

I/86116/2020

Government of West Bengal
Labour Department, I. R. Branch
N.S. Buildings, 12th Floor
1, K.S. Roy Road, Kolkata - 700001

No. Labr/.180./.(LC-IR)/11L-41/17

Date : 17/03/2020

ORDER

WHEREAS under the Government of West Bengal, Labour Department Order No. Labr./660/(LC-IR)/11L-41/17 dated 20.06.2017 the Industrial Dispute between M/s S.S. Industrial Complex, Balitikuri, Kalitala, Howrah - 711113 and their workman Sri Debasish Chatterjee, South Baksara Paulpara Sitalatala, P.O. - Baksara, Howrah - 711110 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,

Sd/-

Deputy Secretary

to the Government of West Bengal

Date : 17/03/2020

No. Labr./180/1(5)/(LC-IR)

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

1. M/s S.S. Industrial Complex, Balitikuri, Kalitala, Howrah - 711113.
2. Sri Debasish Chatterjee, South Baksara Paulpara Sitalatala, P.O. - Baksara, Howrah - 711110.
3. The Assistant Labour Commissioner, W.B. In-Charge, Labour Gazette.
4. The O.S.D. & E.O. Labour Commissioner, W.B. New Secretariat Buildings, 1, K. S. Roy Road, 11th Floor, Kolkata- 700001.
5. The O.S.D., IT Cell, Labour Department, with the request to cast the Award in the Department's website.

Sd/-

Deputy Secretary

No. Labr./180/2(2)/(LC-IR)

Date : 17/03/2020

Copy forwarded for information to :

1. The Judge, Second Industrial Tribunal, West Bengal with reference to his Memo No. 153 - L.T. dated 12.02.2020.
2. The Joint Labour Commissioner (Statistics), West Bengal, 6, Church Lane, Kolkata -700001.

Deputy Secretary

In the matter of an industrial dispute between M/s. S.S. Industrial Complex of Balitikuri, Kalitala, Howrah-711113 and Shri Debasish Chatterjee, South Baksara Paulpara Sitalatala, P.O. - Baksara, Howrah-711110.

(Case No. VIII-11/2017)

BEFORE THE SECOND INDUSTRIAL TRIBUNAL: WEST BENGAL.

PRESENT

SHRI SRIBASH CHANDRA DAS, JUDGE,
SECOND INDUSTRIAL TRIBUNAL, KOLKATA.

Date of passing award – 20.12.2019

A W A R D

This case arose by way of order of reference having No. Labr./660/(LC-IR)/IR/11L-41/17 dt. 20.06.2017 by order of Governor signed by Deputy Secretary to the Government of West Bengal, Labour Department, I.R. Branch, New Secretariat Buildings, (12th Floor), 1, K.S. Roy Road, Kolkata – 1 in the way that an industrial dispute exists between M/s. S.S. Industrial Complex of Balitikuri, Kalitala, Howrah-711113 and Shri Debasish Chatterjee, South Baksara Paulpara Sitalatala, P.O. -Baksara, Howrah-711110 relating to the issues as mentioned in the order of reference stated to be being a matter specified in the second schedule to the Industrial Disputes Act, 1947, further mentioning that the said dispute should be referred to an Industrial Tribunal constituted U/s, 7A of the Industrial Disputes Act, 1947, and then accordingly in exercise of power conferred by Section 10 read with Section 2A of the Industrial Disputes Act, 1947, the Governor is pleased by this order of reference to refer this dispute to this Tribunal stated to be constituted vide 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 the period of 3 months from the date of receipt of this order of reference by this Tribunal in terms of Sub-section (2A) of Section 10 of Industrial Disputes Act, 1947, subject to other provisions of the Act, the issues mentioned in the order of reference being,

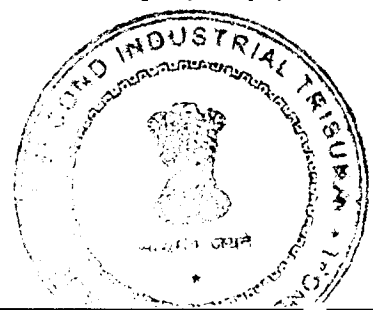
- 1) Whether the termination of services of Shri Debasish Chatterjee by the management of M/s. S.S. Industrial Complex w.e.f. 06.06.2015 is justified, and
- 2) What relief, if any, the workman is entitled to.

The case record shows that after the order of reference was received, summons were issued to both workman Debasish Chatterjee and the management of the company M/s. S.S. Industrial Complex and accordingly they both entered into appearance engaging lawyer by each



of them and also filed written statements and the management of the company contested the case thus.

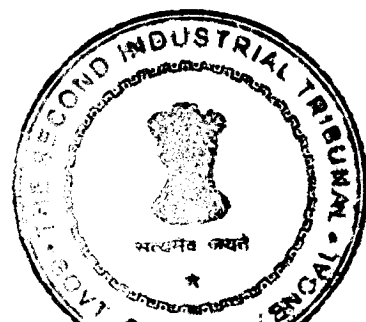
In the written statement filed by Ld. Lawyer for the workman, it has been stated that the workman Debasish Chatterjee was a permanent workman under the management of the company, elaborating further it is stated that the workman was appointed by the management of the O.P. / Company in the post of accountant with effect from 01.02.2013 but the management of the O.P./company required the workman to perform duty in its sister-concern M/s. J.M. Engineering Works with an assurance by the management of the O.P./company that for performing duty in that sister-concern of the O.P./company, the workman would be paid an additional salary of Rs. 3000/- per month besides the normal agreed salary of Rs. 9000/- per month. It is next stated that the workman had given meritorious, skilful service with high precession, with intelligent execution and untiring zeal to the company that earned him an unblemished record of service to the complete satisfaction of the company and he would be loved by all for his such diligent service, and the workman was covered under the provisions of the ESI Act, Employees' Provident Fund and M.P. Act. It is also mentioned in the written statement that the OP/company is prosperous concern earning huge profit but it does not share the same with the workers and indulges in unfair labour practice of hire and fire without caring for the requirement of law and principles of natural justice. It is next stated that though the management of the O.P./company required the workman to work in its sister-concern but he was not given the agreed salary, for which the workman made several demands both verbal and in writing but to no result. It is also stated in the written statement that when the workman reported for duty on 06.06.2015, the management of the O.P./company through its partner did not allow the workman to join the duty verbally stating to him that he had been terminated from service, and then the workman requested that partner of the company to allow him to join and also wanted to know from that partner the reasons for termination of his service but the workman was not allowed though the workman rendered uninterrupted service to the company from his joining, and then the workman raised protect against such illegal termination by the management of the O.P./company demanding to allow him to resume his duty with further request to let him know the reasons for such termination describing the same as illegal. It is also stated in the written statement that the workman was summarily terminated from service in violations of provisions of law and principles of natural justice with effect from 06.06.2015, and despite raising protest by the workman, the management of the company did nothing. Even after that the workman made numbers of calls to the office of the company and also further requested the management of the O.P./company to reinstate him in his service and also wanted to know the reasons for his such illegal termination, but the management of the O.P./company did nothing, and thus the management of the O.P./company resorts to unfair labour practices and administers discipline arbitrarily and vindictively. It is also raised in the written statement by the workman that even after that the workman requested the management of the O.P./company to pay him his



