

**File No. LABR-22015(16)/251/2019-IR SEC Dept. of LABOUR**

**1/36769/2019**

**Government of West Bengal  
Labour Department  
I.R. Branch  
N. S. Buildings, (12<sup>th</sup> Floor),  
1, K. S. Roy Road, Kolkata – 700 001.**

**No.Labr./91/(LC-IR) -  
22015(16)/251/2019**

**Dated, Kol., the 29<sup>th</sup> January, 2019.**

**O R D E R**

WHEREAS an industrial dispute existed between M/s, Ramesh Kumar Rajendra Kumar, 135/52, Girish Ghosh Road, P.O. – Belurmah, Dist. Howrah and their workman Sri Bhanwar Lal Chhapolika, C/o, Mr. Jharkandey Pandey, 4, Karunapukur Road, P.O. Belurmah, Dist. Howrah regarding the issues being a matter specified in the second schedule of the Industrial Dispute act, 1947 (14 of 1947) ;

AND WHEREAS the workman has filed an application directly under sub-section 2 of Section 2A of the Industrial Dispute act, 1947 (14 of 1947) to the Judge, Second Industrial Tribunal Specified for this purpose under this Department Notification No. 101-IR dated 02.02.12 ;

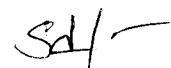
AND WHEREAS the Judge of the said Second Industrial Tribunal heard the Parties and has submitted to the State Government its Award on the said Dispute.

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

(Contd... 2 )

30/1/19

**No.Labr./91/1(2)/(LC-IR)**

**Dated, Kol., the 29<sup>th</sup> January, 2019.**

Copy forwarded for information to :-

- 1) The Judge, Second Industrial Tribunal with reference to his Memo No. 2554-L.T. Dt. 26.12.2018.
- 2) The Joint Labour Commissioner (Statistics), West Bengal, 6, Church Lane, Kolkata – 700 001.

*Sd/-*

Deputy Secretary to the  
Government of West Bengal

**No.Labr./91/2(5)/(LC-IR)**

**Dated, Kol., the 29<sup>th</sup> January, 2019.**

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

- 1) M/s, Ramesh Kumar Rajendra Kumar, 135/52, Girish Ghosh Road, P.O.-Belurmam, Dist. Howrah, PIN- 711 202.
- 2) Sri Bhanwar Lala Chhapolika, C/o, Mr. Jharkandey Pandey, 4, Karunapukur Road, P.O. Belurmam, Dist. Howrah, PIN – 711 202.
- 3) The Assistant Labour Commiswsioner, West Bengal, In-Charge of Labour Gazette.
- 4) The Labour Commissioner, West Bengal, New Secretariat Buildings (11<sup>th</sup> Floor), 1, K.S. Roy Road, Kolkata – 700 001.
- ✓ 5) the O.S.D., IT Cell, Labour Department, with the request to cast the Award in the Department's Website.

*[Signature]* 30/01/19

Deputy Secretary to the  
Government of West Bengal

In the matter of an industrial dispute between Sri Bhanwar Lal Chhapolika, C/o. Mr. Jharkandey Pandey, 4, Karunapukur Road, P.O. – Belurmath within Dist. – Howrah against M/s. Ramesh Kumar Rajendra Kumar, 135/52 Girish Ghosh Road, P.O. – Belurmath within Dist. Howrah.

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( Case No. 01/2012 U/s. 2A(2) )

BEFORE THE SECOND INDUSTRIAL TRIBUNAL: WEST BENGAL

PRESENT:

SHRI SRIBASH CHANDRA DAS, JUDGE,

SECOND INDUSTRIAL TRIBUNAL, KOLKATA

Date of passing award – 30.11.2018

A W A R D

It is a case U/s. 2A(2) of the Industrial Disputes Act, 1947 filed by Bhanwar Lal Chhapolika, C/o. Mr. Jharkandey Pandey, 4, Karunapukur Road, P.O. – Belurmath within Dist. – Howrah against M/s. Ramesh Kumar Rajendra Kumar, 135/52 Girish Ghosh Road. P.O. – Belurmath within Dist. Howrah. The applicant Bhanwar Lal Chhapolika by filing this case has prayed to reinstate the petitioner Bhanwar Lal Chhapolika to continue his service on and from 04.05.2011, payment from the termination date 04.05.2011 and to pass such order / orders as may be deemed fit and proper. As grounds for grant of such relief, it has been stated by applicant / workman that he was an employee of M/s. Ramesh Kumar Rajendra Kumar and he joined his duty in the company on and from 07.04.1975. It is next stated that the applicant was working as a full time accountant and looked after personal accounts of partners of the company and also did clerical job, bank transaction on day to day basis and also looked after tax matters of the company, which is stated to be a partnership business having registered with commercial taxes in 1975 working with government companies such as Railways, Shipping and other companies such as Tisco, Nicco etc. for purchase and sale of scrap, dismantable factories all over India and also clearance job and site preparation. It is also stated that there is no certified standing order in the company regarding retirement age. It is next stated that the workman had been rendering his service regularly, permanently and he would get salaries after deduction of professional tax and the deducted professional tax from the salary of the workman used to be deposited in Profession Tax Department. It is next stated that the workman was terminated from his service on and from 04.05.2011 by the employer without assigning any reason. It is also stated that the workman happens to be the only earning member of his family and due to his termination from the service his family has been facing starvation and after that the workman made a representation before

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Deputy Labour Commissioner, Howrah on 05.05.2011 and then the Assistant Labour Commissioner, Howrah by issuing a letter having memo no. 502/1/MISC/RD/DLC/HOW dt. 31.05.2011 called for a conciliation proceeding and it was also received by the employer and after that on 22.06.2011 the workman received a letter dt. 14.06.2011 containing comments of the employer and on 19.07.2011 the workman submitted his submissions before Assistant Labour Commissioner, Howrah by writing a letter dt.19.07.2011 and then a joint conference was fixed on 29.09.2011. It is next stated that during conciliation proceeding the workman received a letter having Memo No. 959/1/69/11/RD/DLC/HOW dt. 15.09.2011 from Assistant Labour Commissioner, Howrah and it is next stated that written letter of the employer dt. 14.09.2011 was duly given to workman on 29.09.2011 by Assistant Labour Commissioner, Howrah and again on 12.10.2011 the workman submitted his submissions before Assistant Labour Commissioner, Howrah by a written letter dt. 14.09.2011. With all these it has been prayed by the workman for passing necessary order directing the company to reinstate the workman in his service with full back-wages from 04.05.2011.

