against the assertion of continuous service of the workman and the certificate issued by the Mill manager of the company. In the written statement filed by the company, the company has asserted that the workman Ashok Kr. Chourasia has at all not worked continuously in the company as the workman has asserted in his written statement. The company has mentioned in the written statement that filed by the company that the workman Ashok Kr. Chourasia worked 16 days in April, 31 days in May, 30 days in June, 30 days in July, 23 days in August, Nil days in September, 23 days in October, Nil days in November, 31 days in December during the year 1991 and he totally worked only for 183 days in that year, further that he worked 22 days in January, Nil days from February till December during the year 1992 and he only did 22 days in that year. Further that 31 days in January, Nin days from February to June, 31 days in July, 31 days in August, 13 days in September, Nil days from October, to December in 1993 and in that year he worked only for 103 days, further that 30 days in April, 23 days in May 6 days in June during the year 1994 and in that year the workman totally worked for 59 days in 1994, and I find that the company also pleaded that the attendance-sheet maintained by company in respect of workman Ashok Kr. Chourasia along-with others would be proved for this purpose and it would be clear that the workman had not worked

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continuously in none of the years from 1991 to 1994. The company has further asserted in the written statement that the workman Ashok Kr. Chourasia was not in continuous service during the period of 12 calendar months continuously and thereby before his alleged termination he had not worked 240 days as would be revealed from attendance-sheet of the company and thereby dis-engagement of the workman Ashok Kr. Chourasia by company does not attract the provision of Section 25B and 25F of the Industrial Disputes Act, 1947.

During his oral argument Ld. Lawyer for the company strongly raised before the Tribunal that the workman Ashok Kr. Chourasia never continuously worked for 240 days during the year preceding the date of his termination asserting that the burden of proof lies on the workman himself to prove that he worked continuously and / or worked 240 days each year during the tenure of his service and this burden is not on the part of the company and the company need not show and prove that the workman had not worked continuously for 240 days in any way and the Ld. Lawyer has also mentioned this argument in his written statement. In his argument as also mentioned in the written argument Ld. Lawyer for the company regarding certificate issued by the mill manager in favour of workman Ashok Kr. Chourasia (Ext. 2), Ld. Lawyer has stated that no letter showing promotion by the company to workman Ashok Kr. Chourasia from trainee supervisor to supervisor has been produced by him and for that reason it cannot be accepted that workman Ashok Kr. Chourasia was promoted from trainee supervisor to supervisor in the absence of specific or of promotion and confirmation and for this reason certificate given by mill manager to workman Ashok Kr. Chourasia shall not have any effect. In support of his such argument Ld. Lawyer for the workman has cited one case law in 2009 LLR p.68 HP H.C., Bijoy Kr. V. Labour Court and Another and Ld. Lawyer has stated that without any confirmation letter by the company confirming the service of the workman, the workman cannot claim to have been confirmed in the service or promoted and asserted that the observation of Hon'ble Court is also applicable in this case. In his counter argument Ld. Lawyer for the workman has raised that in the pleadings through written statement filed on behalf of workman, the workman has asserted that he had been in continuous service starting from his joining in 1991 till February, 1994 without any break and therefore by applying the principles of rules of evidence, it is the burden of the workman to prove that he did so. Ld. Lawyer added that in discharge of the rule regarding burden of proof, the workman Ashok Kr. Chourasia has examined himself as P.W.-1 and he has clearly deposed that he had been in continuous service in the company from the starting of the time of his joining in his service till February, 1994 after which his service was terminated by the company by striking of his

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name from muster role of the company. Ld. Lawyer has further submitted that besides the oral evidences given by workman himself as P.W.-1, the workman has also submitted documentary evidence which is a certificate (Ext. 2) issued by the Mill manager of the company who happens to be the top executive of the company. Ld. Lawyer further argued that the workman had been working in the company from the time of his joining in 1991 till February, 1994 has also been admitted by the witness of the company Mr. Anjan Kr. Kar as O.P.W.-1 and Mr. Kar (O.P.W.-1) has also admitted in his evidences that the workman Ashok Kr. Chourasia had been working in the company from 1991 up to 1994. Ld. Lawyer for the workman has also raised that the workman Ashok Kr. Chourasia was subjected to lengthy cross-examination by Ld. Lawyer for the company and there is nothing in his such evidences to show that the workman Ashok Kr. Chourasia had at all not been in continuous service from 1991 to 1994. Ld. Lawyer for the workman has further raised in the argument that thus the workman has fully discharged his burden of proof and nothing left in this regard in performing his duties to that effect. Ld. Lawyer has raised that it is the company which has mentioned in the pleadings mentioning statistics that workman Ashok Kr. Chourasia never worked continuously for 240 days in any year and therefore it was the duty on the part of the company to show that in support of his assertion but the company did nothing either by way of adducing oral evidence or by adducing documentary evidence contrary to the evidences adduced on behalf of workman in addition to the documentary evidences which is a certificate issued by the mill manager of the company as top executive officer of the company and asserted that regarding the certificate (Ext. 2) issued by mill manager of the company no contradictory evidence is come. Ld. Lawyer for the workman has further raised that the Ld. Lawyer for the company has asserted that the company never passed any order either confirming service of the workman or giving promotion to him from supervisor trainee to supervisor but Ld. Lawyer explained that these are the duties of the company and accordingly it was necessary on the part of the company to role this and also to be copies of those orders to the workman. Ld. Lawyer explained that the mill manager of the company being top most executive of the company consulted all papers and issued the certificate (Ext. 2) to the workman Ashok Kr. Chourasia and the company has not adduced any iota of evidence to show otherwise and to raise any doubt over the certificate issued by mill manager of the company being top executive officer of the company and explained that such assertion on the part of the Ld. Lawyer for the company is legally baseless for want of cogent evidence. Ld. Lawyer further raised that during the time of considering the interim relief prayer by the workman Ashok Kr. Chourasia U/s. 15(2)(b) of West Bengal Industrial Disputes (2<sup>nd</sup> Amendment) Act, 1980, both sides forwarded argument extensively and on

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behalf of workman this document which is not marked Ext. 2 was also placed before the then Ld. Judge mentioning that it was issued by top executive officer of the company and this document has many aspects in the way that it was issued by top executive officer of the company mentioning the status of the workman and the nature of duties performed by him in the company and questioning all these and also the genuineness of the document, nothing was shown by the company and under such circumstances it was the only duty on the part of Ld. earlier judge to consider the same in the perspective as submitted above as there was nothing against that document on behalf of the company but Ld. Judge was very much pleased to observe that it could not be accepted without assigning any reason but now sufficient evidences have come in support of this document and there is nothing against the same by the company to question its credibility and therefore it should be considered as per law as there is nothing against it by the company in any way. Ld. Lawyer for the workman has further argued that the interim relief order dt. 28.08.2009 was only considered mainly on the basis of that certificate (Ext. 2) as has been marked exhibit during the stage of hearing of the case on merit and it has its own value as per principles of rules of evidence.

As already been seen in the written statement filed on behalf of workman Ashok Kr. Chourasia, it has been asserted that the mill manager of the company was satisfied with the performance of the workman Ashok Kr. Chourasia in regard to his sincerity, energetic activity and nature of hardworking by him and then the mill manager accepted the workman as supervisor w.e.f. 16.04.1991 and accordingly issued him the certificate dt. 25.08.1994. but in the written statement filed by the company it has been specifically raised that the workman did not work continuously and he worked as a trainee supervisor with a stipend of Rs. 600/- per month at the beginning of his service and it was enhanced to Rs. 800/- subsequently. The workman mentioned about the certificate (Ext. 2) issued to him by mill manager of the company in paragraph - 6 in his written statement and regarding this paragraph - 6 of the written statement filed by workman, the company in para - 3 of its written statement has written about the contention of para - 6 of written statement filed by workman and the company mentioned that the allegations contained in para - 6 etc. of the written statement filed by workman are matters of record and denying the allegations made by the workman, the company has asserted that it is not correct to say that the workman worked as a supervisor of the company starting from 1991 till 1994 and the workman remained a trainee supervisor during entire period of his tenure from 1991 to 1994.