due salaries, but the management of the O.P./company did nothing and thus the management of the O.P./company threw the workman to prolonged unemployment and starvation with his family members, and though workman tried his level best to get a job but could not afford to get any and the workman has thus remained unemployed till date. The workman has also mentioned in his written statement that the management of the company never issued any charge-sheet against him and also did not issue any show cause notice to him and also did not conduct any domestic enquiry against him before he was terminated from service in such illegal manner and also did not offer any opportunity of hearing before terminating him from service. And thus when all such persuasions, approaches, demands by the workman before the management of the company failed, the workman by his letter dated 18.09.2015 raised an industrial dispute mentioning all before the labour commissioner, Government of West Bengal with request to intervene in the matter, and after that the conciliation officer convened a number of joint meetings but due to adamant attitude on the part of the management of the company, the dispute could not be settled, and describing the termination of the service of the workman as summary one, bad in law, unfair, mala fide, it is further stated by the workman that the management of the company has thus imposed a shocking injustice on the poor workman, and at that time the salary of the workman stood at Rs. 9000/- per month. The workman has further stated that due to such illegal termination of his service, he has been suffering from financial hardship, and for that reason he applied before District Legal Services Authority, Kolkata for legal aid and that authority has provided him legal aid by appointing his advocate to conduct this matter on his behalf. Mentioning further that the actions of the company are colourable exercise of power, shockingly unjust and against all norms of principles of natural justice, he workman has prayed for holding the termination of his service with effect from 06.06.2015j as illegal, unjust, mala fide amounting to be invalid, improper and inoperative, and has also prayed for grant of relief of reinstatement with full back wages with all incidental benefits including bonus and also for grant of further relief as may be deemed fit and proper.

The management of the company in its written statement has raised some legal technicalities such as the present dispute is not maintainable either in law or on facts, barred under law of acquiescence, waiver and estoppel, barred by the principles of constructive res judicata due to filing of self-same dispute before the Labour Court, the workman was not a workman as per definition of workman in the Industrial Disputes Act as the workman worked under the management of the company in supervisory capacity with his post as accountant, abandonment of service by the workman himself without notice to the company etc. to bar the proceeding of this case.

Admitting that the workman was an accountant of the OP/company, it has been asserted in the written statement of the company that the post of accountant is a managerial post and the workman with mala fide intention raised the dispute before the Assistant Labour Commissioner

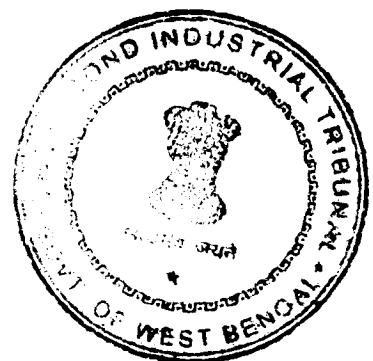


by his letter dt. 10.09.2015 falsely claiming that he was illegally terminated from service on and from 06.06.2015 and it is also alleged in the written statement by the company that the workman filed the letter dt. 18.09.2015 before Assistant Labour Commissioner for wrongful gain (as mentioned in paragraph 6 to paragraph 9 of the written statement of the company). Further in paragraph 10 of the written statement of the company, the management of the company has admitted that the labour officer investigated the matter in dispute and also held joint conference during the end of 2015 and also during the entire period of 2016 and in paragraph 11 of the written statement of the company, the management of the company has asserted that during investigation by labour officer over the matter of dispute, the management of the company raised before labour officer that the workman did not complete his work in the company and misbehaved with other office-staff / workers in the company and also dis-respected the management of the company, for all of which the management of the company warned the workman and after that warning the workman left the service without any information to the management of the company and as mentioned in paragraph-12 of the written statement of the company, the workman committed theft of SIM Card of he company. In paragraph 13 to paragraph-20 of the written statement filed by the company, it has been stated that the management of the company requested the workman to resume his duty but he refused, and also has raised allegations against the workman in the way that before Labour Commissioner and also before conciliation officer the workman admitted that he had already joined another company and falsely filed a computation case before 2nd Labour Court, and all these become evidently clear before the Assistant Labour Commissioner, adding further that during May, 2015 the management of the company orally warned the workman for his mis-conduct , and on 06.06.2015 the workman did not attend for duty and the company found that the workman committed theft of confidential documents of the company and also committed theft of mobile-phone with SIM Card belonging to the OP/company, and the company further admitted that the workman had been working in the post of accountant of the company but it was managerial post, further mentioning that the workman also filed false complaints against the management of the company before Sales Tax and Income Tax Authorities, both of which then raided the premises of the company. Denying the contention of paragraph 1 and paragraph 2 of the written statement filed by workman, the management of the company in its written statement has asserted that the management of the company has no connection with the company M/s. J.M. Engineering Works and never promised to pay additional salary of Rs. 3000/- per month for working therein and required the OP company to prove the same, further denying the contention of paragraph 3 and paragraph 4 of the written statement filed by the workman, the OP/company has raised that the workman never rendered any meritorious service etc. and thus never maintained any unblemished record, or the company a prosperous one earning huge profit without sharing the same to the workers and the management of the company also does not practice unfair labour practice without caring to abide by the laws or principles of natural justice, again denying and



describing the contentions of paragraphs 5 and 6 of the written statement filed by the workman as false, the management of the company has raised that on 06.06.2015 when the workman reported for duty, the partner of the company never dis-allowed the workman and also never stated to the workman orally that the workman was terminated from service and the workman also never made any demand before the management of the company to allow to join his duty or to disclose to him the reasons for his terminated from service by the company and workman also never rendered any un-interrupted service. Further denying the contentions of para-7, 8, 9, 10 and 11 of the written statement filed by the workman, the management of the company has raised in its written statement that the company never terminated the workman summarily w.e.f. 06.06.2015 without showing any reason and without complying with the principles of natural justice and the workman also did not raise protest before the management of the company requesting the company to allow the workman to resume his duty in the company and to pay him his due salaries and the company has required the workman to prove the same strictly, mentioning further that due to such alleged termination, the workman has not been in prolonged unemployment facing any starvation with his family members, adding further in the form of denial that the management of the company did not issue any show cause notice or charge-sheet against the workman before his such alleged termination or did not conduct any domestic enquiry against him offering opportunity of hearing, further mentioning that all such allegations by the workman are false as was held by Assistant Labour Commissioner. Denying the contention of para 12 / 13 of the written statement filed by the workman, the company has raised that the workman by his letter dt. 18.09.2015 addressed to Labour Commissioner, Government of West Bengal never raised any industrial dispute requiring the labour commissioner to intervene in the dispute and the company also did not show any sort of adamant attitude before conciliation officer. In respect of the rest of the contentions of the written statement of the workman, the management of the company has denied that during the material time in question, the alary of the workman was Rs. 9000/- per month, further denied that due to suffering from financial hardship, the District Legal Service Authority, Kolkata provided legal aid to the workman by appointing the conducting lawyer for the workman to conduct the present matter before this Court, asserting that the management of the company never resorted to colourable exercise of power and the workman is not entitled to get any relief by this case as the workman has already filed a case U/s. 33©2 of the I.D. Act, 1947 being case No. 8 of 2016 before Ld. 2nd Labour Court, Kolkata and that case is still pending.