The company M/s. Ramesh Kumar Rajendra Kumar filed written statement and also filed additional written statement. In the written statement the company has taken some legal technicalities such as the reference is not maintainable and it does not come within the scope of definition of workman U/s. 2(s) of the Industrial Disputes Act, 1947 and there is no employer-employee relationship between the workman and the company and it is not an industrial dispute. It has been further stated in the written statement by the company that the dispute of termination of service of the workman is incorrect, baseless and not maintainable and added that the company never terminated the service of the workman and the company denied the termination of service of the workman. Describing the contention of the application of the workman as wrong, inadequate, inconsistent and not accordingly to law, the company has asserted that this Tribunal has no jurisdiction to adjudicate this dispute. It is next stated that a preliminary issue was required to be framed to see the jurisdiction of this Tribunal and then added that the workman Sri Bhawarlal Chhapolika was never employed on regular and permanent basis but he was engaged as a part-time employee to look after personal accounts of the partners of the company and accordingly he was working occasionally without any fixed duty and the employer did not have any supervision over the works of the workman and for that reason there is no employer-employee relationship between the workman and the company. It is next stated that the workman developed a habit of remaining absent without information to the employer and the workman never corrected himself. It is next stated that on 06.05.2011 at about 2 p.m. when the workman came to join his duties in the company after a long absent, he was asked to submit an explanation by the company and then the workman started quarrelling with the superior person of the company and expressed unwillingness to continue work in the company, and for

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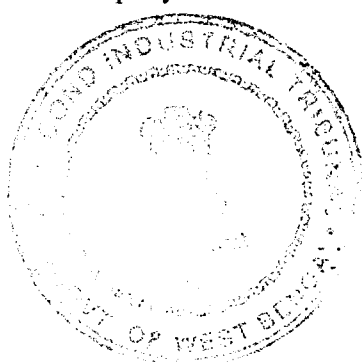


such misbehaviour with the superior of the company the company filed FIR on 12.05.2011 in the local police station and the company also expressed its decision to terminate his service but the company never terminate his service. It is next stated that the workman then demanded Rs. 7,51,290.00 from the company as money for gratuity, leave salary etc. before the Deputy Labour Commissioner, Howrah. It is also stated that the workman after that never raised any dispute with the management of the company or before Deputy Labour Commissioner, Howrah and never demanded reinstatement in his service. It is also stated in the written statement by the company that during conciliation proceeding in presence of Assistant Labour Commissioner, Howrah the management of the company requested the Assistant Labour Commissioner, Howrah to direct the workman to join his duties both orally and in writing by letter dt. 4.09.2011 but the workman did not do anything. It is next stated that on 07.02.2012 the management of the company requested Assistant Labour Commissioner, Howrah by submitting a letter dt. 07.02.2012 to direct the workman to produce original document but he refused. It is next stated that without waiting for the result of conciliation proceeding the workman filed this case. Regarding contention of para No. -1 to para No. 5 of the petition of the workman, the company has stated that these are matters of records and the company does not admit anything and denying the contention of para-6 of the petition of the workman the company has stated that all these are denied. Describing the contention of para-7 & 8 of the petition of the workman, the company has stated that these are matters of law. Denying the contention of the para-9 & 10 of the petition by the petitioner the company has stated that all these have been denied and the company also denied contention of para-11 of the petition of the workman expressing that contention of para-12 to para-18 of the petition of the workman are matters of record.

In the additional written statement filed by the company on 04.03.2014 the company has stated that the reference is not maintainable on the ground that the order of reference by the government has specified territorial jurisdiction and it is invalid. Going through the additional written statement filed by the company it is found that the company has added that the applicant attends the age of 58 years a long back and it is the age of superannuation and this is the only new matter in the additional written statement.

On the basis of above pleadings of both sides, issues were framed and then the case came up for hearing on merit. During the time of hearing on merit the workman Bhanwar Lal Chhapolika examined himself as P.W.-1 and he also adduced documentary evidences which are 1) a letter to the Assistant Labour Commissioner, Howrah Sri R. Dutta dt. 14.09.2011 by partner of company on behalf of company M/s. Ramesh Kumar Rajendra Kumar (Ext. 1), 2) a letter by workman Bhanwar Lal Chhapolika addressed to Deputy Labour Commissioner, Howrah dt. 19.07.2011 (Ext. 2), 3) a letter addressed to Assistant Labour Commissioner, Howrah dt. 14.06.2011 by partner of the company M/s. Ramesh Kumar Rajendra Kumar, 4) one written

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complaint addressed to O.C. Bally Police Station by workman Bhanwar Lal Chhapolika dt. 05.05.2011 (Ext. 4), 5) one letter address to the management M/s. Ramesh Kumar Rajendra Kumar dt. 31.05.2011 (Ext.5). It is also found that on behalf of company M/s. Ramesh Kumar Rajendra Kumar one Mr. Badri Narayan Modi examined himself as O.P.W.-1 and the company also adduced documentary evidences which are one letter to Deputy Labour Commissioner, Howrah by workman Bhanwar Lal Chhapolika (Ext. A), 2) one letter to Assistant Labour Commissioner, Howrah Sri R. Dutta by workman Bhanwar Lal Chhapolika dt. 12.10.2011 (Ext. A/1), one letter addressed to Assistant Labour Commissioner, Howrah dt. 14.06.2011 by partner of the company M/s. Ramesh Kumar Rajendra Kumar (Ext. B), 3) one letter addressed to Assistant Labour Commissioner, Howrah Mr. R. Dutta dt. 14.09.2011 by partner of M/s. Ramesh Kumar Rajendra Kumar (Ext. B/1), 4) one letter addressed to Assistant Labour Commissioner, Howrah Mr. R. Dutta by authorised representative of M/s. Ramesh Kumar Rajendra Kumar (Ext. B/2), 5) one letter addressed to officer-in-charge of Bally Police station, Howrah dt. 12.05.2011 by Rajendra Kumar Modi of the company M/s. Ramesh Kumar Rajendra Kumar (Ext. C), 6) one letter addressed to the company M/s. Ramesh Kumar Rajendra Kumar dt. 02.08.2011 by Assistant Labour Commissioner Mr. R. Dutta (Ext. D), 7) one letter addressed to M/s. Ramesh Kumar Rajendra Kumar dt. 31.01.2012 by Assistant Labour Commissioner. Mr. R. Dutta, Howrah.

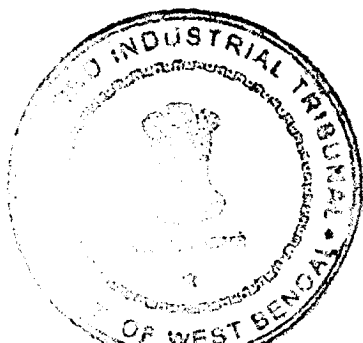
In this case the issues that have been framed are,

- 1) Whether the workman Bhanwar Lal Chhapolika was a service holder in the capacity of workman in the company under name and style of M/s. Ramesh Kumar Rajendra Kumar,
- 2) Whether the workman Bhanwar Lal Chhapolika was terminated from the service by the company by way of refusal of employment or otherwise,
- 3) Whether the workman abandoned the service in the company by his own will without any coercion from the management of the company,
- 4) Whether the case is maintainable and the Tribunal has any jurisdiction for adjudication over the dispute as raised in the case,
- 5) Whether the workman is entitled to reinstatement in his service, and
- 6) The workman is entitled to get any relief in the form of back-wages or otherwise.

Decisions with reasons thereto

Having going through the pleadings of both sides and the other materials in the case record, it appears that the issues that were framed when the case came up for recording evidences on merit are interrelated, and for that reason all the issues have been taken together.