The legality of the matter regarding non-mentioning of specific period of remaining as trainee supervisor as mentioned in the appointment letter has already been

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seen and it has been found that the company has committed gross mistake by not mentioning the specific period for remaining as supervisor trainee and as already seen as per observation of Hon'ble Court as mentioned earlier such non-mentioning of specific time of remaining as a supervisor trainee in the appointment letter is a gross illegality that has continued from the time of his appointment and therefore, as observed by Hon'ble Court in that case as mentioned earlier the workman is a workman U/s. 2(s) of the Industrial Disputes Act, 1947. Now coming to the evidences. I find that the workman Ashok Kr. Chourasia as P.W.-1 has stated in his examination-in-chief that he worked in the company from 11.04.1991 till the month of February, 1994 continuously without any break and the company struck off his name from the muster role of the company from the month of March, 1994 without showing any reason and thereby terminated his service. He has also stated in his examination-in-chief that he was designated as supervisor but he was not given authority to act a supervisor and he had to do job of clerical and manual in nature. He also stated in his examination-in-chief that he was made the member of Employee State Insurance and also and Employees' Provident Fund. Going to the examination-in-chief of workman Ashok Kr. Chourasia as P.W.-1 I find that some documents were shown to him for the purpose of proving the same and bring into evidence in this case and the certificate which is marked Ext. 2 was also included in those documents and during the time of marking the certificate as Ext. 2 no objection was raised by Ld. Lawyer for the company in line with the matters of pleadings as made out in the written statement filed by the company as mentioned earlier that the workman continuously remained a trainee supervisor from 1991 to 1994 and he was not given any work as supervisor. I also find that the workman as P.W.-1 was subjected to lengthy cross-examination by Ld. Lawyer for the company and in the cross-examination it is coming out from the evidence of P.W.-1 that P.W.-1 had been in the service of the company from 1991 to 1994 before his dismissal and P.W.-1 also asserted in his cross-examination that in his custody there is no document to show that he had been working in the company continuously from 11.04.1991 till month of February, 1994 without any break but all these documents are within the possession of the company and P.W.-1 denied a suggestion that he had never been in continuous service of the company. P.W.-1 also denied a suggestion put to him by Ld. Lawyer for the company that the company did not terminated his service but the workman himself abandoned the service and also denied a further suggestion that he was not working in the capacity of clerical job and also denied a suggestion that he remained as a supervisor during the period of his service. I have already mentioned the pleadings of the company in its written statement in reply to the pleadings made by workman in his written statement regarding the certificate

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(Ext.-2) and the company in its pleadings simply raised that the certificate (Ext.-2) is a matter of record and it is conspicuously coming that Ld. Lawyer for the company has not raised any single question to the workman Ashok Kr. Chourasia during his cross-examination as P.W.-1 during the hearing of the case on merit to challenge the credibility of that certificate (Ext. 2) issued by mill manager of the company being an executive officer of the company or anything against the mill manager of the company who issued that certificate (Ext.-2).

The evidences adduced by workman Ashok Kr. Chourasia during the time of hearing of the petition for grant of interim relief s. 15(2)(b) of West Bengal Industrial Disputes (2<sup>nd</sup> Amendment) Act, 1980 have been adopted by both sides as I also mentioned earlier, and at that time P.W.-1 he deposed that his appointment letter contained that he was appointed as supervisor trainee and also deposed as to how long he would remain a supervisor trainee in the service of the company (was not mentioned in the appointment letter and also deposed that the mill manager of the company has certified about his sincerity and diligence and discharging his duties towards the company as per terms of employment and the certificate was issued on 15.01.1994 by mill manager of the company and he had already filed the certificate in the Court with other documents and also deposed that the certificate was written by the company and it was given to him by the company while the workman was in his service in the company and his certificate was issued to him by the mill manager of the company. I find that at that time during his examination as P.W.-1 on 07.12.2001, the certificate (Ext.-2) was shown to the witness and the witness P.W.-1 deposed that he is well acquainted with the signature of the mill manager of the company and after he identified the signature of the mill manager of the company the certificate was marked EX-2 on that time also (07.12.2001) and I also find that during marking of the certificate as EX-2, Ld. Lawyer for the company raised objection. It is also found that during that time (on 07.02.2008) P.W.-1 was subjected to lengthy cross-examination and from the cross-examination dt. 19.03.2008 it is found that the certificate (Ext. 2) was given to him without pressing of it (Ext.2) by him (P.W.-1). Thus it is coming out that the certificate (Ext.-2) also came into evidence on the basis of oral evidence of workman as P.W.-1 and though Ld. Lawyer for the company raised objection during the time of marking of the certificate (Ext.-2), yet I find that in the lengthy cross-examination to which P.W.-1 was subjected to then also, Ld. Lawyer for the company did not put any question touching the certificate (Ext.-2), excepting that Ld. Lawyer for the company wanted to know from P.W.-1 then that if the company / mill manager of the company gave him that certificate (Ext.-2) on being pressed by him or not and the P.W.-1 answered that the company gave him the certificate (Ext.-2) without any

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pressing from the end of him (P.W.-1). Further during that time of hearing of the case over the matter of consideration of interim relief petition U/s. 15(2)(b) of West Bengal Industrial Disputes (2<sup>nd</sup> Amendment) Act, 1980, on behalf of company one Mr. Anjan Kr. Kar was examined as O.P.W.-1 on 31.07.2018. Standing in the witness box Mr. Kar as O.P.W.-1 deposed that he worked in the company M/s. Kelvin Jute Mill as personnel manager and he knows the workman Ashok Kr. Chourasia and O.P.W.-1 also stated in his examination-in-chief that he (workman) worked under the company from 1991 to 1994 mentioning that he was a trainee supervisor. This O.P.W.-1 also deposed that there is no record in the company to show that the workman was terminated from the service as supervisor in March, 1994 and there is no record in the company to show that the workman Ashok Kr. Chourasia was promoted from trainee supervisor to supervisor. The O.P.W.-1 has admitted that Ashok Kr. Chourasia had been working in the company from 1991 to 1994 but O.P.W.-1 mentioned that he was working in the capacity of trainee supervisor. The matter of legality regarding trainee supervisor as mentioned in the appointment letter has already been seen. During cross-examination on 25.08.2008 this O.P.W.-1 Mr. Kar revealed that he joined the company on 24.06.2002 and presently i.e. on 25.08.2008 he was personnel manager of the company, and he O.P.W.-1 also deposed that the certificate (Ext.-2) was issued by the mill manager of the company M/s. Kelvin Jute Mill in favour of Ashok Kr. Chourasia stating that he (Ashok Kr. Chourasia) was working in the SQC department of the company from 16.04.1991. From the further cross-examination of O.P.W.-1 Mr. Kar it is found that O.P.W.-1 admitted that he did not know the entire part of the written statement filed by the company excepting only to some extent and he also admitted that he could not remember whether in the written statement filed by the company there is any mentioning that Ashok Kr. Chourasia was terminated from the service as a supervisor, earlier O.P.W.-1 denied the suggestion that Ashok Kr. Chourasia was promoted to supervisor from supervisor trainee.

Ld. Lawyer for the workman has further argued that genuineness of the certificate (Ext.-2) issued by mill manager of the company has not been challenged by the company either during the time of hearing of the case at the stage of interim relief petition U/s. 15(2)(b) of West Bengal Industrial Disputes (2<sup>nd</sup> Amendment) Act, 1980 or during the time of hearing of the case on merit and relying the evidence of O.P.W.-1 Mr. Kar who was examined during the time of hearing of the interim relief petition admitted the genuineness of the certificate (Ext.-2) and also genuineness of the person i.e. mill manager of the company and Ld. Lawyer for the company did not put any question to challenge all these either to the workman as P.W.-1 or to other witness. But Ld. Lawyer for the company has in his argument mentioned that the certificate (Ext.-2) issued by the

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mill manager of the company should not be accepted by the Court as a ground which he explained that there was no order by the company promoting the workman from supervisor trainee to supervisor and in support of his such contention Ld. Lawyer has cited one ruling 2009 LLR 68 of Himachal Pradesh High Court explaining that in that case the fact was that the workman claimed to be a permanent workman after completion of his training on the basis of a wage slip and the Hon'ble Court was pleased to observe that for confirmation in the service a confirmation order by the company is necessary and Ld. Lawyer asserted that this observation of Hon'ble Court is also applicable in this case and the certificate (Ext-2) for grant of confirmation letter by the company should not be accepted by the Court as was refused by Ld. Judge during disposing of the interim relief petition, and to counter this argument by Ld. Lawyer for the company, Ld. Lawyer for the workman has raised that in the cited case by the Ld. Lawyer for the company there was nothing on the part of the workman to show that he was promoted and promotion was also not in question in that case and the workman in that case wanted confirmation of his service after completion of training on the basis of wage slip and it was rejected by Hon'ble Court and Ld. Lawyer asserted that in the present case the certificate issued by mill manager of the company in the capacity of top executive officer of the company mentioning clearly that the workman Ashok Kr. Chourasia has worked as supervisor in the SQC department of the company on 16.04.1991 and there is no challenge on the certificate (Ext-2) regarding its genuineness or also its contents. Going through case law cited by the Ld. Lawyer for the company I find that in that case the workman completed his training in that company and the company was not making him permanent in his service and he did not have any document to assert permanency and he claimed permanency on the basis of wage slip and Hon'ble Court was very much pleased to observe that to become permanent, order in that regard by the company was necessary and admittedly in that case there was at all no order to make the workman permanent. But in the present case the workman has not been claiming permanency in service, he has claimed that he was promoted from the post of supervisor trainee to supervisor and to that effect necessary certificate was issued by the company specially mentioning that the workman Ashok Kr. Chourasia has worked as supervisor in the SQC department from 16.04.1991.