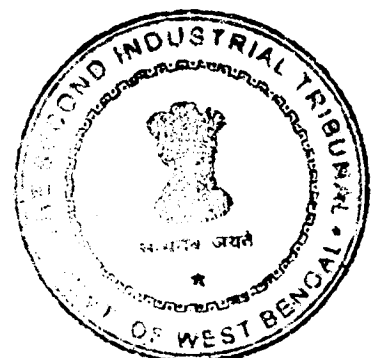
During hearing of the case on merit, both sides adduced both oral and documentary evidences. The retrenched workman Debasis Chatterjee examined himself as P.W.-1 and he i.e. P.W.-1 was also fully cross examined by Ld. Lawyer for the company. The workman Debasis Chatterjee also adduced documentary evidences, which are,



- 1) Copy of letter by workman Debasis Chatterjee dt. 18.09.2015 addressed to Deputy Labour Commissioner, Howrah (Ext. 1),
- 2) Copy of Identity Card in the name of workman Debasis Chatterjee containing registration details by E.S.I. Corporation (Ext. 2),
- 3) 3) copy of letter of authority dt. 21.06.2013 in favour of workman Debasis Chatterjee by partner of the company to act before Deputy Labour Commissioner, Sales Tax, Howrah, West Bengal on behalf of the company (Ext. 3),
- 4) Copy of letter of authority dt. 13.11.2013 in favour of workman Debasis Chatterjee by partner of M/s. J.M. Engineering Works (Ext. 4),
- 5) Copy of letter of authority in favour of workman Debasis Chatterjee by partner of company M/s. J.M. Engineering Works dt. 19.11.2013 to act before Sales Tax Officer, Howrah (Ext. 5),
- 6) Copy of Sales Tax Assessment order dt. 31.08.2016 (Ext. 6),
- 7) Copies of ESI challans in the name of workman Debasis Chatterjee, today 6 pages (Ex. 7),
- 8) Copy of letter dt. 14.10.2015 addressed to Deputy Labour Commissioner, Howrah by partner of the company (Ext. 8),
- 9) Copy of letter dt. 16.11.2015 by workman Debasis Chatterjee addressed to Deputy Labour Commissioner, Howrah (Ext. 9),
- 10) Copy of letter dt. 14.01.2016 by partner of the company addressed to Deputy Labour Commissioner, Howrah (Ext. 10) and
- 11) Copy of letter dt. 04.03.2016 by workman Debasis Chatterjee addressed to Deputy Labour Commissioner, Howrah (Ext. 11).

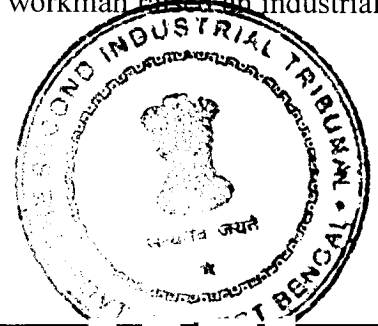
The management of the company examined one Mr. Lakshmi Kanta Bhowmik as O.P.W.- 1 alone, and also adduced documentary evidences which are,

- A) Copy of computation case No. 8 of 2016 of Ld. Second Labour Court, West Bengal between workman Debasis Chatterjee and the company i.e. M/s. S.S. Industrial Complex (Ext. A),
- B) Copy of application under Section 33C(2) of the Industrial Disputes Act, 1947 filed by Debasis Chatterjee against the company i.e. M/s. S.S. Industrial Complex filed before Ld. Second Labour Court, West Bengal (Ext. B),
- C) Report of conciliation officer in the matter of dispute between Debasis Chatterjee and the management of the company i.e. M/s. S.S. Industrial Complex (Ext. C),
- D) Copy of notice dt. 29.09.2015 issued to the company i.e. M/s. S.S. Industrial Complex by Assistant Labour Commissioner, Howrah (Ext. D), and
- E) Copy of notice dt. 14.06.2016 to the company i.e. M/s. S.S. Industrial Complex by Assistant Labour Commissioner, Howrah (Ext. E).

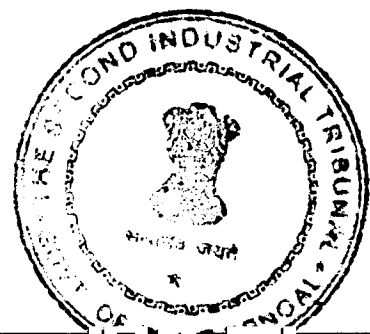


Decision with reasons

As has already been seen, the order of reference contains only two issues, the first one is whether the termination of service of the workman Sri Debasis Chatterjee by the management of the company M/s. S.S. Industrial Complex with effect from 06.07.2015 is justified or not and whether the workman is entitled to get any other relief or not. I have already mentioned the case raised by workman in his written statement and to recapitulate the same in gist is it is that the workman Debasis Chatterjee was appointed by the management of the company with effect from 01.02.2013 in the post of accountant at a monthly salary of Rs. 9000/- but after the workman joined in the company as accountant, the management of the company required the workman to perform duty in another company namely M/s. J.M. Engineering Works which is stated to be the sister-concern of the company and for performing duties in that sister-concern the management of the company assured the workman that he would be given additional salary of Rs. 3000/- per month, and accordingly the workman had been continuing with the service under the company and for his meritorious and skilful service with high precision and intelligence execution with untiring zeal, the workman maintained unblemished record in his service, the workman was also diligent, honest and for all such reasons he would be loved by the management of the company and he was given the cover of the provisions of ESI Act, Employees' Provident Fund and M.P. Act. As per workman the company is a prosperous concern earning huge profit but the management of the company did not share the same with the workers and it indulges in unfair labour practice of hire and fire without caring to comply with the laws of the land and also principles of natural justice. The workman has further raised though for performing his duties in the sister concern of the company i.e. M/s. J.M. Engineering Works the management of the company agreed to pay him additional salary of Rs. 3000/- but the management of the company did not pay him that salary though the workman demanded for the same both orally and in writing, and after that on 06.06.2015 when the workman reported for duty in the company, the partner of the company did not allow him to join and also that partner stated to the workman verbally that the workman had already been terminated from service by the management of the company. The workman has further raised that after that the workman repeatedly requested the management of the company to allow him to join his duty but he was not allowed to join, mentioning further that the management of the company terminated the workman from service without assigning any reason and without requiring him to make any show cause and thus the workman was illegally summarily terminated from service with effect from 06.06.2015 and then the workman raised protest against his such illegal termination from service by the management of the company demanding reinstatement and also demanded to inform him the reason for such illegal termination of his service, and before such termination by the management of the company, the management of the company also did not conduct any domestic enquiry against him but ultimately the management of the company did not do anything in view of his all such request and protest, and then by writing a letter dt. 18.09.2015, the workman raised an industrial