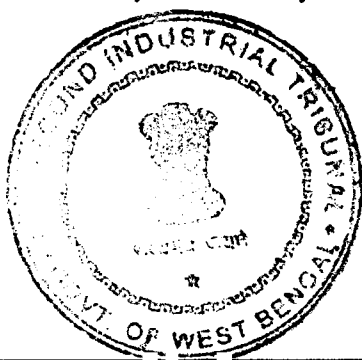
The workman/ petitioner in his petition U/s. 2A(2) of the Industrial Disputes Act, 1947



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has asserted himself to be a workman under the company M/s. Ramesh Kumar Rajendra Kumar by stating that he had been doing clerical works under the management of the company but the company had denied the petitioner / workman to be a workman under the company legally U/s. 2(s) of the Industrial Disputes Act, 1947. In his application U/s. 2A(2) of the Industrial Disputes Act, 1947, the applicant / workman has stated that he was an employee under the company M/s. Ramesh Kumar Rajendra Kumar, 135/52, Girish Ghosh Road, P.O. Belurmah, in Howrah and the applicant joined his duty from the month of April, 1975. It is also stated that the applicant / workman was working as a full time employee in the capacity of accountant and used to look after the accounting matters of the company and also partners of the company in the capacity of a clerk and in the same capacity he also used to do bank transaction on behalf of the company on day to day basis and also did clerical works in respect of tax matters of the company. It is also stated that the company M/s. Ramesh Kumar Rajendra Kumar is a partnership firm having started its business in 1975 and this business firm / company is registered with commercial taxes (Sale tax) of the Government and it is also registered with other government companies such as Railways, shipping and it is also connected with non-government business enterprises such as Tisco, Nicco and others and also doing other clearance job and site preparation. In the written statement filed by the management of the company, the management of the company has asserted that the case is not maintainable either in law or in fact and added that the applicant / workman does not come within the scope of definition of workman U/s. 2(s) of the Industrial Disputes Act, 1947 by explaining that there is no employer-employee relationship between the applicant and the company and the dispute is not an Industrial Disputes within the scope of Section 2A(2) of the Industrial Disputes Act, 1947. The company has also raised that the management of the company never terminated the service of the workman and the assertion of termination of the service of the workman by the workman in his petition U/s. 2A(2) is not correct but baseless, with addition that the management of the company never terminated the workman at any time and the workman has also not mentioned any date of his termination in his petition, with further assertion that the petition of the petitioner is wrong, inadequate, inconsistency, without compliance of mandatory provisions of U/s. 2A(2) of the Industrial Disputes Act, 1947 and at the same time the management of the company has also raised challenged that the Tribunal has at all no jurisdiction to adjudicate this matter of dispute between the workman and the company M/s. Ramesh Kumar Rajendra Kumar.

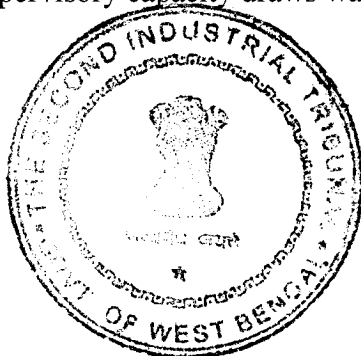
Ld. Lawyers of both sides have filed written notes of arguments and in his argument Ld. Lawyer for the workman has raised that the applicant / workman joined his duty under the company in the capacity of a clerk in April, 1975 and he was a full-time accountant / clerk doing commercial clerical matters in the company arising out of sales, income tax and other commercial taxes by raising that the company M/s. Ramesh Kumar Rajendra Kumar started its business in that name and style from the year 1975 doing works with different companies



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including government companies having commercial tax matters and the workman / petitioner in the capacity of a clerk under the company had to do all such clerical matters arising out of commercial and other taxes involving with other companies. Ld. Lawyer for the workman has also mentioned written argument that the company does not have any certified standing order and there is nothing in the company regarding the rules and procedures of the services of the employees of the companies. It is also raised in the argument that the salaries of the workman /applicant used to be paid after deduction of applicable taxes and the records of payment of such salaries and deductions of taxes from the salary of the workman is lying with the management of the company was terminated by the company on 04.05.2011. Against all these Ld. Lawyer for the company has mentioned in the argument that the workman has wrongly claimed that he was wrongfully restrained from joining the duty on and from 04.05.2011 and also wrongly fully claimed that he was a permanent employee of the company. It is also argued that a workman has not exhibited any evidence either oral or documentary in support of the claim of the workman that he was a permanent employee in the company from 1975 and the workman has also not filed any appointment letter showing that the company appointed him in the clerical works in the company and he has also not filed any other supporting document. The company has also mentioned in the argument that the documents brought into evidence by the workman are not supporting any contention of the workman to justify that he was workman doing clerical works in the company. Asserting that it was the duty on the part of the workman to prove his claim by himself that he was a workman in the company doing clerical etc. works but he has failed. The company has also raised in the argument that the workman was appointed as a temporary staff on the basis of no work no pay but he started becoming absent without any approval from management of the company and the management of the company also warned him not to become absent without any proper sanction of leave but the workman did not take the warning by the management of the company seriously and he never corrected himself.

Both sides have also adduced evidences in respect of their respective stances over the matter as mentioned above. Before coming to the evidences I want to mention the matter of law regarding the meaning of workman. The meaning of workman has been specifically stated in Section 2(s) of the Industrial Disputes Act, 1947 by mentioning that 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 this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with or as a consequence of that dispute or whose dismissal, discharge or retrenchment that dispute but does not include any person who is subject to air force act or who is employee in police service or who is employee in managerial / administrative capacity or who being employed in supervisory capacity draws wages exceeding Rs.10,000/- per month.

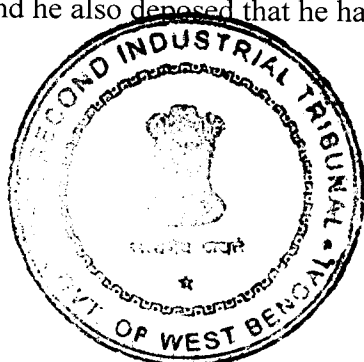


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As P.W.-1 the workman Bhanwar Lal Chhapolika has deposed that he was an employee of the company M/s. Ramesh Kumar Rajendra Kumar locating at 135/52, Girish Ghosh Road in Belurmah in Howrah and he joined in that company from the month of April, 1975. P.W.-1 Sri Bhanwar Lal Chhapolika also deposed that he was working as a full-time clerk / accountant and looked after the accounts of the company and also partners of the company and he also had to do clerical works relating to bank transaction works on every day and other tax related matters. P.W.-1 also deposed that the company is a partnership company, commencing business in the year 1975 and it is registered with the commercial taxes / sales taxes of the government and it also works with other companies such as Railways, Shipping and non-government business concerns such as Tisco, Niscco etc. for purchase and sale of scrap, dismantlable factories in India and the company also does clearance job and site preparation. The workman as P.W.-1 also deposed that there is no verified standing order in the company mentioning the age of retirement and the company only considers the service of any workman on the basis of physical fitness and efficiency etc. P.W.-1 also deposed that he Had been rendering his service in the company regularly, permanently and he received salaries after deduction of professional tax and it was also informed to the professional tax authority by the management of the company but he was terminated from the service on and from 04.05.2011 without any reason at all. This P.W.-1 was cross-examined by Ld. Lawyer for the management. Ld. Lawyer for the management during cross-examination wanted to know from the P.W.-1 the reason for his filing of the case and P.W.-1 replied that P.W.-1 was terminated from service and then he came to Labour Commissioner directly and made a complaint over the termination of his service by the company mentioning that he was illegally terminated by the management of the company. P.W.-1 also stated in cross that his educational qualification is graduation and his date of birth is 03.11.1949 and he joined the company in the year 1975 and he has also filed documents in support of all such assertion by him. P.W.-1 also stated in his cross that he worked in the company up to 04.05.2011 and P.W.-1 also denied a suggestion put to him by Ld. Lawyer for the company that he expressed his unwillingness to continue service in the company to the management of the company.