Ld. Lawyers of both sides have forwarded argument on this certificate (Ext. 2) and it is now to be decided if this certificate (Ext.-2) is acceptable by applying the principles of evidence. As per pleadings of workman Ashok Kr. Chourasia, it has been stated about the certificate (Ext.-2) that the mill manager of the company was so pleased with his sincerity, energetic activity and hard work in his service under the company that

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he i.e. mill manager of the company accepted him (workman) as supervisor w.e.f. 16.04.1991 and also issued him the certificate (Ext.-2) dt. 25.01.1994 and the workman Ashok Kr. Chourasia as P.W.-1 during the time of interim relief on 07.12.2001 also deposed that the mill manager of the company has certified about his sincerity and due diligence in discharging his duty towards the company as per terms of employment and at that time he also deposed that the certificate given by mill manager has been filed by him along with other documents before this Tribunal and identified it during his deposition as P.W.-1 mentioning that the certificate (Ext.-2) was in his custody and he produced this from his own custody and it was prepared and given by the company and it was given to him when he was in service in the company by the mill manager of the company and P.W.-1 at that time also deposed that he is well acquainted with the signature of the mill manager of the company and identified the signature of the mill manager on the certificate with date thereon and then it was marked Ext. 2. At that time on behalf of company objection was raised and it is mentioned by the Ld. earlier Judge, and going through the cross-examination of P.W.-1 at that time I find that Ld. Lawyer for the company only wanted to know from this P.W.-1 as to whether the certificate (Ext.-2) was given to mill manager of the company on being pressed by him i.e. workman (P.W.-1) and P.W.-1 replied that the certificate (Ext.-2) was given to him by the company without pressing for the same from the end of the workman and Ld. Lawyer for the company did not put any other question touching this certificate (Ext.-2). At that time (31.07.2008) Ld. Lawyer for the company examined Mr. Kar as P.W.-1 and O.P.W.-1 deposed that he happened to be the personnel manager of the company and for that reason the workman Ashok Kr. Chourasia became known to him and this workman Ashok Kr. Chourasia worked under the company from 1991 to 1994 and this witness O.P.W.-1 Mr. Kar in the capacity of the personnel manager of the company in cross clearly admitted that the ext. 2 (certificate) was issued by the mill manager of Kelvin Jute Mill / company in favour of Ashok Kr. Chourasia mentioning in the certificate that Ashok Kr. Chourasia was working as supervisor in SQC department of the company from 16.04.1991. Workman Ashok Kr. Chourasia was also examined during the time of clearing of the case on merit as P.W.-1 on 20.06.2018 and he also deposed that he worked in the company from 11.04.1991 till February, 1994 continuously without break and he also again proved the certificate (Ext.-2) and again it was marked Ext. 2 on the basis of his evidence dt. 20.06.2018 but it is found that Ld. Lawyer for the company during this time also did not put any question in cross-examination of P.W.-1 touching the certificate, excepting putting one suggestion to P.W.-1 that P.W.-1 was not in continuous service and P.W.-1 denied the suggestion. Ld. Lawyer for the company in his argument, both written and oral, only raised that the

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certificate(Ext. 2) as was given by mill manager of the company to the workman Ashok Kr. Chourasia should not be accepted by this Court now as was also not accepted by the earlier Ld. Judge of this Court while disposing of the petition for grant of interim relief U/s. 15(2)(b) of West Bengal Industrial Disputes (2<sup>nd</sup> Amendment) Act, 1980 and for this reason Ld. Lawyer has mentioned a ground that there was no specific order for promotion to workman Ashok Kr. Chourasia from trainee supervisor to supervisor. The legality regarding mentioning of trainee supervisor in the appointment letter of Ashok Kr. Chourasia (Ext. 1) has already been seen and it is already been legally established that as admittedly the company wrote the appointment letter given to Ashok Kr. Chourasia without mentioning as to how long he would remain trainee supervisor and thus the contention of the company that Ashok Kr. Chourasia remained supervisor trainee all along during his service from 1991 to 1994 is bad in law for want of specifically mentioning the training period as to how long it would continue. Thus, the argument by Ld. Lawyer for the company that workman Ashok Kr. Chourasia remained trainee supervisor during the long time starting from 1991 till 1994 as mentioned in the appointment letter (Ext. 1) is not tenable and it is bad in law and the company by not mentioning the specific period for remaining as trainee supervisor has committed gross mistake legally. Admittedly it is found that Ld. Lawyer for the company did not put any question in cross-examination either of P.W.-1 at both the stages and O.P.W.-1 during the stage of interim relief matter to nullify the genuineness of the certificate and it is also admitted by O.P.W.-1 who is a personnel manager of the company. I find that Ld. Lawyer for the company also did not declare O.P.W.-1 Mr. Kar hostile for his such admission on the certificate. Though Ld. Lawyer for the company raised objection during the marking of the certificate and it was recorded by Ld. earlier judge but going through the evidences adduced by both parties I find that there is no ground for sustaining that objection in regard to the document (Ext. 2). Ld. Lawyer for the company has asserted that there is no specific order by company giving promotion to the workman Ashok Kr. Chourasia and to sustain this ground Ld. Lawyer for the company cited the evidences of O.P.W.-1 Mr. Kar and also cited one ruling in 2009 LLR P. 68 of Himachal Pradesh High Court. As O.P.W.-1 Mr. Kar was examined during the stage of disposing of the interim relief petition but the company did not make available during the time of hearing of the case on merit. As has already been seen O.P.W.-1 Mr. Kar in his cross-examination that mill manager of the company issued the certificate (Ext.-2) to the workman Ashok Kr. Chourasia mentioning in the certificate (Ext.-2) that Ashok Kr. Chourasia was working a supervisor in SQC department of the company in 16.04.1991 and as I mentioned earlier that Ld. Lawyer for the company never declared O.P.W.-1 Mr. Kar hostile for putting

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question touching the certificate (Ext.-2). Ld. Lawyer for the workman submitted that the mill manager of the company happened to be the top executive officer of the company and the company did not like to produce him as witness before this Tribunal to ascertain as to whether there was any order by the company making the workman Ashok Kr. Chourasia posted as supervisor from trainee supervisor as being the top official the mill manager being a responsible authority of the company did everything as per record of the company. Ld. Lawyer for the workman citing the evidences of P.W.-1 Ashok Kr. Chourasia adduced at both stages submitted that the workman has clearly deposed that all the necessary document about his service are lying with the company and there is nothing in the evidence to discard this evidence of P.W.-1. Ld. Lawyer for the workman also referred the evidences of O.P.W.-1 Mr. Kar and submitted that Mr. Kar (O.P.W.-1) has admitted in his evidence on 25.08.2008 that though he is the personnel manager of the company he joined the services of the company on 24.06.2002 which is long after the service period of Ashok Kr. Chourasia starting from 1991 to 1994 and Ld. Lawyer also raised that this O.P.W.-1 though stated that there is no record of the company to show that workman Ashok Kr. Chourasia was promoted from trainee supervisor to supervisor, yet O.P.W.-1 Mr. Kar admitted that he is not fully acquainted with the written statement filed by the company accepting only to some extent and this O.P.W.-1 Mr. Kar as a personnel manager of the company clearly admitted in cross-examination (25.08.2008) that the O.P.W.-1 cannot remember if there is any mentioning in the written statement of the company that workman was terminated from the service as supervisor. Ld. Lawyer for the workman also raised that the company has not adduced any documentary evidence and added that in the list of documents filed on behalf of company and also in the pleadings of the company Ld. Lawyer for the company asserted that the company would file documents to adduce them as documentary evidence but last of all the company did nothing. Ld. Lawyer further submitted that the company purposefully withheld the documents to suppress the truth and the mill manager of the company issued the certificate properly, genuinely and honestly and as per law there is nothing to reject it. Regarding the cited ruling Ld. Lawyer for the workman raised that in the cited case the workman was undergoing a training course and he was dropped from service immediately and after that he claimed confirmation in the service on the basis of a pay slip which was disallowed by the Court and asserted that it is not applicable in this case.