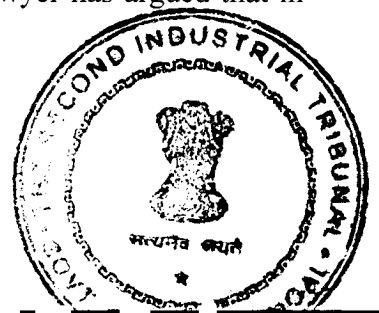


dispute before Labour Commissioner, Government of West Bengal requesting him to intervene in the matter. After receiving this letter dt. 18.09.2015 the conciliation officer convened a number of joint meetings but due to adamant attitude of the management of the company the dispute could not be settled. The workman has further asserted that after his such illegal termination by the management of the company, the workman tried his level best to secure to secure a job but failed and thus he fell into prolonged unemployment facing starvation with his family members. The management of the company in its written statement, as I find in para-4 of that written statement, has clearly admitted that the workman Debasis Chatterjee was appointed by the management of the company in the post of accountant and asserted that the post of accountant is a supervisory-category post, in para-7 of the written statement the management of the company has further asserted that the post of accountant in which the workman was appointed was also a managerial post under the company, it is next stated in the written statement of the company that as mentioned in para-11 of the written statement of the company, the workman Debasis Chatterjee would not attend office regularly and he used to misbehave with other officials of the company and did not complete the work as was given to him and for that reason the management of the company gave him warning and for that warning on the workman by the management of the company, the workman left the company voluntarily without giving any notice to the management of the company and as stated in para-12 and also para-17 of the written statement of the company it is found that the management of the company has raised allegations against the workman that the workman committed theft of mobile phone and SIM card of the mobile phone, both belonging to the company. The company has further raised that the case filed by the workman is not maintainable and the order of reference by the appropriate government is barred by law weaver, estoppel and acquiescence and by the principles of res judicata, over which the company has stated that the workman has filed self-same case praying for self-same relief before Second Labour Court, Kolkata and the post of accountant is a managerial post and thus the workman cannot be called a workman as per requirement of law. It is also raised that during conciliation meeting by the conciliation officer the workman admitted that he had already joined in the service of a different company and for that reason the workman left the service voluntarily without notice to the company. The company has further raised that the company deals with all types of fabrication job requiring immediate equipment and mechanical items and the workman was required to maintain account of all these but he left the job without completing them without notice to the company and after that the workman filed false complaints against the management of the company before Sales Tax Authority and Income Tax Authority, as a result to which both sales tax authority and the income tax authority raided house of the management and also the premises of the company and thus the workman intended to make unlawful gain from the company, yet the management of the company orally requested the workman to join his duty but the workman did not turn up and thus he was not summarily terminated from service but the workman himself abandoned the service and thus the

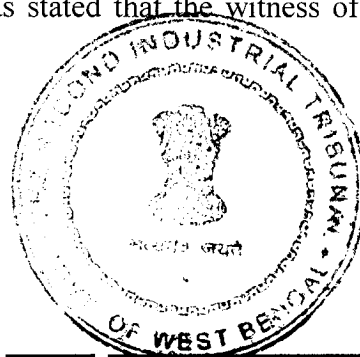


management of the company denied the contention of the written statement filed by workman excepting to the extent that the workman was appointed by the company in the capacity of accountant as admitted in the written statement by company as I mentioned earlier.

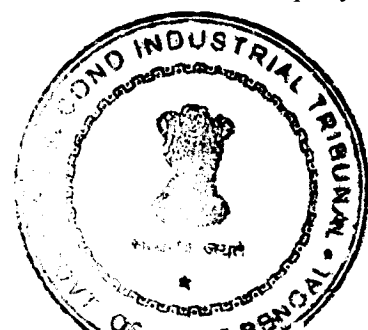
Ld. Lawyer of both sides have argued the case, I find that after making argument Ld. Lawyer for the workman has filed one written notes of argument but Ld. Lawyer for the company did not want to file any such note of argument. In her argument, Ld. Lawyer for the workman has raised that the management of the company appointed the workman as accountant in the company with effect from 01.02.2013 and accordingly the workman started working under the company, and then the workman was given the cover of ESI Act, Employees' Provident Fund and M.P. Act. Ld. Lawyer has also mentioned that though the workman had been performing his duty, yet the management of the company did not pay him the agreed amount of salary, for which the workman made several demands verbally and also in writing before the management of the company but to no result at all, and on 06.06.2015 when the workman reported for duty, one of the partners of the company did not allow him to join his duty and also verbally stated to the workman that the workman was already terminated by the management of the company from his service and after that the workman made several request to the partner of the company to allow him to join his duties and also requested to let him know the reasons for termination of his service, yet the workman was not allowed to join and management of the company also did not give the reasons for termination of his service and the salary of the workman per month was Rs. 9000/- and it is also mentioned by Ld. Lawyer that this amount of salary of the workman was admitted by the management of the company through its witness O.P.W.- 1. Ld. Lawyer for the workman has further raised that the management of the company terminated the service of the workman with effect from 06.06.2015 without showing any reason, after which the workman raised protest against his such illegal termination by the management of the company and demanded for allowing him to resume his duty and also to enable him to know the reasons of the termination from service but to no effect and thus, Ld. Lawyer has mentioned, that the workman was summarily terminated in violation of provisions of law and principles of natural justice, and after the request by the workman to the management of the company to allow him to resume his duty and also to enable him to know the reasons for termination in writing but failed. The workman fell into prolonged unemployment as he still unemployed and has been facing starvation with his family as all his attempts to get a job elsewhere failed. Before his such termination, Ld. Lawyer for the workman asserted, the management of the company did not issue any charge-sheet to the workman and also did not issue any show cause notice on the workman and also did not conduct any domestic enquiry and also did not offer any opportunity of hearing to the workman and the management of the company also violated the mandatory provision of Section 25F of the Industrial Disputes Act, 1947. Rererring the contention of written statement filed by he management of the company in the way that the workman had been working in the post of accountant which was a managerial post, Ld. Lawyer has argued that in



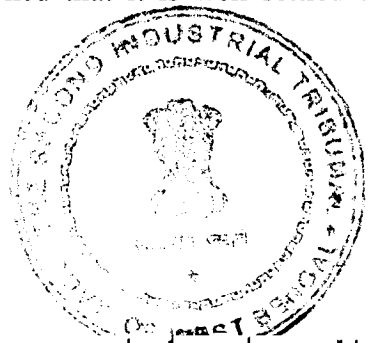
support of such contention by the management of the company no evidence was adduced by the management of the company before the Court and the management of the company thus miserably failed to substantiate that assertion, and Ld. Lawyer for the workman has further raised that it will be found from the letter of the company dt. 14.10.2015 (Ext. 8) addressed to the Deputy Labour Commissioner that in that letter (Ext. 8) the management of the company mentioned that the workman Debasis Chatterjee was an employee of the company from 01.02.2013 till 06.06.2015 as accounts clerk without mentioning by the management of the company in that letter (Ext. 8) that the workman had been working in any supervisory capacity to be treated as managerial post. Ld. Lawyer for the workman has further argued that the workman as P.W.-1 deposed that he had been working as clerk in the accounts department of the company and the documents (Ext. 3 and Ext. 5), have established that the workman had been working in the capacity of accounts clerk under the company and the workman never worked in the supervisory capacity in the company and, Ld. Lawyer asserted, such evidences by the workman have remained totally uncontroverted and thus there is no iota of evidence by the management of the company that the workman had been working in any managerial capacity. Referring one case law in 1975(II) LLJ 372 of Hon'ble Supreme Court of India Ld. Lawyer for the workman has submitted that in that case the position of the post of accountant was in question and the Hon'ble Court was very much pleased to observe that the post of accountant is workman and in that case it was the further observation of the Hon'ble Judge of the Supreme court was that in the absence of proper records to show and an administration of company entrusted work of supervisory, managerial or administrative responsibility fall on the workman as accountant, he must be held to be workman and citing another case law in 1964(1) LLJ 19, Ld. Lawyer for the workman has submitted that in that case it was the observation of Hon'ble Supreme Court of India that accountant is a workman, and Ld. Lawyer for the workman concluded this point of argument mentioning that it is admitted position from the contention of the written statement by the management of the company that the workman had been working in the capacity of accountant and thus he was a workman and nothing else. Ld. Lawyer for the workman has further stated that in the written statement filed by the management of the company, it has been asserted by the company that the workman left his service at his own desire and it was denied by the workman clearly and the workman in his deposition as P.W.-1 and also in his written statement has stated that he was illegally and unjustly terminated from service of the company and the workman never abandonment his service but he was illegally terminated from the service of the company, and the Ld. Lawyer for the workman has explained that if it is so found by the management of the company that the workman had been absenting from service of the company, then it was the requirement of the law on the part of the management of the company that management of the company must issue notice to the workman directing him to join duty but in the present case the management of the company never issued any such notice to the workman and to support her such submission / argument, Ld. Lawyer has stated that the witness of the