From the cross-examination of the workman (P.W.-1) by Ld. Lawyer for the company it is coming out that Ld. Lawyer for the company has not challenged the deposition by the P.W.-1 that he was appointed in the company for doing clerical works arising out of tax matters in the company such as commercial tax etc. and also tax matters of the partners of the company and this much evidence on the part of the workman that he had been working in the capacity of clerk of the company etc. have become altogether unchallenged. To counter the evidences given by workman as P.W.-1, the management of the company has examined one Mr. Badri Narayan Modi as O.P.W.-1, who deposed that he happens to be the son of the proprietor of the company Mr. Rajendra Kumar Modi and he also deposed that he had been looking after the business of his

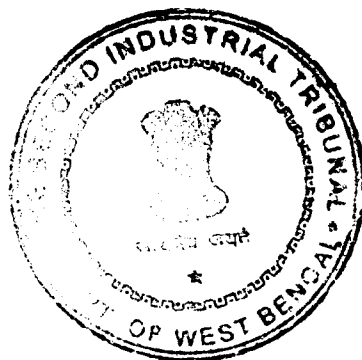


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father in the company. O.P.W.-1 also deposed that the workman Sri Bhanwar Lal Chhapolika is known to him as the workman was engaged in the company as an accountant. This P.W.-1 was cross-examined by Ld. Lawyer for the workman and he deposed in cross-examination that the partnership business was dissolved and his father Mr. Rajendra Kumar Modi is now the proprietor of the company and O.P.W.-1 also admitted that he knows the workman. O.P.W.- 1 also admitted in cross-examination that P.W.-1 Bhanwar Lal Chhapolika was a workman and O.P.W.- 1 also admitted that it shall not be possible on his part i.e. part of O.P.W.- 1 to say if any attendance register is maintained in the company and it was signed by the workman but in the cross-examination this O.P.W.- 1 admitted that the petitioner / workman used to maintain accounts in the company and he had been working probably for 10 years and this O.P.W.-1 also admitted that he did not know for how many years the workman had been working in the company but the workman P.W.-1, as O.P.W.- 1 further admitted in cross-examination, did not tender any resignation to the management of the company and this O.P.W.- 1 also admitted in cross-examination that he cannot say whether the workman working in the company for 14 years in the capacity of workman.

Thus, it is clearly established that the workman Bhanwar Lal Chhapolika has clearly deposed as P.W.-1 that he had been working in the capacity of a clerk on permanent basis being appointed by the company and the working of the workman in the company as a clerk is also admitted by the company as found from the cross-examination of the witness of the company i.e. O.P.W.- 1 Mr. Badri Narayan Modi who happens to be the son of the proprietor of the company. In the application U/s. 2A(2) of the Industrial Disputes Act, 1947, the workman has asserted that he had been working in the company as a clerk for more than 40 years and the management of the company though denied such assertion in the written statement of the company yet he i.e. O.P.W.- 1 Mr. Badri Narayan Modi who has been looking after the affairs of the company as admitted by him as O.P.W.- 1 has not denied the suggestion put to him by Ld. Lawyer for the workman that the workman had been working in the company as a clerk for 40 years continuously. There are also documentary evidences. Ext. 1 is a letter written by the management of the company to the Assistant Labour Commissioner, Howrah Mr. R. Dutta and in that letter also the company admitted that the workman Bhanwar Lal Chhapolika was a workman in the company and it is also an admission on the part of the management of the company that the workman was a workman in the company, and the workman also wrote a letter to the Deputy Labour Commissioner, Howrah dt. 19.07.2011 (Ext. 2) mentioning that he was a workman in the company. thus, the oral evidences of workman as also admitted by witness of the company i.e. O.P.W.- 1 Mr. Modi admitting that the workman had been working in the company as a clerk is

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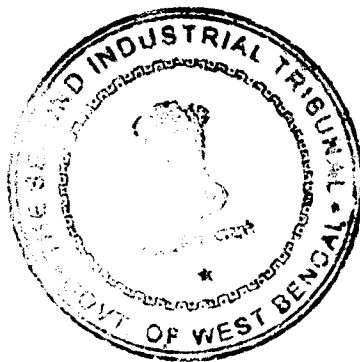


also found to be clearly corroborated by the documentary evidences as mentioned above as found to have remained unchallenged by Ld. Lawyer for the management of the company.

Now having taken the evidences by both sides with the provisions of law U/s. 2(s) of the Industrial Disputes Act, 1947 it is found that the workman Bhanwar Lal Chhapolika was legally a workman working in the company M/s. Ramesh Kumar Rajendra Kumar working in the capacity of a clerk / accountant as also admitted by O.P.W.- 1 examined on behalf of management of the company.

Specific cases raised by both sides have already been seen. In gist the case raised by workman Bhanwar Lal Chhapolika is that he was appointed by the company M/s. Ramesh Kumar Rajendra Kumar locating at 125/52, Girish Ghosh Road, under P.S. – Belurmah in Howrah as a clerk in April, 1975 and he had been working as a clerk as a full time employee and in that capacity he had to do clerical works of the tax matters of the company and also tax matters of the partners of the company and for that purpose he had to attend tax offices and also bank. It is also stated that the company is registered with the commercial taxes of the government and the company started its business from 1975 and its business activities are related to government companies such as Railways, Shipping etc. and also other private companies such as Tisco, Nicco etc. for purchase and sale of scrap, dismantlable factories, clearing job and site preparation and there is at all no verified standing order in the company including anything regarding retirement age and the company allows continuation of services on the basis of physical fitness. It is also stated that the workman continued doing his works as a clerk regularly and permanently and the workman received salaries after deduction of professional taxes and the management of the company deposited the deducted professional tax with the tax department of the government. The management of the company terminated the service of the workman on and from 04.05.2011 without any reason at all. It is also stated that after such illegal termination of the service of the workman by management of the company, the workman made a representation over the same before Deputy Labour Commissioner on 05.05.2011 and on that basis the Assistant Labour Commissioner, Howrah sent notice being Memo No. 502/1/MISC/RD/DLC/HOW dt. 31.05.2011 to the management of the company for the purpose of the conciliation and the management of the company submitted comments against his representative before Assistant Labour Commissioner, Howrah and on 09.07.2011 a submission was made before Assistant Labour Commissioner, Howrah by a letter dt. 19.07.2011 and during continuation of conciliation proceeding the workman received notice from Assistant Labour Commissioner, Howrah vide Memo No. 959/1/69/11/RD/DLC/HOW dt. 15.09.2011 and also received a written letter by the management of the company dt. 14.09.2011 on 29.09.2011. But the management of the company against this specific case raised by the workman has raised legal