Admittedly the company has not adduced any documentary evidences. It is found that no question has been raised on behalf of company against the genuineness of the certificate (Ext.-2) and there is no evidence by the company in any way that the mill manager of the company being top executive authority of the company issued the

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certificate(Ext. 2) callously without application of his mind or dishonestly. Ld. Lawyer for the company has wanted to impress upon this Tribunal not to accept the certificate (Ext.-2) as was not accepted by Ld. earlier Judge of this Court during considering the interim relief matter U/s. 15(2)(b) of West Bengal Industrial Disputes (2<sup>nd</sup> Amendment) Act, 1980. Going through the order passed by Ld. earlier Judge in disposing of the interim relief matter U/s. 15(2)(b) of West Bengal Industrial Disputes (2<sup>nd</sup> Amendment) Act, 1980 I find that Ld. earlier Judge simply mentioned that Ext. 2 was not acceptable and scrutinising that order it is found that Ld. earlier Judge has not given any reason as to why he did not want to accept the document (Ext.2), but now after the evidences adduced during the stage of hearing of the case on merit it is coming out that absolutely there is no reason to say anything against the genuineness of the certificate (Ext.-2) or the mill manager of the company issued the certificate (Ext.-2) with some sort of dishonest intention or without considering the official record of the company. From the ruling cited by Ld. Lawyer for the company as mentioned earlier I find that Hon'ble Court was very much pleased to observe that to claim confirmation after training period, specific order by the company is necessary as the workman in that case claim confirmation on the basis of a pay slip and nothing-else and admittedly that workman did not get any order for promotion. But in the present case the matter is totally different, here the mill manager of the company being the top executive officer of the company or authority of the company mentioned in the certificate (Ext.-2) that the workman Ashok Kr. Chourasia was made from trainee supervisor to supervisor and the company has not adduced even an iota of evidence to nullify this position. The workman has produced the certificate (Ext. 2) from his legal custody which has not been questioned by the company and thereby the mill manager of the company by giving the certificate (Ext.-2) has given evidence in favour of the workman and Ld. Lawyer for the company before raising the submission that the Court should not accept it ought to have called that mill manager as witness to bring evidence that the mill manager of the company did not consider official papers relating to workman Ashok Kr. Chourasia. This certificate (Ext.-2) has also been admitted by O.P.W.-1 who admittedly stated that he joined the company as personnel manager after eight years from the tenure of service of workman and he has admitted that he did not have full knowledge over the written statement filed by company and O.P.W.-1 only stated that he did not find document to show that company gave him promotion, now this much evidence of O.P.W.-1 that he did not find any paper of company to show promotion to workman Ashok Kr. Chourasia from trainee supervisor to supervisor is found to be only superficial as he has failed to say anything specific as to whether the company maintains any official records for promotion to the workman as asserted by workman and

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supported by mill manager of the company being the top executive authority of the company by giving the certificate (Ext.-2) that the workman Ashok Kr. Chourasia was made supervisor from trainee supervisor. Thus, argument made by the Ld. Lawyer for the company that the certificate (Ext.-2) is not acceptable is found to be baseless and the genuineness of the certificate (Ext.-2) given by mill manager of the company and admission of the same on the part of O.P.W.-1 Mr. Kar that the mill manager of the company gave the certificate (Ext.-2) to workman Ashok Kr. Chourasia mentioning that Ashok Kr. Chourasia was made supervisor from trainee supervisor, in addition to the finding earlier that the company committed gross mistake by not mentioning the time specifically for under-going training by workman Ashok Kr. Chourasia in the appointment letter (Ext. 1) – go to show that the company has become estopped and now cannot assert that there is no specific order by company giving workman Ashok Kr. Chourasia post of supervisor from supervisor trainee.

It is the further case by the workman Ashok Kr. Chourasia is that he worked in the company continuously from the time of his joining in 1991 till February, 1994 but the company has challenged this and as seen earlier also the company has raised a big specific case mentioning that the workman never completed 240 days of work in any year in any way. In para- 1© of W.S. the company has mentioned that the workman Ashok Kr. Chourasia has not at all worked in the company M/s. Kelvin Jute Company Ltd. as has been alleged by the workman that he continuously worked from 1991 to 1994 and the company has given statistics and stated that the workman worked 16 days in April, 31 days in May, 30 days in June, 30 days in July, 23 days in August, Nil days in September, 23 days in October, Nil days in November, 31 days in December during the year 1991 showing total working days as 183 days in that year, further 22 days in January, Nil days from February to December during the year 1992 showing total working days as 22 days in that year, further 31 days in January, Nil days from February to June, 31 days in July, 31 days in August, 13 days in September, Nil days from October to December in the year 1993 showing total working days as 103 days in that year and 30 days in April, 23 days in May, 6 days in June during the year 1994 showing total working days as 59 days only, with the assertion by the company that copies of the attendance-sheet of the attendance maintained by the company for workman Ashok Kr. Chourasia is annexed with the written statement for marking the same as evidence during proper time of the proceeding of the case. Ld. Lawyer for the company has argued that the workman never worked continuously for 240 days in any year, neither did he worked continuously 240 days during the preceding immediately from the time of his alleged retrenchment. In support of his such argument Ld. Lawyer for the company referred evidence of O.P.W.-1 Mr. Kar

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dt. 31.07.2008 and further raised that it is the duty on the part of the workman to prove that he continuously worked for 240 days during the preceding year immediately before retrenchment. Ld. Lawyer for the workman has strongly argued that the workman has the onus to prove that he worked continuously every time starting from the joining till immediately before his retrenchment and for this purpose the workman has examined himself as P.W.-1 at both the stages and the witness of the company O.P.W.-1 Mr. Kar has also admitted the same and thus the workman has satisfactorily discharged his onus and proved that he continuously worked from the beginning of joining his service in 1991 till his name was struck off from the muster role of the company from the month of March, 1994. Ld. Lawyer for the workman has further raised that it was necessary on the part of the company to prove that the workman did not do work continuously to the satisfaction of the Court and for this purpose to bring attendance register maintained by the company in this regard. But the company did nothing and thus, Ld. Lawyer for the company cannot assert that the workman did not do work in the company continuously.

Going through the evidences I find that the workman as P.W.-1 during the stage of hearing of the interim relief petition on 07.12.2001 and also subsequently as P.W.-1 during the stage of hearing of the case on merit has uniformly deposed that he worked continuously and there is nothing in the cross-examination of P.W.-1 to challenge such evidences of the workman both the stages. Ld. Lawyer for the company did not examine any witness during the stage of hearing of the case on merit but examined only O.P.W.-1 Mr. Kar who introduced himself by deposing that he is the personnel manager of the company and he joined the company in 2002 and I find that in his examination-in-chief this O.P.W.-1 Mr. Kar has admitted that workman worked under the company from 1991 to 1994. Thus, it is found that the workman has adduced sufficient to show that he worked in the company continuously from 1991 to 1994 and therefore the onus shifts on the company. For the purpose of discharging such onus on the part of the company Ld. Lawyer for the company during the time of hearing of the case for disposal of the interim relief petition U/s. 15(2)(b) of West Bengal Industrial Disputes (2<sup>nd</sup> Amendment) Act, 1980 only examined Mr. Kar (O.P.W.-1) and has also wanted to get support from the cross-examination of workman Ashok Kr. Chourasia as P.W.-1 at both stages. Mr. Kar as O.P.W.-1 in his examination-in-chief has only supported the case of the workman by deposing that the workman worked under the company from 1991 to 1994 with the addition that there is no record in the company regarding the service matter of the workman and O.P.W.-1 also deposed that for that reason he cannot say if workman was promoted from trainee supervisor to supervisor. O.P.W.-1 in his examination-in-chief is totally silent about the assertion of the company that Ashok Kr. Chourasia did not