company (O.P.W.- 1) has admitted in cross-examination that management of the company has not filed any such document to show that management of the company asked the workman in writing requiring his attendance for his duty in the company, further the management of the company also did not issue any show cause notice to the workman and also did not issue any charge-sheet against the workman and the workman was also not given any opportunity for hearing before he was illegally terminated by the management of the company, and in support of such argument /submission, Ld. Lawyer for the workman cited case law in 2007(1) CLR 244 of Hon'ble Bombay High Court mentioning that in that case it was the observation of Hon'ble Judge that in case of abandonment of service, the employer must give notice calling upon the workman to resume his duty and the company must have also held enquiry before termination of his service but in the present case the management of the company did not do anything, citing another case law in 1998 (II) LLJ 632 Ld. Lawyer for the workman has raised that in that case also Hon'ble Judges were very much pleased to hold that termination on the ground of abandonment of service which is held to constitute a mis-conduct and such termination was effected without giving opportunity to show cause and thus it was held to be unsustainable with further observation that it was not the case of abandonment of service , referring a further case law in 2003 (97) FLR 262 of Jharkhand High Court for Ld. Lawyer for the workman has submitted that in that case Hon'ble Judges were pleased to hold that terminated from service due to abandonment of work would be retrenchment and Section 25F of the Industrial Disputes Act, 1947 becomes applicable and also hold that even a dispute raised even after 12 years regarding termination in violation of Section 25F would not become stale, further referring another case law in 1991 (93) FLR 679 of Hon'ble Bombay High Court Ld. Lawyer submitted that in that case Hon'ble Judges hold that even if the workman abandoned the work voluntarily, it is incumbent on the part of the employer to hold an enquiry but in the present case nothing was done and further submitted that all the above cited case laws by Ld. Lawyer for the workman are applicable in the present case being of same nature, asserting that it has been proved by evidence that the workman never abandoned his service and also did not get any notice, show cause, charge-sheet on the management of the company and the workman was terminated from service in violations of mandatory requirement law and principles of natural justice. Ld. Lawyer for the workman has further argued that the management of the company committed illegalities / misdeeds and in an attempt to cover up all those illegalities and misdeeds, the management of the company has raised allegations that the workman committed theft of mobile phone and SIM card both belonging to the company but in support of such contentions / allegations, the management of the company has not produced any document or evidence, and explaining that allegations of theft is a major mis-conduct and in that case it was necessary on the part of the management of the company to issue charge-sheet against the workman to hold domestic enquiry against the workman but admittedly the management of the company did nothing and at the same time the witness of the company (O.P.W.-1) admitted in cross-examination that the company did

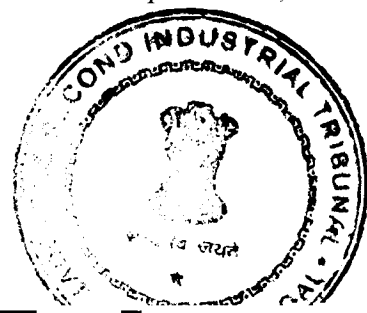


not file any document before this Court to show that the workman committed theft of anything including documents, mobile phone or SIM card belonging to the company and O.P.W.- 1 also admitted that the management of the company also did not file any FIR against the workman with allegations of committing theft of properties belonging to the company, the company also did not issue any show cause to the workman on any such ground and in the written statement filed by the workman and also in the deposition by workman s P.W.-1, the workman has totally denied all these, O.P.W.- 1 also admitted that management of the company did not issue any show cause regarding the matter of alleged theft by the workman on the workman and thus all such allegations of theft against the workman are nothing but false and baseless. The Ld. Lawyer for the has also asserted in her argument that the workman totally denied the allegation by the management of the company including that the workman has filed false computation case before Second Labour Court, Kolkata and that case was filed to get back outstanding salary and other service benefits as were refused by the management of the company to him. Explaining that retrenchment by the employer is a punishment inflicted by way of disciplinary action and the management of the company terminated the service of the workman without showing any reason whatsoever and also did not comply with the requirement of Section 25F of the Industrial Disputes Act, 1947 which provides condition in the way that no workman employed in any industry etc. shall be retrenched by the employer until the workman has been given one minute's notice in writing including the reasons for his retrenchment and the retrenchment compensation but this mandatory requirement law was not comply with by the management of the company and the workman was given the capital punishment without any particular of hearing to the workman. Ld. Lawyer for the workman has further raised that the principles of natural justice is an integral part of guarantee of quality assured by Article 14 of the Constitution of India and therefore any action by the employer must be fair, just and reasonable and Article 21 of Constitution of India includes right to livelihood, the order of terminated from service of an employee visits with civil consequence of jeopardising not only his livelihood but also carrier and the livelihood of his dependents and accordingly any action putting an end to the tenure of the employee fair play is a mandatory requirement but the management of the company did not comply with such basic requirement and to support her such argument Ld. Lawyer for the workman cited one ruling in 1993(67) FLR 111 of Hon'ble Supreme Court of India. Ld. Lawyer for the workman has further argued that it is a mandatory provision in the Industrial Disputes Act, 1947 that at the time of the retrenchment the employer has to comply with the requirement of Section 25F of the Industrial Disputes Act, 1947, that postulates three conditions to be fulfilled by an employer for effecting a valid retrenchment, this conditions are one month's notice in writing indicating the reasons for the retrenchment for wages in lieu of such notice, payment of compensation equivalent to fifteen days' average pay for every completed year of continuous service or part thereof in excesses of six months and notice to the appropriate government in prescribed manner and Ld. Lawyer also mentioned that it is well settled that

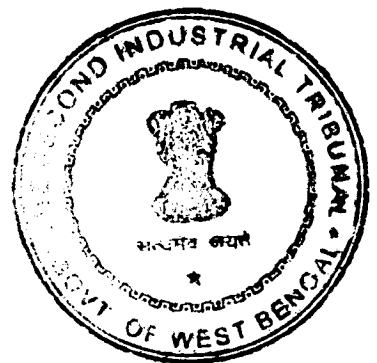


considering the negative thing used in Section 25F of the Industrial Disputes Act, 1947, it imposes the mandatory duty on the employer which is a condition precedent for retrenchment of a workman and any contravention of this mandatory requirement would invalidate the retrenchment and render it void ab initio but admittedly the company did not comply with the mandatory provisions of law and thus the termination of service of the workman is in clear violation of the provision of law and also of the principles of natural justice.