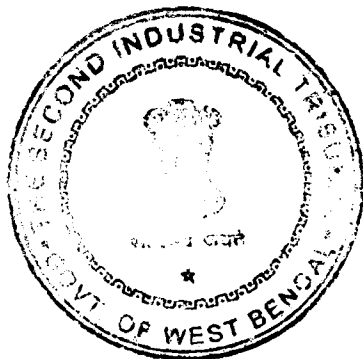
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technicalities such as non-maintainability of the case and also lack of jurisdiction of this Tribunal. The management of the company has also raised that the workman does not come within the scope of the definition workman as has been given in the Industrial Disputes Act, 1947 and the dispute is not an industrial dispute and there is no employer-employee relationship between the workman and the management of the company. Denying the termination of the service of the workman by the management of the company, the management of the company has raised that the matter of alleged termination of the service of the workman is incorrect, baseless adding that the service of the workman was never terminated by the management of the company and added that the workman Bhanwar Lal Chhapolika was never been employed in the company on regular and permanent basis but he was appointed as a part time employee for doing accounts of the partners of the management of the company but the workman used to become absent without information to the management of the company and as such there was no employer-employee relationship between him and the company. It is also mentioned that the workman already attends the age of superannuation of 58 years a long back and for that reason he cannot claim reinstatement in his service. The management of the company has also raised that on 06.05.2011 at about 2 p.m. the workman came to join his duty in the company after remaining long absent and then he was directed to explain his such long absence and at that time the workman picked up a quarrel with the management of the company by making altercations and at that time only the workman expressed his unwillingness to do any work to the company and thus the workman abandoned his service in the company, and over that matter of quarrel the management of the company filed one first information report (FIR) on 12.05.2011 in the local police station. The company has also stated that the workman demanded Rs. 7,51,290/- from the management of the company in presence of Deputy Labour Commissioner, Howrah by submitting a letter dt. 07.09.2011 as money for gratuity, leave salary etc. The company has also raised that after such alleged termination the workman never raised any dispute with the management of the company and remained during conciliation proceeding, he never demanded reinstatement in his service. Mentioning that the management of the company participated in the conciliation proceeding before labour commissioner, Howrah and requested the workman to resume his duty immediately but the workman did nothing and for that reason his application U/s. 2A(2) of the Industrial Disputes Act, 1947 is not maintainable. Denying all the allegations raised by the workman in his application U/s. 2A(2) of the Industrial Disputes Act, 1947, the management of the company has raised that management of the company never refused providing employment to the workman and the company never terminated his service.

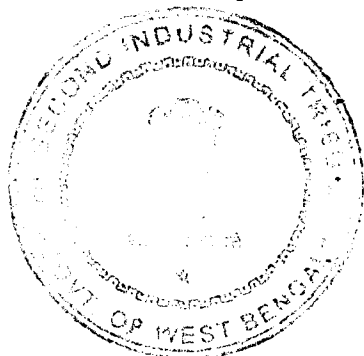
In his written argument Ld. Lawyer for the workman has raised that the workman joined his duty as a clerk under the company in April, 1975 and he was appointed by the company as a full-term accountant and the company also commenced by business in that year having

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established business activities with Government and other companies by purchase and sale of iron scraps etc. and also by doing preparation of sites for business purposes without having any certified standing order. Ld. Lawyer for the workman also argued that the salary of the workman used to be paid after deduction of applicable taxes and all such records relating to payment of salary / deduction of taxes are lying with the management of the company. the management of the company terminated the service of the workman on 04.05.2011 by way of refusal of employment and then the workman filed an application to the Deputy Labour Commissioner, Howrah on 05.05.2011 over this matter of refusal of employment by the management of the company and on 22.06.2011 the workman received a letter from Assistant Labour Commissioner, Howrah mentioning comments by the management of the company over this matter of dispute. In his argument Ld. Lawyer for the workman has also mentioned that the workman Bhanwar Lal Chhapolika examined himself as a witness and he has deposed all mentioning that the management of the company illegally terminated the service with addition that he was an employee under the company and he joined in the company in April, 1975 and he worked as a full-time clerk doing clerical works relating to tax matter of the company and also personal tax matter of the partners of the company and he also deposed that there is no certified standing order in the company and the company would deduct relevant taxes from the salary of the workman and the workman had been rendering his service continuously without any break but there is no certified standing order in the company. It is also mentioned in the argument by Ld. Lawyer for the workman that on 29.02.2011 there was a joint conference between the workman and the management but the management of the company did not comply with the suggestions made during that joint conference in presence of Assistant Labour Commissioner, Howrah without showing any reason. It is also stated that there are any workers working in the company and the workman has given as many as 23 of them. It is also mentioned in the argument that the last drawn pay of the workman on the date of his termination on 04.05.2011 by management of the company was Rs. 10,000/- per month after deduction of all taxes. It is also mentioned in the argument that the management of the company comprising Mr. Rajendra Kr. Modi, his son Badri Narayan Modi criminally intimidated the workman and also assaulted him and for that reason the workman filed one complaint on 04.05.2011 in the local police station but there was no investigation over that complaint. It is also mentioned in the argument that the management of the company violated the mandatory requirement of industrial law and dismissed the workman from service without following the requirement of natural justice such as domestic enquiry etc. and also did not comply with the requirement of law U/s. 25F of the Industrial Disputes Act, 1947.

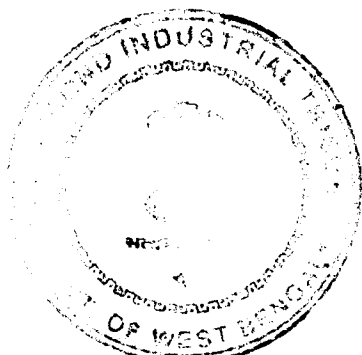
Ld. Lawyer for the company has also filed written argument denying the workman to be an employee of the company and raised that the workman has not filed document to support such claim or to show that the workman was the permanent employee of the company. Ld.



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Lawyer for the company has mentioned in his written argument that the workman was appointed on temporary basis on condition of no work no pay but after joining the company the workman started becoming absent without any information to the management of the company and then he was warned by the management of the company to correct himself. It is also stated that on 6<sup>th</sup> May, 2011 when the workman came to join the company after remaining absent for long, the management of the company wanted to know the reason for his such absence and then only the workman decided to leave his service and then after a conciliation before Assistant Labour Commissioner, the management of the company allowed him to join the company again one condition of his filing an explanation for his long absence and for that reason this case cannot lie and become maintainable. It is also stated that it is the decision of the workman himself not to continue the service in the company and for that reason conducting domestic enquiry by the company was not necessary and the Court also cannot direct reinstatement of the workman in such a situation.

Now the entire matter is required to be decided on the basis of the evidences. It has already been found that the workman has adduced sufficient evidence so that he was the workman in the company and at the same time it is also admitted by the management of the company (Ext. A to Ext. D/1) that the workman was a serviceman in the company. The workman Bhanwar Lal Chhapolika as P.W.-1 has deposed that he was the employee of the company M/s. Ramesh Kumar Rajendra Kumar, 135/52, Girish Ghosh Road in Howrah, he joined this company in April, 1975 and he had been working as a clerk doing clerical matters relating to tax of the company and he was a full-time employee. P.W.-1 also deposed that the company is a partnership company starting business from 1975, it is registered with commercial taxes of the government and it has business relation with government companies such as Railways, and non-government companies such as Tisco, Niscco etc. in matters relating to purchase and sale of scraps, dismantlable factories, clearing job, site preparation etc. and the company would pay him salary after deduction of professional tax. P.W.-1 has also deposed that he was terminated by the management of the company on and from 04.05.2011 illegally without any reason and P.W.-1 has further deposed that he is the only earning member of the family and facing starvation due to termination of his service. He also deposed that immediately after termination he made representation before the Deputy Labour Commissioner, Howrah on 05.05.2011 mentioning all and on 22.06.2011 he received a letter dt. 14.06.2011 from the management of the company with comments as was placed before Assistant Labour Commissioner, Howrah and then on 19.07.2011 he also filed one written comments before Assistant Labour Commissioner, Howrah and accordingly a joint conference on 29.06.2011 during which Assistant Labour Commissioner, Howrah gave him one letter but to no result. During deposition of P.W.-1, P.W.-1 also adduced documentary evidences (Ext. 1 to Ext. 5). This P.W.-1 was cross-examined by Ld. Lawyer for the company, who wanted to know from P.W.-1 as to why