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continuously worked for 240 days in a year and O.P.W.-1 completed the sentence in chief simply by mentioning that the workman worked under the company from 1991 to 1994 and he complete the sentence thus without mentioning that the workman never worked continuously for 240 days in any year. Further on the evidences of O.P.W.-1 Mr. Kar, the personnel manager of the company, there is no document regarding attendance of the workman in the company and no such document was also produced by O.P.W.-1 to justify anything other than his admission that the workman Ashok Kr. Chourasia worked continuously in the company from 1991 to 1994. In his argument, both written and oral, Ld. Lawyer has mentioned that there is no record in the company regarding promotion of the workman. Ld. Lawyer for the workman has strongly argued that though it is the assertion by the company that there is no record in the company regarding attendance of the workman for his works in the company from 1991 to 1994 and the same is also asserted by the O.P.W.-1 Mr. Kar as personnel manager of the company but the submission of the Ld. Lawyer for the company cannot be accepted due to circumstantial evidence that has come before the Court and for this purpose Ld. Lawyer for the workman referred the contention of the written statement filed by the company and further argued that in para- 1© of the written statement filed by the company the company has given two-paged statistics regarding attendance of the workman mentioning that the attendance-sheet regarding attendance maintained by the company regarding workman Ashok Kr. Chourasia would be filed and proved as evidence but the company did not bring any such document for use as evidence in this case and therefore such assertions on the part of the company is baseless and it is further baseless due to the admission on the part of the O.P.W.-1 Mr. Kar being the personnel manager of the company that the workman Ashok Kr. Chourasia worked in the company from 1991 to 1994. Regarding onus Ld. Lawyer for the company has filed one ruling in 2008(9) SCC p-486 to submit that in that case it is the observation of the Hon'ble Court the burden of proof is on the workman to justify that he worked continuously 240 days, and having taken the evidences of workman O.P.W.-1 and other evidences it is clearly established that workman worked continuously from 1991 to 1994 which is also clearly admitted by the witness of the company O.P.W.-1 Mr. Kar and there is nothing as found in the evidences of O.P.W.-1 or in the cross-examination of P.W.-1 to discard or nullify such position and it is automatically with all such evidences and also admission on the part of the O.P.W.-1 established that workman continuously worked on 1991 to 1994 and there is no break in his continuous service thus. Further the workman as P.W.-1 has clearly deposed that he worked in the company as supervisor after working as supervisor trainee, and the certificate issued by mill manager being top executive authority of the company

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(Ext. 2) and O.P.W.-1 clearly deposed that the certificate (Ext. 2) is genuine, and legally the trainee-supervisor-ship of workman ought to have been specific without being such a long period without mentioning when the trainee-ship would come to end and the version of O.P.W.-1 that there is no official record regarding working by workman, which is found to be contradictory due to giving of lengthy statistics regarding attendance of workman, which is not possible without official record / file and as found, no documentary evidence was adduced despite assertion of adducing the same in W.S. by company, and admittedly there is also no statutory format for confirmation / promotion order in the company, and with these, it is to say that the certificate itself operates as confirmation / promotion order for workman legally.

Question of abandonment of service on the part of the workman has been raised by the company. It is the specific case by the workman as per his written statement that he did not abandoned the service in any way and he had been working in the company continuously and as per para – 8 of written statement, it is that on and from 1994 the workman used to be paid his salary by the company on voucher and the management of the company got annoyed at the protest of the workman and in the month of March the workman found that his name was struck off from the muster role of the company and the workman wanted to know the reason from the management but the management remained silent and the workman protested again and gave a letter to the management of the company dt. 01.04.1995 but the management did not make any reply to that letter and then the workman gave a letter to the Assistant Labour Commissioner, Government of West Bengal, at 1, K.S. Roy Road, Calcutta – 700001 on 29.05.1995 for intervention in the matter. The workman has further stated that in response to the letter dt. 29.05.1995 of the workman, the Assistant Labour Commissioner, Government of West Bengal issued a letter to the management of the company M/s. Kelvin Jute Co. Ltd. vide memo No. 13/45/1/96/DLC dt. 03.01.1996 and then the management of the company also send its reply to the Assistant Labour Commissioner on 15.02.1996 with forwarding a copy to of the same to the workman, and then the workman also submitted details statement in response to the above-mentioned forwarding letter to the Deputy Labour Commissioner at Barrackpore on 11.03.1996. In his written statement the workman has further stated that the manner in which the service of the workman was terminated by the company is a clear instance of unfair labour practice, mala fide and colourable exercise of power, with the addition that the service of the workman was illegally terminated by the company in spite of discharging his duties up to the satisfaction of the management and also in spite of clear, meritorious, sincere and faithfully discharging of his duties continuously for more than three years. From the written statement filed by the company I find that against

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name of the workman from muster role of the company. Ld. Lawyer further argued that the salary slips (Ext.8, Ext. 9) as has been proved by the workman during his evidence, the company used to give him salary but not stipend. Ld. Lawyer concluded his argument by mentioning that the workman never abandoned his service and the protest letter (Ext. 6) as evidence has totally discarded the stance raised by the company that the workman abandoned his service. It is the argument by Ld. Lawyer for the company that workman Ashok Kr. Chourasia himself abandoned his service and the company never terminated his service.

As per assertion of the workman in his written statement that the workman raised protest for giving him salary on voucher and due to such protest by him against the management of the company, the management of the company became annoyed and the workman found that from the month of March, 1994 his name was struck off from the muster role of the company and then he raised protest by writing letter and Ext. 6 is a letter dt. 01.04.1995 as has been proved on the basis of evidence of workman at both stages i.e. during interim relief hearing stage on 22.01.2008 and also hearing of the case on merit stage on 20.06.2018 and it was marked Exhibit without any objection as I find. This Ext. 6 is found to be addressed to the president to the works Sri Durgaprasad Nathani of M/s. Kelvin Jute Co. Ltd., 6, Old Post Office Street, Temple Chambers, Calcutta - 700001 with caption illegal termination of his service from the company. This Ext. 6 is two paged and it contains that he (workman) wanted to draw kind attention of the addressee for his immediate action mentioning that he was appointed in the company w.e.f. 11.04.1991 as supervisor trainee on a monthly salary of Rs. 600/- and he had been serving the company loyally, faithfully and efficiently and there had been no adverse report against at any material point of time. It (Ext.6) further contains that the company gave him promotion from 1993 and designated him as supervisor in the SQC department of the company and then he was transferred to the batching department of the company and his salary was increased to Rs. 800/- per month and on and from 1994 his salary used to be paid by the company in voucher and then he protested in receiving his salary on voucher and the management of the company got annoyed for his such protest and in the month of March, 1994 the management of the company struck off his name from the muster role of the company and then he wanted to know the reason for which but the management of the company remained silent and he has also mentioned in his letter that the management of the company had taken vindictive attitude towards him by adopting unfair labour practice. It (Ext. 6) further contains that for all fairness and for the same of principles of natural justice, he demanded that he be re-instated in the service with back-wages and the compensation with the addition that in case he did not receive any reply

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from the company within 7 days it would be presumed that the company had no intention to withdraw the action against him further adding that he did not have any fault requiring his termination from service explaining that the management all on a sudden without any reason and justification illegally terminated his service w.e.f. March, 1994 with further explanation that his such termination is an example of gross injustice and unfair labour practice and also in violation of law adding further that termination of his service was nothing but illegal retrenchment in as much as without complying with the mandatory provisions of law and at the end he solicited immediate reply from the company and it contains the signature of the workman and it is further shown that a copy of this letter was given to the Assistant Labour Commissioner, Calcutta and also to others. This letter also contains an endorsement showing that it was received by the addressee. Thus, this document (Ext. 6) shows that the workman has asserted that he was wrongly terminated by the company as he raised protest against the management of the company for giving him salary in voucher and it is also found in the document (Ext. 6) that the company demanded his immediate reinstatement in the service by the company and a copy of this letter was also given to Labour Commissioner in its Calcutta office. Going through the evidences orally adduced by the company at the stage of interim hearing matter I find that O.P.W.-1 Mr. Kar has totally remained silent to say anything about this document (Ext. 6). Controversy has also been raised in the way that it is the assertion of the company that the company did not give the workman any salary but only stipend but the workman has raised that initially he was supervisor trainee and at that time he would get stipend but after his promotion from supervisor trainee to supervisor he was given salary and to justify his such version the workman has proved salary slips (Ext. 8 & Ext. 9). The Ext. 8 shows that the workman Ashok Kr. Chourasia used to be given salary and in the month of January, 1992 his basic salary was Rs. 520/- per month and this document (Ext. 8) is silent about stipend and it does not contain any word as stipend. And the same is also the case in respect of other document (Ext. 9) and it also does not contain anything as stipend but also salary. Thus, the assertion on the part of the workman that the company used to give him salary is found to be justified by both oral evidences of P.W.-1 and also by documentary evidences (Ext. 8 & Ext. 9). Anyway, if there is any basic difference between salary and stipend, and as per Oxford English Dictionary salary is noun and it is singular, it means a fixed regular payment made by an employer to an employee, it originated from Latin word – salarium, whereas stipend is also noun, it means fixed regular sum paid as a salary to a fixed / teacher / official. Thus, intrinsically there is no basic difference between salary and stipend. As per case of workman he used to be given stipend while he was trainee supervisor but he was made supervisor (Ext. 2) and the

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company starting giving him salary and when the company started giving him salary in voucher, he protested and it angered the company and the workman found that his name stood struck off from the muster role from the month of March, 1994. Though the company has time and again asserted that the company did not terminate the workman from his service but in the written statement filed by the company, the company has, as I find in para -1(d) of written statement of the company, mentioned that the workman was disengaged and thus, the stance of the company, first that the company did not terminate his service and then clearly mentioning in the written statement that the workman was disengaged – are found to be sharply contradictory and as a consequence by the principles of rules of evidence, none of these is acceptable. The oral and documentary evidences (Ext. 6, Ext. 8 & Ext. 9) are found to be sufficient to show nothing excepting that due to payment of salary to the workman in voucher, workman protested and it angered the management of the company and the company admittedly as mentioned earlier (para – 1(d) of written statement of company) disengaged the workman by striking off his name from the muster role of the company w.e.f. the month of March, 1994, though in the pleadings by company, the workman worked even after March in 1994, of which nothing supporting has come.