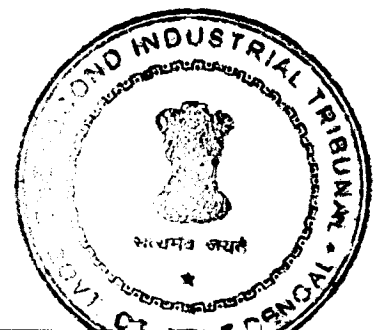
Against all these Ld. Lawyer for the company has argued that the order of reference by the appropriate government is barred under the law of acquiescence weaver and estoppel and also by the principle of constructive res judicata and has explained that the workman has already filed a case of self-same nature before Ld. Labour Court being case No. 8/2016 in the Second Labour Court, West Bengal for computation but that case is false and added that the workman Debasis Chatterjee has suppressed material fact before this Tribunal by not mentioning about the filing of that case before Ld. Labour Court and that case is under Section 33C(2) of the Industrial Disputes Act, 1947 being computation case No. 8/2016 and that case is still pending before that Second Labour Court, Kolkata. Ld. Lawyer for the company has further submitted that that computation case as has been pending before Second Labour Court, Kolkata is self-same as of the present case as has come into existence by order of reference having No. –Labr./660 (LC-IR)/IR/11L-41/17 dt. 20.06.2017 by order of Governor signed by Assistant Secretary to the Government of West Bengal, Labour Department. Ld. Lawyer for the company has further explained that the principle of res judicata has been explained in Section 11 of the Civil Procedure Code and the workman filed that computation case under Section 33C(2) of the Industrial Disputes Act, 1947 before filing of the present case by way of order of reference and thus the present case before this Tribunal is barred by application of the principle of res judicata and accordingly the present case before this Tribunal is not maintainable as being barred by res judicata. Ld. Lawyer for the company also added that before making the order of reference it was necessary on the part of the appropriate government to consider the contention of the petition U/S. 33C(2) of the Industrial Disputes Act, 1947 but it did not do so and thus the order of reference is barred under the law of acquiescence weaver and also barred by doctrine of principle of estoppel. To support his such argument Ld. Lawyer for the company has cited one case law arising in W.P.(C) No. 3633/2004 of Hon'ble Delhi High Court and has further submitted that similar question also arose in that case and Hon'ble Court decided that in such circumstances the principles of res judicata becomes applicable, citing another case law in (2013) 4 Cal LT-662 (SC), Ld. Lawyer for the company has argued that the appropriate government is required to be satisfied that a report was prepared by the conciliation officer and further satisfied that there must be sufficient material to make the order of reference and last of all the same ended in failure but in the present case no such materials were placed before the appropriate government for consideration to enable the appropriate government to make the order of reference and for that reason the order of reference suffers from doctrine of estoppel, weaver and acquiescence, further



citing another case law in Writ Petition No. 3859/1987 of Hon'ble Punjab and Hariyana High Court. Ld. Lawyer has raised that before making the order of reference it was necessary on the part of the appropriate government to ascertain whether the company in question is an industry or not but before making the order of reference the appropriate government did not want to know from the management of the company about the nature of the company and nature of management of the company and thus the appropriate government made the order of reference without knowing the nature and character of the company and accordingly the order of reference suffers from the doctrine of estoppel. Ld. Lawyer for the company has further explained that computation case No. 8/2016 filed by workman before Second Labour Court, Kolkata relates to computation of arrear salary by the workman from the company and it is also under Section 33C(2) of the Industrial Disputes Act, 1947 and by that case the workman has prayed before Ld. Second Labour Court, Kolkata to compute the benefits of Rs. 64800/- and the subject matter of the case is exactly similar to the present one and therefore principle of res judicata become applicable and the present case is liable to be dismissed without granting any relief to the workman. Against all these Ld. Lawyer for the workman has raised that appropriate government before making the order of reference considered the necessary materials and the report of the conciliation officer and as per law under Industrial Disputes Act, 1947, there is no limitation regarding the making of order of reference. Ld. Lawyer for the workman has further submitted that in the written statement also Ld. Lawyer for the company raised that the order of reference is not maintainable due to doctrine of acquiescence, waiver and estoppel but these doctrines are applicable in pure civil matters and all these did not have any application here in the matter of industrial dispute and added that there is also no supporting evidence by the management of the company in support of doctrine of acquiescence, waiver and estoppel. Ld. Lawyer for the workman has further raised that mere filing on a computation case before any appropriate court question of estoppel, waiver, acquiescence did not come into existence and at the same time it cannot be a matter of res judicata. Describing the matter of doctrine of res judicata. Ld. Lawyer for the workman has submitted that for the application of principle of res judicata as have been enshrined in Section 11 of the Civil Procedure Code both cases must be self-same substantively and the prayers must be substantively similar for getting relief and raising further that Ld. Lawyer for the management of the company has totally misconceived, doctrine of res judicata and also misconceived the application of doctrine of acquiescence, waiver and estoppel and Ld. Lawyer explained that computation case No. 8/2016 pending before Second Labour Court, Kolkata is on the matter that the workman had been a workman under the management of the company arising out of his performing of work in that company and also about the amount of money remained outstanding from the management of the company to the workman and a computation over the matter comes under the provisions of Section 33C(2) of the Industrial Disputes Act, 1947.