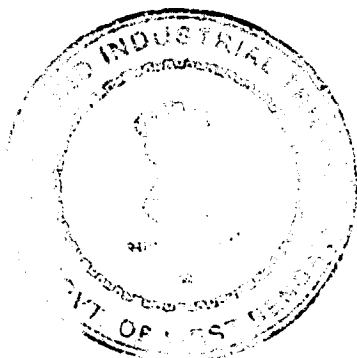
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P.W.-1 filed the case and P.W.-1 replied that he filed the case as he was terminated from service by the management of the company and also made a complaint before Labour Commissioner directly immediately after his termination. Ld. Lawyer for the company also wanted to know from P.W.-1 about his educational qualification and P.W.-1 replied that he is a graduate. Ld. Lawyer for the company wanted to know from P.W.-1 the date of birth of P.W.-1 and P.W.-1 gave his date of birth as 03.11.1949. Ld. Lawyer for the company also wanted to know the year in which he joined the company and P.W.-1 replied that he joined the company in 1975. At this stage Ld. Lawyer for the wanted to know document in support of date of birth of P.W.-1 and then P.W.-1 deposed that he can file the same if required. Ld. Lawyer for the company also wanted to know from the P.W.-1 if he was employed after termination and P.W.-1 replied that he has remained unemployed. P.W.-1 also denied suggestion by Ld. Lawyer for the company to the effect that he was employed and not entitled to get any benefit and his case is false. P.W.-1 also stated in cross that he does not claim re-instatement or re-employment. P.W.-1 also denied suggestion by Ld. Lawyer for the company to the effect that he was never terminated by the company and added that both partners of the company namely Mr. Rajendra Kr. Modi and B.N. Modi verbally stated to him that his service was terminated and he has not filed any such letter for termination. P.W.-1 also denied the suggestion by Ld. Lawyer for the company that P.W.-1 expressed his unwillingness to continue his service in the company. Referring one document (Ext. 1) Ld. Lawyer for the company raised with the P.W.-1 that P.W.-1 expressed unreadiness to continue his employment in the company and the P.W.-1 raised that he did not give any such letter. Going through the letter Ext.-1, it is found that it is a letter addressed to Assistant Labour Commissioner, Howrah Mr. R. Dutta by one of the partners of the company, with subject that alleged termination of service of the workman and in that letter the partner of the company in para-c has mentioned that on 06.05.2011 the workman came to join his duty in the company and at that time the workman expressed his unwillingness to continue his service and the P.W.-1 has not admitted his contention. In the evidences it has come that the date of termination of service of the workman by the management of the company is 04.05.2011 and now from this document (Ext. 1) which is actually a letter of the management of the company to the Assistant Labour Commissioner, Howrah that even after such termination of service, the workman came to the management of the company to join his service. P.W.-1 also stated his cross that he was terminated from service verbally. Ld. Lawyer for the company wanted to know about the family of the workman and the P.W.-1 in cross stated that his family consists of nine members. Ld. Lawyer for the company suggested to the P.W.-1 that P.W.-1 was never terminated from service and P.W.-1 denied. The documentary evidences are Ext. 1 to Ext. 5. As I mentioned earlier Ext. 1 is the letter by the management of the company to the P.w-1 (workman), and as P.W.-1 deposed it was supplied to him by the Assistant Labour Commissioner, Howrah. In this letter (Ext. 1) it is found that the management of the company raised that this case is not a matter of

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industrial dispute and the workman was never terminated by the management of the company and after that it is also found that the company has admitted that the workman was engaged by the company as accounts clerk on no work, no pay basis and added that the workman became long absent and on 06.05.2011 at about 2 p.m. the workman came to join his duty and then the management of the company wanted to know from him the reason for his absence and then only the workman expressed unwillingness to continue his service in the company and the company through Assistant Labour Commissioner, Howrah wanted to request P.W.-1 to join his duty, but going through the cross-examination it is found that Ld. Lawyer for the company has not raised all such contention of the letter (Ext. 1) with the P.W.-1 during cross-examination, neither did the management of the company took any step before this Court to bring Assistant Labour Commissioner as witness to justify the claim of the management of the company as in the document (Ext. -1) that the company requested through Assistant Labour Commissioner, Howrah requiring the workman to join in the company further. In Ext. 2 which is a letter by workman to Deputy Labour Commissioner, Howrah dt. 19.07.2011 the workman has shown his monthly salary as Rs. 10,000/- and salary for the month of April, 2011 as Rs. 10,000/- and has also shown bonus for 2011/2012 as Rs. 10,000/- I find that over this contention in the document (Ext. 2) Ld. Lawyer for the company has not raised challenge with the P.W.-1. Ext. 3 is a letter addressed to the Assistant Labour Commissioner, Howrah by one of the partners of the company dt. 14.06.2011 mentioning that the workman Bhanwar Lal Chhapolika was working in the company and he would remain absent causing professional difficulties and after that the company decided to do away with the service of the workman and after that the workman attained the management of the company and their family members in case the management of the company did not reinstate the workman in his service. With the addition that the father of the partner of the company who signed the letter and the partner who signed the letter have to go out of town and apprehending wrong actions on them and on that ground F.I.R. was filed in the local police station of the company. Going through the evidences of P.W.-1 I find that all these matters were not taken by Ld. Lawyer for the company with the P.W.-1 during cross-examination. Ext. 4 is found to be a letter written by workman to the officer-in-charge of Bally Police Station dt. 05.05.2011 containing that the workman was an accountant in the company and on 04.05.2011 at about 3.15 p.m. some officials of the company under partner Rajendra Kr. Modi became tempted and caught hold of the collar of the workman in presence of another partner Mr. B.N. Modi (Ext. 4) and I find that P.W.-1 deposed this letter but Ld. Lawyer for the company has not raised any question challenging the contention of this document (Ext. 4). Ext.5 is found to be a notice dt. 31.05.2011 issued by Assistant Labour Commissioner, Howrah to the management of the company requesting the company to send written comments on the complaint letter of illegal termination of service with copy to workman, as also deposed by workman as P.W.-1 and it shows that the workman immediately filed complaint with the Labour



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Commissioner office after his termination and Ld. Lawyer for the company has also not raised any challenge on this matter (Ext. 5).

All these evidences as have been adduced by workman show that the workman had been working as a clerk in the company from April, 1975 and he was illegally terminated by the company without following the requirement of natural justice and the compulsory requirement of law as per Industrial Disputes Act, 1947 and the stance of the company that the workman was not the employee of the company or he was appointed on casual basis has not found any support from the evidences of P.W.-1 including his cross-examination.