The workman Ashok Kr. Chourasia has mentioned that he worked in the company initially as a trainee supervisor in the SQC department of the company and after his promotion from trainee supervisor to supervisor he was transferred to the batching department of the company and he worked continuously from his joining in 1991 till February, 1994 without any break. But on behalf of company it has been raised that firstly the workman was never promoted from trainee supervisor to supervisor and secondly, he was a supervisor and therefore he cannot come within the scope of workman as per definition of workman U/s. 2(s) of the Industrial Disputes Act, 1947. Ld. Lawyer for the workman has argued that the workman was promoted from trainee supervisor to supervisor and this has been admitted documentarily by the mill manager of the company in the capacity of top executive authority of the company and there is nothing by the company to discard all such clear-cut proof. Against all these Ld. Lawyer for the company has submitted, as also seen earlier, that the company did not give any promotion and even if promotion was given it was in the capacity of supervisor and therefore, the workman cannot be a workman legally. Ld. Lawyer for the workman then replied that the workman Ashok Kr. Chourasia claimed benefit of provident fund in the company but the company rejected his claim on the ground that legally he was not workman and then the workman challenged this letter before the competent authority who is the regional P.F. Commissioner and claimed benefit of provident fund as being workman under the

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company but the company also challenged that claim of the workman raising that he could not be called a workman legally and then judgement was given by regional P.F. Commissioner holding that workman was an employee as per Section 2(f) of EPF & MP Act, 1952 and this judgement of regional PF Commissioner was never challenged by the company. Ld. Lawyer for the workman also argued that though the designation of the workman was supervisor, yet the workman had to do manual works and the workman had to carry loads of bags from one place to another and to justify his submission Ld. Lawyer referred two documents i.e. Ext. 4 & Ext. 5 such as bundles of bags and explaining Section 2(s), Ld. Lawyer for the workman has further raised that workman means any person including an apprentice employed in an industry who do any manual, unskilled, technical, operational, clerical or supervisory work and further mentioned that who being employed in a supervisory capacity draws wages exceeding Rs. 10,000/- per mensem and explained that total amount of salary of the workman being Rs. 800/- or less per month and that the workman had to work manually / clerically etc., the workman is a workman as per law. In reply against this argument Ld. Lawyer for the company raised that a supervisor is an administrative post and definition of workman as per Industrial Disputes Act, 1947 does not apply to him.

Law as per Industrial Disputes Act, 1947 provides definition of workman in Section 2(s) and accordingly workman means any person including an apprentice employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be expressed or implied, and for the purpose of any proceeding under the Industrial Disputes Act, 1947 in relation to an industrial dispute includes any such person who has been dismissed, discharged or retrenched in connection with or in consequence of that dispute or whose dismissal, discharge or retrenchment has led to that dispute but does not include any such person (1) who is subject to Air Force Act etc. or (2) who is employed in police service or (3) who is employed in managerial or administrative capacity or (4) who being employed in supervisory capacity draws wages exceeding Rs. 10,000/- or exercises either by nature of duties attached to the office or by reason of powers vested him functions mainly of a managerial nature. As per decision of Hon'ble Supreme Court of India in S.K. Maini Vs. Carona Sahu Co. Ltd., 1994 LLR 321 (S.C.) the designation of an employee is not of much importance and what is important is the nature of duties being performed by the employee. The workman as P.W.-1 during the stage of interim relief petition hearing on 07.12.2001 deposed that he had to perform various kinds of work and again during the hearing of the case on merit on 20.06.2018 he deposed that though he was designated as supervisor, he had no authority to act as supervisor and he had to do

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job of clerical and manual in nature and for the purpose of justifying his such version he proved as many as two documents i.e. ext. 4, ext. 5 without any objection from the side of the company, both documents being issued by the company. Ext. 4 is found to be a letter written by president (works) of the company M/s. Kelvin Jute Co. Ltd. addressed to M/s. Ranjan Bagging, 8/1D Gurudas Dutta Garden Lane, Calcutta – 700067 and the contention of this letter (Ext. 4) is that president (work) of the company M/s. Kelvin Jute Co. Ltd. did by this letter authorise the workman Ashok Kr. Chourasia to collect 40 bundles of B. Twill (100g bay) bags from M/s. Ranjan Bagging on behalf of company M/s. Kelvin Jute Co. Ltd. with further mentioning that signature of workman Ashok Kr. Chourasia was attested by the writer of the letter i.e. president (works) of the company M/s. Kelvin Jute Co. Ltd. and it also contains signature of the workman Ashok Kr. Chourasia as stated to be attested. Ext. 5 is also found to be a letter similar to Ext. 4 and it is found to be written on behalf of company M/s. Kelvin Jute Co. Ltd. and it is addressed to M/s. Bengal Swastic Enterprises, 4 K.B.M. Road, Champdani, P.O. – Baidyabati (712222) in District – Hooghly and the contention of this Ext. 5 is that the writer of the letter on behalf of company did by this letter authorise workman Ashok Kr. Chourasia to collect the articles mentioned in the letter described as bags and twine from M/s. Bengal Swastic Enterprises with further mentioning that signature of workman Ashok Kr. Chourasia was attested in the letter and the articles mentioned in the letter are B. Twill bags  $6 \times 7, 44Z \ 26\frac{1}{2} = 4549$  bags, A. Twill  $8 \times 9, 44 \times 26 - \frac{1}{2} = 497$  bags, Sewing Twine = 772 Kgs., it also contains the signature of workman Ashok Kr. Chourasia as stated to had been attested by the writer of the letter and below the signature of this workman Ashok Kr. Chourasia, there is also signature of the writer of this letter, and the contention of these two letters, (Ext. 4 & Ext. 5) show that the workman Ashok Kr. Chourasia worked manually and the workman Ashok Kr. Chourasia had to work under the direction of the company to bring articles i.e. bags, B. Twill and as per Ext. 5 he had to bring  $4549 + 497 + 772$  bags from other companies namely M/s. Bengal Swastic Enterprises at a time. Going to the evidences of workman as P.W.-1 at both stages I find that company has not put any question to the workman challenging these documents (Ext. 4 & Ext. 5) by which the company required the workman to bring articles and the sole witness examined by the company Mr. Anjan Kr. Kar (O.P.W.-1) during the interim relief stage is found silent on these documents (Ext. 4 & Ext. 5). Ld. Lawyer for the workman has also brought into evidence the ESI Corporation Identity Card in the name of workman Ashok Kr. Chourasia (Ext. 7), salary pay slips (Ext. 8, Ext. 9) and a notarised copy of order passed by regional P.F. Commissioner at Barrackpore (Ext. 10) in support of assertion by the Ld. Lawyer for the workman that the workman was a workman in legal terms and the

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documents i.e. Ext. 6, Ext. 7, Ext. 8, Ext. 9 & Ext. 10 have clearly proved the same. Ld. Lawyer for the workman has argued that the order of the Regional P.F. Commissioner, Barrackpore (Ext. 10) was brought into evidence on behalf of the workman without taking any special leave from the Tribunal and also mentioned that definition of employee in the Employees' Provident Fund & MISC Provisions Act which is an independent Act is different one from Industrial Disputes Act, 1947 and the order of the Regional P.F. Commissioner, Barrackpore (Ext. 10) cannot be applied in this case equating the definition of employee as per that Act with that of Industrial Disputes Act, 1947. It is also the oral argument by Ld. Lawyer for the company that the company accepted the workman Ashok Kr. Chourasia as an employee for the purpose of Provident Fund only to avoid future legal liability. But Ld. Lawyer for the workman has challenged this argument forwarded by Ld. Lawyer for the company and mentioned that company did not like to give the benefit of provident fund to the workman and then workman approached the Regional P.F. Commissioner, Barrackpore who then decided the matter in favour of the workman compelling the company to provide benefit of P.F. matters to the workman. I also find that Ld. Lawyer for the company has filed one case law in 2009(III) LLJ p.121 of Hon'ble Himachal Pradesh High Court pointing out that merely because some amount was paid as Provident Fund it cannot be said that he had become a workman of the company.