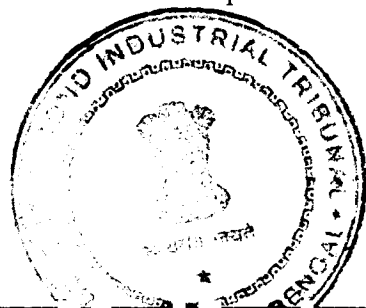


Admittedly the present case arose out of order of reference made by the appropriate government as I mentioned earlier where in it has been clearly stated that an Industrial Dispute exists between the management of the company and the workman and it was felt expedient that the said dispute should be referred to an Industrial Tribunal constituted under Section 7A of the Industrial Disputes Act, 1947 and then the appropriate government made the order of reference in exercise of power conferred by Section 10 read with Section 2A of the Industrial Disputes Act, 1947 and then the appropriate government referred this order of reference to this Tribunal for deciding the issues which are, 1) If the termination of service of the workman by the management of the company with effect from 06.06.2015 is justified or not and 2) what other relief, if any, the workman is entitled to and thus appropriate government exercised power under Section 10 of the Industrial Disputes Act, 1947 and accordingly the present case before this Tribunal arose by this order of reference only for limited purpose which is to answer the issues as mentioned in the order of reference and nothing else. Ld. Lawyer for the company has produced the copy of the application filed under Section 33C(2) of the Industrial Disputes Act, 1947 filed before the Second Labour Court, Kolkata and the contention of that application by the workman is mainly that the workman had been working under the management of the company and an amount of salary and other consequential benefits remained due and all such particulars have been mentioned in the application under Section 33C(2) of the Industrial Disputes Act, 1947 and the workman in that computation case has prayed before Ld. Second Labour Court, Kolkata for computation of all these, and thus the purpose of application under Section 33C(2) of the Industrial Disputes Act, 1947 is totally different from the present case before this Tribunal that arose by way of order of reference and the relief claimed by the present case by the workman has nothing to do with the prayer in the application under Section 33C(2) of the Industrial Disputes Act, 1947 before Ld. Second Labour Court, Kolkata, further the jurisdiction of Ld. Second Labour Court, Kolkata is totally different from that of the present Tribunal as have been enshrined clearly in the Industrial Disputes Act, 1947. Further the Labour Court is an executing court as per that act. Ld. Lawyer for the company has vehemently raised that the appropriate government did not consider the matters of application under Section 33C(2) of the Industrial Disputes Act, 1947 filed by workman before Ld. Second Labour Court, Kolkata before making the order of reference by which the present case has come into existence before this Tribunal. From the case record I find that before making the order of reference the matter of dispute was taken by Mr. Somnath Roy, Assistant Labour Commissioner, Howrah for conciliation in an attempt to solve the dispute and the report (Ext. C) at the instance of the management of the company shows that the management of the company did not follow the legal procedure for terminating the service of the workman and Assistant Labour Commissioner, Howrah found that it is a fit case to be referred for adjudication and this report was placed before the appropriate government and then appropriate government made the order of reference. I further find that Ld. Lawyer for the company cross-examined the witness of the workman and also adduced both oral



and documentary evidences and I do not find from all such evidences anything to support the assertion by Ld. Lawyer for the company that the order of reference is barred by the doctrine of estoppel, weaver and acquiescence or by principles of natural justice. It is, therefore, to say that Ld. Lawyer for the management of the company totally misconceived the concept of law as per Industrial Disputes Act, 1947 and also misconceived the scope of making order of reference by appropriate government in exercise of power under Section 10 of the Industrial Disputes Act, 1947 and the scope of the matter following under Section 33C(2) of the Industrial Disputes Act, 1947 and also mis-conceived jurisdiction and power of Labour Court and also of Industrial Tribunal and baselessly submitted that order of reference is barred by estoppel, weaver and acquiescence and also by the doctrine of res judicata and thereby resorted to vexation pleadings and argument.

Ld. Lawyer for the management of the company has admitted in his written statement clearly that the workman Debasis Chatterjee had been an employee under the management of the company as I find in para-4, para-11, para-16 of the written statement filed by the company but Ld. Lawyer has argued that though workman Debasis Chatterjee had been working with the designation of Accountant but the post of Accountant under the management of the company is a managerial post and accordingly the workman Debasis Chatterjee had been working in supervisory capacity and for that reason he cannot be called a workman under the definition of workman as has been given in the Industrial Disputes Act, 1947. Ld. Lawyer for the company has also argued that the workman was never terminated from his service but he resorted to misbehave with other workman and the management and the company and he also dis-respected the authority of the management of the company and for all such reasons the management of the company warned him and wanted him to change his attitude and thereafter after receiving such warning from the management of the company, the workman stopped attending duty from the management of the company from 06.06.2015 and thus the workman himself left his service voluntarily and despite request by the management of the company he did not report for duty. I have already mentioned the argument made by Ld. Lawyer for the workman in this regard, Ld. Lawyer for the workman raised that the management of the company claimed that the workman had been working in supervisory capacity and thus in managerial post, yet in support of such contention by the management of the company, there is no supporting evidence. The workman as P.W.-1 deposes that he was appointed by the management of the company as accountant on permanent basis with effect from 01.02.2013 and the management of the company then required him to perform duty in M/s. J.M. Engineering Works which is a sister-concern of the management of the company(Ext. 4) and for doing the work in that sister-concern the management of the company assured him to pay him additional salary of Rs. 300/- by the management of the company besides his monthly salary of Rs. 9000/- per month, workman as P.W.-1 also deposed that he had rendered meritorious service as accountant of the management of the company and as a result his record of service was unblemished and it was up to the

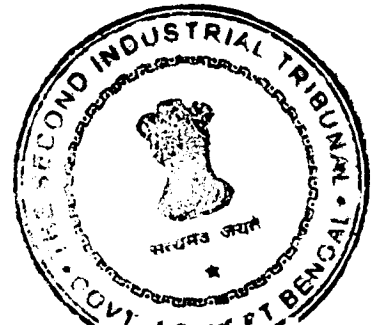


complete satisfaction of the management of the company and for that reason management of the company covered him by provisions of E.S.I. Act and Employees' Provident Fund and M.P. Act, P.W.-1 also deposed and that the management of the company required him to work in the sister-concern of the management of the company with assurance of giving him additional salary of Rs. 3000/- per month besides normal salary, yet the management of the company did not pay him that amount of money and on 06.06.2015 when he reported for duty in the company the partner of the company did not allow him to join his duty and he further stated to the workman verbally that he was already terminated from service. Thus from the evidence of workman as P.W.-1 the workman was appointed in the capacity of accountant which is also clearly admitted by management of the company in its written statement. This P.W.-1 i.e. workman Debasis Chatterjee was cross-examined by Ld. Lawyer for the management of the company and in cross-examination Ld. Lawyer for the management of the company wanted to know from him (P.W.-1), that p.w.-1 had been working in the supervisory post and workman denied and asserted that he was accountant only and had been performing duties as accountant under his immediate boss who is Mr. Biplob Ghosh, further though Ld. Lawyer for the company has asserted in the written statement of the company that the workman being appointed in the post of accountant had been working in managerial capacity but going through the entire cross-examination of the workman as P.W.-1 I find that Ld. Lawyer for the company has not put any suggestion to the workman (p.W.-1) that he had been working in managerial capacity. The witness of the company Mr. Laxmi kanta Bhowmik (O.P.W.-1) in para-14 of that affidavit-in-chief has mentioned that the workman was appointed as accountant but he had been working in managerial capacity. This witness if the company (O.P.W.- 1) during cross-examination by Ld. Lawyer for the workman admitted that he is the partner of the company, O.P.W.-1 also admitted in cross-examination that he cannot say anything about any mis-conduct by the workman with anyone, O.P.W.- 1 also admitted that he has not filed the particular of place of work where the workman used to perform his duties and also has not filed description of work used to be had been by the workman in the capacity of accountant. Thus from the evidences of both sides the admitted position is that the workman was appointed by the management of the company as accountant.