The main stance of management of the company is that the workman was appointed on casual basis and he became long absent without information to the management of the company and the company faced difficulties and when the company on 06.05.2011 at about 3 p.m. (Ext. 1) raised the matter with the workman, the workman expressed his unwillingness to continue his service in the company. The management of the company in support of such contention examined one Mr. Badri Narayan Modi as (O.P.W.-1). O.P.W.- 1 Mr. Modi deposed that he is the proprietor of the company M/s. Ramesh Kumar Rajendra Kumar and looking after the business of his father and the workman Bhanwar Lal Chhapolika is known to him (O.P.W.- 1) and as a result he has stated that the workman Bhanwar Lal Chhapolika was an accountant in the company. O.P.W.-1 also deposed that the workman used to be come absent most often and for that reason the company faced difficulties in preparation of accounts / tax matters of the company and also deposed that on 06.05.2011 the workman came to join his duty at 2 p.m. and at that time the management of the company asked the workman to explain his absent but the workman did not give any explanation and became annoyed and started altercation with him (O.P.W.-1) and lastly the workman expressed his unwillingness to continue his service and then the management of the company filed F.I.R. before local police station on 12.05.2011. O.P.W.- 1 also deposed that the workman came and demanded money and the matter went to conciliation officer and during conciliation proceeding the workman demanded reinstatement and at that time the company requested the Assistant Labour Commissioner, Howrah to advise workman to join his duty and the workman is not entitled to get any relief. O.P.W.- 1 deposed in examination-in-chief accordingly and also adduced documentary evidences (Ext. D). This O.P.W.- 1 was cross-examined by Ld. Lawyer for the workman and the O.P.W.- 1 admitted that he knows the workman and O.P.W.-1 cannot say on which date the workman joined in the company and O.P.W.- 1 also admitted that it is not possible for him whether attendance register is maintained in the company to show that the petitioner signed on it or not. O.P.W.- 1 also admitted that the workman used to maintain accounts of the company and also admitted that O.P.W.- 1 cannot say as to for how many years the workman had been working in his company. O.P.W.- 1 also stated that the company is closed and then he changed his version and admitted

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that now the company was running with two employees but O.P.W.- 1 cannot say their names. The O.P.W.- 1 also admitted that he / management of the company did not take any action against the workman for his absence in work and also admitted that the workman never tendered his resignation and also admitted that O.P.W.- 1 cannot recollect whether he gave any reply to the workman in regard to his demanded money and O.P.W.-1 also admitted that he (O.P.W.- 1) cannot say if the workman had been working in the company for more than 40 years. The management of the company also adduced documentary evidences, Ext. A is a letter addressed to Deputy Labour Commissioner, Howrah by workman dt. 19.07.2011 which shows that the workman demanded inter alia, money for leave salary, salary for April, 2011 and also for 4 days in the month of May, 2011 and also bonus for 2011-12. Ext. A/1 is a letter addressed to Assistant Labour Commissioner, Howrah by workman dt. 12.10.2011 mainly raising that the management of the company terminated the workman illegally and at that time there were as many as 24 employees in the company including the workman himself. The management of the company has also brought into evidence another document on its behalf (Ext. B) which is found to be a letter addressed to the Assistant Labour Commissioner, Howrah dt. 14.06.2011, it is signed by one of the partners of the company, in this document (Ext. B), the management of the company has clearly written to the Assistant Labour Commissioner, Howrah that the management of the company received the letter of the Assistant Labour Commissioner, Howrah vide No. 506/MISC/RD/DLC/HOW/DT. 13.05.2011 and in the form of reply by this Ext. B, it has stated that workman Bhanwar Lal Chhapolika was working in the company as a part-time accountant for the last few years and often the workman used to become absent from work without any prior intimation causing lot of difficulties to the company and even after repeated request, the workman did not mend himself and ultimately the management of the company decided to do away with his service and the management of the company thus axed him, this document (Ext. B) was admitted into evidence on the basis of evidence of witness of the company Badri Narayan Modi (O.P.W.-1). What has been found in this document (Ext. B) is that the contention of this document (Ext. B) has totally nullified the stance of the management of the company that the workman voluntarily abandoned the service as mentioned in the written statement of the company and also as deposed by O.P.W.- 1 Mr. Badri Narayan Modi and it appears that the management of the company has resorted to deliberately falsifying before this Court by stating that the workman himself abandoned the service when the management of the company asked him to explain his remaining absent without information to the management of the company and the truth has come from the letter of the management addressed to the Assistant Labour Commissioner, Howrah (Ext. B) wherein, as clearly mentioned, the management of the company has clearly admitted that the management of the company decided to do away with the service of the workman and accordingly the management of the company axed him from the service. Ext. B/1 is a letter addressed to Assistant Labour Commissioner, Howrah by the partner of the



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company raising that on 06.05.2011 at about 2 p.m. the workman entered into an altercation with the management of the company and at that time the workman expressed his willingness not to continue with the service in the company and as I mentioned in respect of Ext. B, this Ext. B/1 appears to be nothing but totally false on the matter that the workman abandoned the service voluntarily but at the same time it has become the admitted position from both Ext. B, Ext. B/1 that workman Bhanwar Lal Chhapolika had been working in the company as clerk . Ext. C is another document of the management of the company, it is a letter addressed to officer-in-charge of the Bally Police Station by one of the partners of the company Mr. Rajendra Kr. Modi and the management of the company has further admitted in this letter (Ext. C) that the management of the company suffered from professional difficulties due to absence of the workman without any information and for that reason the management of the company decided to do away with his service and accordingly axed the service of the workman. In the written argument Ld. Lawyer for the company has, as also mentioned earlier, raised that the workman was not a permanent employee and he started becoming absent without any information to the management of the company and on 06.05.2011 the management of the company wanted explanation from the management of the company as to his remaining absent from work without information to the management of the company, the workman resorted to show his annoyance and also expressed to leave the service voluntarily, these are the main matters of argument as mentioned in the written notes of argument but Ld. Lawyer for the company has not mentioned the admitted position as found in Ext. B, Ext. B/1 and Ext. C wherein the management of the company, as mentioned earlier also, has clearly stated that due to remaining absent by the workman without information to the management of the company, the company decided to do away with his service and accordingly the management of the company axed him from the service.

Ld. Lawyer for the workman in his argument has raised that there is no certified standing order in the company and the management of the company has not fixed any age of retirement. Ld. Lawyer for the workman has also raised in his argument that even the management of the company has been keeping its employees in the service even after attaining age of 60 years or more. In the argument by Ld. Lawyer for the management of the company nothing has been raised against all these as has been raised by Ld. Lawyer for the workman excepting that the workman during the time of joining the service in the company, did not give proper document regarding his age and the workman had already attained the age of superannuation a long back and cannot claim service up to 60 years of age. Ld. Lawyer for the workman has specifically raised that there is no certified standing order in the company in any way and the age of retirement cannot be less than 60 years. Ld. Lawyer for the workman also raised that during the time of examination of workman as P.W.-1, the workman has given his date of birth and also wanted to file document regarding his date of birth the Ld. Lawyer for the company has not

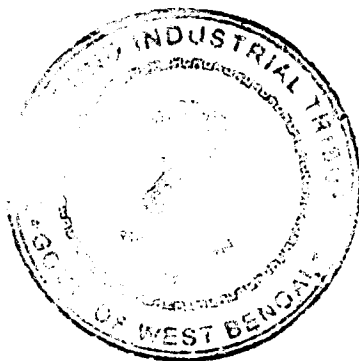
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challenged all such evidences adduced by workman as P.W.-1. By citing ruling in 1-LLJ-1964 (British Paints (India) Ltd. Vs. its workman), page 407, 1-LLJ-1972 page-472 (Jeewoanilal (1929) Ltd.) and the workman another etc. Ld. Lawyer for the workman raised that in those case also question of age for superannuation was raised and the Hon'ble Supreme Court of India decided that in absence of any document such as certified standing order etc. in this regard the superannuation age should be attainment of 60 years of age. Against all these Ld. Lawyer for the company is found to have raised nothing excepting that the workman suppressed his age earlier before the company. Going through the cited rulings it is found that Hon'ble Court in these cases was very much pleased to observe that in case of clerical natures of work in the company, the retirement age should be fixed as 60 years.