As I have already mentioned Ext. 9 is the salary pay slip in the name of workman Ashok Kr. Chourasia issued by the company and it shows a deduction of an amount for P.F. contribution and also an amount for E.S.I. The judgement delivered by Regional P.F. Commissioner, Barrackpore (Ext. 10) shows that question relating to the workman Ashok Kr. Chourasia arose before that authority in the way that if workman Ashok Kr. Chourasia was an employee under the company or not. Workman asserting to himself to be an employee under the company demanded for P.F. benefit but it was denied by the company and then this matter was decided by Ld. Regional P.F. Commissioner, Barrackpore after a contested hearing and the Ld. Commissioner discussed all matters relating to involvement of definition of an employee as was challenged by the company and came to a finding that workman Ashok Kr. Chourasia is entitled and was required to be made a member of the Provident Fund. Admittedly, this order of Regional P.F. Commissioner, Barrackpore (Ext. 10) was not challenged by the company and the order (Ext. 10) became absolute. Going through the case law cited by Ld. Lawyer for the company, the matter involved was that the workman was a trainee steno-clerk who was terminated before being confirmed in the service by the company in that case and Hon'ble Court came to a finding that as per evidence the workman admitted that he was

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under-going training program and Hon'ble Court made the observation as has been argued by Ld. Lawyer for the company. But in the present case the letter of the mill manager of the company (Ext. 2) as admitted by witness of the company O.P.W.-1 Mr. Kar, the workman Ashok Kr. Chourasia was promoted from trainee supervisor to supervisor and therefore he no longer remained a trainee so as to apply the cited ruling as referred by Ld. Lawyer for the company. It is found that the ratio of the ruling cited by Ld. Lawyer for the company is totally different and it cannot be made applicable in the present case, and here it may further be referred that it has already been discussed and found that as per observation of Hon'ble Court non-mentioning of specific time for under-going training in the appointment letter (Ext. 1) has rendered that the terms of appointment as supervisor trainee without specification for training time, the company cannot any longer claim the workman to be a trainee and the workman is a workman U/s. 2(s) of Industrial Disputes Act, 1947. The documents Ext. 4, Ext.5 are unchallenged by the company and these are found to be issued by the company and these documents show that the workman had to work manually for carrying articles such as bags of B. Twill etc. and Ext. 4 & Ext. 5 thus support the deposition of workman as P.W.-1 that the workman had to work manually, clerically etc. and the company never allowed him to work in the capacity of supervisor and there was none under him for supervising for any purpose, and by applying the observation and decision of Hon'ble Supreme Court of India in 1994 LLR 321 it is to say that the workman was a workman legally without any supervisory capacity in the company though he was stated to be a supervisor and he does not come within the exception as to not inclusion of any person as provided in Section 2(s) of the Industrial Disputes Act, 1947.

I have already mentioned the direction of Hon'ble Court that interim relief matter is to be decided along-with the matter of reference finally holding that interim order is only an interlocutory order and the interim matter was decided by earlier Ld. Judge Mr. Mitra in order No. 189 dt. 28.08.2009 and going through this order, it is coming out that Ld. Earlier Judge did not like to give any importance to the documents brought into evidence on behalf of workman and regarding certificate issued by mill manager of the company to the workman it was observed that without any specific order for promotion and confirmation, it (Ext. 2) shall not have any effect but after considering the evidences on merit as have now become available, it is to say that such observation on the part of Ld. Earlier Judge rejecting the documents as were brought into evidence by workman is now found to be baseless and the evidences adduced by workman are found to be proper in all respects and on behalf of the company there is nothing to discard of them. In the pleadings of the company as per written statement, the company has asserted to bring

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documentary evidences from the office of the company specially regarding the assertion of the company that the workman did not complete continuously working for 240 days in any year but the company last of all did nothing. As seen in Ext. 2 the mill manager of the company being executive authority of the company categorically has stated that the workman Ashok Kr. Chourasia has worked as supervisor in the SQC department from 16.04.1991 and during the tenure of this service the workman used to draw Rs. 800/- per month and he also appreciated the workman mentioning that the workman is sincere, energetic and hard-working and the certificate (Ext.-2) along-with the contention therein has been admitted by another official of the company O.P.W.-1 Mr. Kar in toto with clearly admitting that the workman worked continuously from 1991 to 1994 and this O.P.W.-1 never used any word against continuous working by the company. Admittedly, the workman has failed to produce any separate order for promotion etc. But the company as to its assertion in the written statement for filing of documents from the office of the company also did not file any document and no reason is also coming from the side of company as to why it did so. O.P.W.-1 Mr. Kar being personnel manager of the company further admitted that only some of the matters of the written statement are known to him but not fully and he also asserted that there is no paper in the office of the company regarding service matter of the workman but such evidence on the part of the O.P.W.-1 is found to be contradictory because of the assertion by the company in its written statement specially regarding statistics of attendance by workman and such statistics could not have been given unless there were papers in the office of the company regarding service / attendance of the workman in the company and this goes to show that such evidence of O.P.W.-1 that there is no paper in the company regarding service matter of workman is found to be contradictory. There is no evidence by the company that the mill manager of the company issued the certificate (Ext.-2) in a careless manner without consulting official papers regarding the workman as discussed earlier, and legally speaking, even if there is no official order regarding promotion or confirmation of the workman, the certificate (Ext.-2) given by the mill manager of the company in the capacity of top executive official of the company shall operate as one under the present circumstances as mentioned earlier also. Thus, the reasoning of the interim order, after discussion of evidences, both oral and documentary, is found to be nothing but faux-pas. As a result, it is to say that the termination of service by striking off name of the workman Ashok Kr. Chourasia from the muster roll of the company w.e.f. March, 1991 is found to be illegal ab-initio.

Now I take up issue No. 2, it is regarding as to what other relief, if any, is he entitled. As per written statement filed by workman it has been stated that after his illegal

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termination the workman is still without any employment and without earning and as a consequence the workman is in grave economic distress and maintaining himself and his family members is under charity of others, and for all such reasons the workman requested the company to allow him to continue his service but the management of the company did not make any reply. He has also mentioned that the management of the company assured him to pay full salary with increment applicable to supervisor from the date of his joining but the company last of all did nothing. It is the prayer by the workman to reinstate him in service with full back-wages and consequential benefits. Against all these the company in its written statement has stated that the para - 14 in which the workman has stated all these regarding his economic condition are nothing but submissions. Ld. Lawyer for the company has argued that the economic condition of a workman is a matter of special knowledge of the workman and the workman has to prove it independently and citing one ruling in 2008(9) SCC p-486 Ld. Lawyer for the company has further raised that it has been held by Hon'ble Supreme Court that back-wages is not automatic. But Ld. Lawyer for the workman has argued that the workman has discharged his duty towards burden of proof and explained that the company asserted that the workman did not work continuously and the workman adduced evidence to show that he worked continuously and the company through its witness O.P.W.-1 Mr. Kar has admitted this assertion of the workman by specifically deposing that the workman worked from 1991 to 1994 and this O.P.W.-1 never uttered a single word that the workman never worked continuously. Ld. Lawyer for the workman has also argued that it is also the burden on the part of the workman to prove that after his termination from the service he did not get any source of income and as a result he has been suffering economically and he is anyhow living life with his family on the charity of others and the company has adduced even a single iota of evidence against such evidences given by workman as P.W.-1 and in the cross-examination of P.W.-1 or in the evidences of O.P.W.-1 there is at all nothing to discuss such evidences. Ld. Lawyer for the workman further argued that the ruling cited by Ld. Lawyer for the company i.e. (2008) 9 Supreme Court cases 486 is on different perspective and it cannot be applied in this case and Ld. Lawyer explained that in the cited ruling services of respondent was terminated by the employer which is a co-operative society on the ground that the co-operative society was running on losses and the employee who was terminated was appointed only for a short term basis on two occasions and it was found that the co-operative society became very sick unit and not in a position to make any payment for back-wages and for that reason the Hon'ble Court directed to pay compensation of Rs. 2 lakhs to the workman. Ld. Lawyer for the workman further submitted that the Hon'ble Court applied the principles

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of Section 106 of the Evidence Act regarding burden of proof of the workman as a matter of special knowledge and accordingly the workman has adduced sufficient evidence which have become absolute for want of contrary evidence by company in any way either orally or documentarily and there is also nothing to disbelieve the evidences given by the workman as P.W.-1. Ld. Lawyer further referred identity card (Ext. 7) and submitted that the workman has to maintain his aged father and mother who have been named in that card (Ext. 7). Ld. Lawyer for the workman further raised that under such circumstances the onus of proof shifted on the company but the company has not adduced any evidence and there is also nothing in the cross-examination of P.W.-1 or in the evidences of O.P.W.-1 examined during the time of interim relief matter and accordingly the company has not discharged the onus shifted on it thus. Ld. Lawyer for the workman further argued that the company has adopted double standard in this case and what has been done by the mill manager of the company in the capacity of top executive authority is being tried to be destroyed by the company but any how the witness of the company itself Mr. Kar as personnel manager of the company has clearly admitted the action of mill manager who documentarily stated that the workman was promoted from trainee supervisor to supervisor and O.P.W.-1 has clearly admitted the same. Ld. Lawyer for the workman has further raised that in the written statement filed by the company, the company gave a lengthy statistics regarding attendance of the workman with promise to file the attendance register but last of all the company did nothing and also did not assign any reason for not filing the documents and thus it is a matter of adverse presumption from which the company escape.

Going through the case law as mentioned above filed by the Ld. Lawyer for the company I find that Hon'ble Court was very much pleased to describe the principles of evidence as to special knowledge observing that grant of reinstatement cannot be automatic but it is trite and the Tribunal has to strike a balance in lying with the provision of Section 11A of Industrial Disputes Act, 1947, and going through the ruling I find that though the factual position in the cited case and the one in the present case are different yet the principles regarding burden of proof and special knowledge as per Section 106 of Evidence Act are of importance and these are of general application. From the evidences of workman it is found that the workman as P.W.-1 has deposed that he was dismissed from the service and after that he did not get any work and he is unemployed, and over this evidence Ld. Lawyer for the company suggested to the workman (P.W.-1) that he is not entitled to get any relief and P.W.-1 denied it. I also find in the cross-examination of P.W.-1 that Ld. Lawyer for the company suggested to the P.W.-1 (workman) that the workman had been working in as many as three companies at present namely Empire Jute

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Mill, Eastern Manufacturing Ltd. and Titagarh Jute Mill and I find that Ld. Lawyer for the workman raised objection against this question, yet the workman as P.W.-1 replied denying the suggestion and he also denied a further suggestion that the workman left the company. Going through the pleadings of the company it is found that the company has not mentioned any matter of income by the workman after he was dismissed from the service, now as per cross-examination it is the assertion of the company that the workman worked in as many as three companies but the company has not tried to bring any evidence in support of such assertion in the form of suggestion to the P.W.-1, neither did the company filed any petition to call for any witness / document from the companies namely Empire Jute Mill, Eastern Manufacturing Ltd. and Titagarh Jute Mill. Thus, the evidences adduced by the workman regarding his economic condition and suffering of his family have become absolute and there is at all nothing to doubt it. Having taken the observations and principles of rules of evidence pertaining to Section 106 of Evidence Act regarding special knowledge in the cited ruling by Ld. Lawyer for the company it is coming out that the workman has discharged his responsibility regarding onus of proof, and thus it shifted on the company specially for its suggestion that the workman had been working in as many as in three companies now. As per identity card (Ext. 7) the workman has his father and mother. In the written statement the company mentioned that it would file documents from the office of the company in support of its assertion in the written statement specially regarding statistics about attendance of workman but company did nothing as has been argued by Ld. Lawyer for the workman also and at the same time cogent reason has also not been given by the company and as I mentioned earlier though the O.P.W.-1 has tried to say that there is no record in the company yet the same is found to be contradictory so far the mentioning of statistics by company in regard to attendance of workman, which is not possible without official document and thus such evidence on the part of O.P.W.-1 cannot carry any weight. Section 11A of the Industrial Disputes Act, 1947 has given power to Tribunals mentioning that it can pass necessary order after being satisfied. It is the assertion of the company that the company did not dismiss the workman against case of the workman that the workman worked continuously from 1991 to 1994 but in the pleading the company has mentioned that the workman was disengaged and this is found to be self-contradictory. Further the O.P.W.-1 Mr. Kar who appeared to adduce evidence on behalf of company clearly admitted that the mill manager has mentioned in the certificate that workman was made supervisor from supervisor trainee and it has been seen that the company has tried to nullify the document given by mill manager as chief executive authority of the company by all means but last of all the company through its witness O.P.W.-1 clearly admitted it. In the evidences workman as

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P.W.-1 has deposed that he worked continuously without any break with all sincerity towards the company and the mill manager of the company has also mentioned this in the document (Ext.-2) but he only raised protest against the manager of the company for giving him salary in voucher and this anger the company and struck off his name from the muster role of the company from the month of March, 1994 without assigning any reason and despite protest, the company did nothing and the company also did not give allegation against him neither did the company order for any enquiry against him. In the pleadings also the company has mentioned that the workman was disengaged. Therefore, it is clearly coming out that the service of the workman was dismissed by the company in violation of the rules and laws and the facts and circumstances show nothing excepting that the assertion of the workman that his service was dismissed in a retaliation due to his protest against the company. With all these it is to say that the company dismissed the service of the workman illegally.

Now whether the workman is entitled to get all back-wages and other consequential relief are to be seen. The workman as P.W.-1 earlier during consideration of interim relief matter stated that there are about 2000 / 2500 employees in the company. O.P.W.-1 Mr. Kar deposed during interim relief matter on 25.08.2008 that the company is going to be sick but from the evidence of P.W.-1 during the stage of hearing of the case on merit did not like to put any question to P.W.-1 (workman) touching the financial condition of the company. At the same time, it has already been seen that though in the appointment letter (Ext. 1) the company has not mentioned any specific time for remaining supervisor trainee by the workman and as per observation of Hon'ble Court in *Mana Thomas Gonsalves v. Concept Pharmaceuticals (p) Ltd.* (2000) IV LLJ – SUPP – Bomb. 906, such non-mentioning of specific time for traineeship in appointment letter (Ext. -1) is grossly illegal on the part of the company and the workman is a workman under Section 2(s) of the Act. Having considered all these facts and circumstances vis. a vis. the requirement of Section 11A of the Act, it appears that reinstatement of the workman is necessary with at least 80% of back-wages with full other consequential relieves. It is therefore to say that the order rejecting the interim relief petition U/s. 15(2)(b) of West Bengal Industrial Disputes (2<sup>nd</sup> Amendment) Act, 1980 was not proper and the workman is found to have brought sufficient evidence and established prima facie case in support of the same and thus was entitled to get an order under the West Bengal Payment of Subsistence Allowance Act, 1969.

It is, in the summing up, to say that the mill manager of the company being top executive authority did everything by document (Ext. 2) asserting that the workman worked sincerely and he was given the post of supervisor as observed earlier but the

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company now has attempted to overturn it for no reason by all means but failed miserably though as observed the document (Ext. 2) also operates as an order for promotion legally and thus, the company resorted to unfair labour practices that has also, as facts and circumstances have shown, amounted to violation of basic rights.

It is therefore,

ORDERED.

that this Tribunal is satisfied that the order of dismissal / termination of workman Ashok Kr. Chourasia w.e.f. the month of march 1994 by way of striking off his name from the muster role of the company was not justified and it is declared illegal ab initio and hereby set aside and the prayer for workman Ashok Kr. Chourasia for immediate reinstatement in his service is allowed and accordingly the company directed to reinstate him in his post immediately and it is further stated that the workman is also entitled to get back-wages w.e.f. the month of March, 1994 till his reinstatement and the company is directed to give him 80% of the back-wages and also directed to give him full other consequential relieves immediately. There is no order as to cost. This is the award of this Tribunal. In view of order of reference No. 77-I.R./IR/7L/13/97 dt. 14.01.1997 by order of Governor signed by Mr. S.R. Chakraborty, Assistant Secretary to the Government of West Bengal, Labour Department, Writers' Buildings, Calcutta - 700001 and it is also directed to requisite number of copies of judgement and award be prepared and necessary copies as per rules be sent to the appropriate government i.e. the Principal Secretary to the Government of West Bengal, Labour Department, New Secretariat Buildings, 1, Kiran Sankar Roy Road, Kolkata - 700001.

Dictated & corrected by me.

Sdl-  
Judge

Sdl-  
( S. C. Das )  
Judge  
Second Industrial Tribunal,  
West Bengal  
at Kolkata  
17-08-2018