As P.W.-1 the workman has deposed that he joined the company in April, 1975 and he was terminated from the company on 04.05.2011 and thus he completed more than 40 years of service in the company and his date of birth is 03.11.1949. The P.W.1 was cross-examined by Ld. Lawyer for the company and it is coming out that this much evidence regarding the age of the workman has remained unchallenged. As discussed earlier, it is the view of the Hon'ble Supreme Court of India that in case of clerical job in companies, the retirement age should be attainment of 60 years and it is the admitted position that there is no certified standing order in the company. It has already found that Ext. B, Ext. B/1 and Ext. C which are the documents of the company have altogether rendered the stance of the company as baseless and false and at the same time it has become admitted position that the workman had been working in the company as a clerk and O.P.W.- 1 Mr. Modi also admitted that he cannot say for how long the workman had been working in the company and there is no system of maintaining attendance register and attendance register was not produced by company as evidence without assigning any reason. Under such circumstances the evidences of the workman a P.W.-1 that he joined the service in April, 1975 and he continued the service without any break as a permanent employee under the company till his dismissal of service on 04.05.2011, and it is coming out that by that time, he was not superannuated by the management of the company, and this further justifies that there is no certified standing order or anything similar in the company fixing the age of superannuation as it is coming out that the workman was not required by the management of the company to retire on attainment of 60 years of age, the date of birth of workman, as deposed by P.W.-1 as has remained unchallenged, is 03.11.1949.

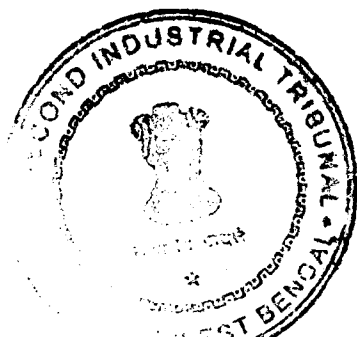
The workman as P.W.-1 has deposed that he was terminated from the service on and from 04.05.2011 and from the documents as brought by management of the company as evidence i.e. Ext. B, Ext. B/1, and Ext. C, it is found to be admitted as in these documents the company has clearly admitted by stating that the management of the company had decided to do away with the service of the workman and accordingly the service of the workman was axed



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by the management of the company and the stance of the company that the workman voluntarily left his service in the company is found to be false in view of the contention of the Ext. B, Ext. B/1 and Ext. C. Ld. Lawyer for the workman has described all such activities on the part of the management of the company as directorial attitude of the employer without any reason and rhyme and Ld. Lawyer also stated that thus the management of the company has exercised unfair labour practices. Ld. Lawyer for the management of the company has not raised anything against such argument by Ld. Lawyer for the workman. From the evidences it has come that the management of the company did not allow the workman to join his duty and thus the service of the workman was retrenched by refusal of employment and the contention of documentary evidences i.e. Ext. B, Ext. B/1 and Ext. C have supported this contention. The matter of unfair labour practices have been given in the 5<sup>th</sup> schedule of the Industrial Disputes Act, 1947. The management of the company, as admitted in Ext. B, Ext. B/1 and Ext. C by the management of the company, the workman used to remain on leave without information to the management of the company and as per evidence of O.P.W.- 1 Mr. Modi, there is no attendance register and no attendance register or anything else to show the attendance of workman has been produced by company and this allegation of remaining absent without information to the management of the company has remained nothing but a mere faux-pas and as mentioned in 5(e) of the 5<sup>th</sup> schedule showing unfair labour practices, such an allegation on the part of the management of the company against the workman has amounted to exercise of unfair labour practice by the management of the company. Further admittedly the management of the company has at all not initiated any disciplinary proceeding such as issuing show cause notice on the workman requiring him to reply over this matter, conducting domestic enquiry etc. and dismissed the service of the workman without following the mandatory requirement of law and in flagrant violations of natural justice.

Regarding relief the workman has claimed reinstatement in his service with full back-wages with all other consequential benefits and also to allow him to continue his service on and from the date of dismissal on 04.05.2011. Ld. Lawyer for the workman has emphasised for reinstatement of the workman in the service with back-wages with other consequential relief but Ld. Lawyer for the company has argued that the workman cannot be reinstated in service as he has already retired. It has already been found that there is no certified standing order in the company or anything else showing the date of superannuation of any workman. As per evidence of the workman himself as P.W.-1, his date of birth is 03.11.1949, and as per case laws cited by Ld. Lawyer for the workman, the observation of Hon'ble Supreme Court of India, a clerk in a company, as the workman happened to be in this case, should be allowed to continue service till attainment of 60 years of age. Therefore the workman ought to have retired before the date of dismissal of his service which is stated to be 04.05.2011 but as found in this case there is no certified standing order in the company or anything similar fixing the retirement age and it is



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found that the management of the company allowed him to continue service till his dismissal on 04.05.2011 and since the Industrial Disputes Act, 1947 is a beneficial piece of legislation, the management of the company is liable to provide benefit to the workman till 04.05.2011. Nothing has been found in support of the legal technicalities as have been raised by management of the company in its written statement. Therefore, an award may be given accordingly.

It is, therefore ,

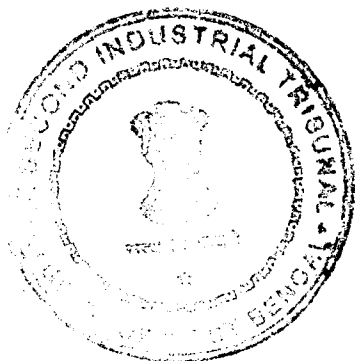
### ORDERED

that the issues, excepting issue No. 5 relating to reinstatement of the workman in service, are decided in favour of the workman Bhanwar Lal Chhapolika and it is stated that his termination of service by way of refusal of employment w.e.f. 04.05.2011 by the management of the company M/s. Ramesh Kumar Rajendra Kumar is found to be illegal and the same is hereby set aside and it is further stated that the workman is entitled to get salaries as have fallen outstanding with arrear thereto and also with other consequential benefits arising there from till the date of his dismissal by way of refusal of employment as mentioned above, and his prayer for reinstatement of his service immediately after date of dismissal by way of refusal of employment as mentioned above stands rejected, with the addition that his service in the company till the date of dismissal by way of refusal of employment as mentioned above by the management of the company is validated. The management of the company is directed to make payment of the outstanding salaries and other consequential benefits arising there from immediately to the workman. There is no separate order for cost. This order /direction by this Tribunal is to be treated as an award. Let necessary number of copies of this Award be prepared and sent to the appropriate government i.e. the Principal Secretary to the Government of West Bengal, Labour Department, N.S. Buildings, 1, K.S. Roy Road, Kolkata – 1.

Dictated & corrected by me.

sdlr

Judge



sdlr

(Sribash Ch. Das )

Judge

2<sup>nd</sup> Industrial Tribunal

Kolkata

30.11.2018