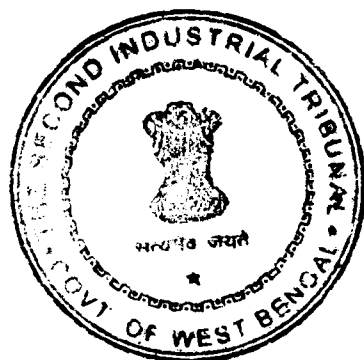
Now whether the post of accountant is managerial post for a post for a post of for workman. AS has already been seen the workman as P.W.-1 has deposed that he was appointed by the company as accountant and then after appointment, the management of the company required the workman to work in M/s. J.M. Engineering Works as accountant by stating that M/s. J.M. Engineering Works is the sister-concern of the management of the company and for performing that work of accountant in that sister-concern of the management of the company, the management of the company promised to pay an additional salary of Rs. 3000/- per month besides agreed salary of Rs. 9000/- per month, thus the workman Debasis Chatterjee was appointed as accountant and I further find that during cross-examination of the P.W.-1 i.e. the workman management of the company has not taken any challenge by putting any question on



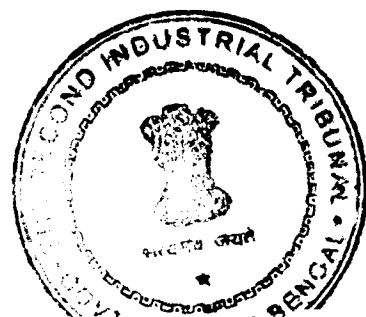
the matter that the workman was appointed as accountant. I have already mentioned the argument made by Ld. Lawyer for the workman in this regard, Ld. Lawyer for the workman cited the letter of the management of the company dt. 14.10.2015 as was made Ext. 8 addressed to the Deputy Labour Commissioner and has raised that in that letter (Ext. 8) written by management of the company to the Deputy Labour Commissioner, the management of the company has clearly mentioned that the workman Debasis Chatterjee have been an employee under the management of the company from 01.02.2013 to 06.06.2015 as accounts clerk and Ld. Lawyer has further raised that in that letter (Ext. 8) there is at all no whisper by the management of the company that the workman Debasis Chatterjee had to perform work in any supervisory capacity of managerial nature, Ld. Lawyer for the for the workman has further cited two documents i.e. Ext. 3 and Ext. 5 and has submitted that these documentary evidences have established that workman Debasis Chatterjee was simply an accountant under the management of the company. Ld. Lawyer for the workman has also argued that the workman as P.W.-1 also deposed that he never worked in any supervisory or managerial capacity, and Ld. Lawyer asserting further that all these documentary evidences i.e. the Ext. 3, Ext. 5 and Ext. 8 were never challenged by the management of the company during hearing of the case on merit and as a result all such evidences have become absolute and have remained uncontroverted and against all such documents and evidences, the management of the company has at all not adduced any evidence. Against all these argument by Ld. Lawyer for the management of the company is that the workman had to perform duty in managerial capacity. I find that Ext. 3 is a letter on behalf of management of the company addressed to the Deputy Commissioner, Sales Tax for the State of West Bengal at Howrah, it was prepared on Rs. 10/- Indian Non-judicial Stamp by Mr. Laxmi Kanta Bhowmik in the capacity of partner of that company, the contention of the letter is that the partner Mr. Bhowmik by that letter dt. 21.06.2013 authorised workman Debasis Chatterjee as authorised representative of the company to appear before Deputy Commissioner of sales tax for the State of West Bengal to submit and receive papers and the status of the workman was described by that partner of the company Mr. Bhowmik as accountant being employed regularly, thus the document i.e. Ext. 3 is a clear proof that the workman Debasis Chatterjee was an accountant in the company being employed regularly and these documents is conspicuously silent over the matter that the workman had to perform his duty in managegial or supervisory capacity, further the document (Ext. 5) is similar to Ext. 3, it was prepared by partner of the company addressed to Sales Tax officer, Howrah for the State of West Bengal dt. 19.11.2013 and in that document also the management of the company clearly stated that the workman Debasis Chatterjee was an accountant under the company being employed regularly and management of the company authorised workman Debasis Chatterjee to receive some papers and other documents from that Sales Tax Officer at Howrah, from the deposition of the workman as P.W.-1 I find that both Ext. 3 and Ext. 5 were admitted into evidence without any objection from the side of Ld. Lawyer for the management of the company, from the cross-



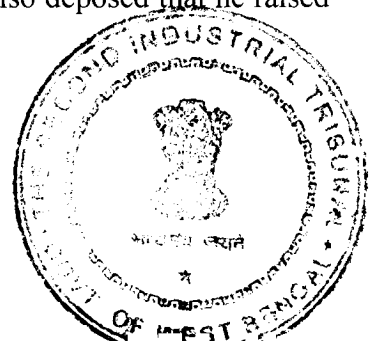
examination of P.W.-1 and also from the evidences of O.P.W.-1 I find that on behalf of the company no challenge was raised against these two documents i.e. Ext. 3 and Ext. 5, further Ext. 8 is a letter by the partner of the company addressed to Deputy Labour Commissioner at Howrah dt. 14.10.2015 and I find that it was also admitted into evidence on the basis of evidence of workman as P.W.-1 without any objection by Ld. Lawyer for the management of the company, the contention of this letter (Ext. 8) shows that in reply to letter No. 228/SSR/DC/HWW dt. 29.09.2015 by the addressee of the letter (Ext. 8) the management of the company through its partner MR. Bhowmik wrote this letter and sent the same to the Deputy Labour Commissioner, Howrah mentioning in this letter that the workman Debasis Chatterjee had been an employee under the management of the company from 01.02.2013 to 06.06.2015 as accounts clerk, from the cross-examination of the deposition of workman I find that Ld. Lawyer for the management of the company has not challenged this document i.e. Ext. 5. Thus all these documents i.e. Ext. 3 and Ext. 5 and Ext. 8 were the documents of the company, in all those documents, management of the company clearly described the workman as accounts clerk and here it is to be mentioned that in none of these documents i.e. Ext. 3 and Ext. 5 and Ext. 8 the management of the company never stated that the workman Debasis Chatterjee had to perform duty in managerial or supervisory capacity. Ld. Lawyer for the workman has cited one case law in 1975(II) LLJ 372 of Hon'ble Supreme Court of India in support of his argument that an accountant is a workman and going through the case law I find that it is the observation of Hon'ble Court that an accountant is a workman and it is also the observation of Hon'ble Apex Court in that case that in the absence of proper reference to show endorsement of supervisory, managerial or administrative responsibility while working as accountant, workman must be a workman, further Ld. Lawyer for the workman has also cited one case law in 1964(1)LLJ 19 and submitted that this case law also supports his argument that an accountant is a workman, and myself going through the case law find that in that case also Hon'ble Court was pleased to hold that accountant is a workman. I find from the case record that in support of the assertion of the Ld. Lawyer for the management of the company that the workman Debasis Chatterjee had been working in managerial / supervisory capacity, the management of the company has not adduced any evidence either oral or documentary. The documents Ext. 3 and Ext. 5 and Ext. 8 are letters of the company and all these documents were proved by the workman as P.W.-1 without any objection from Ld. Lawyer of the management of the company and in those documents the management of the company has clearly admitted that the workman was appointed by the company as accountant and he had been performing his duties as accounts clerk and there is at all no evidence that the workman had been performing in managerial or supervisory capacity. Thus all such evidences have clearly established that the workman Debasis Chatterjee had been performing his duty under the management of the company and also in the sister-concern of the company i.e. M/s. J.M. Engineering Works as accounts clerk and nothing else.



Ld. Lawyer for the management of the company has further raised in his argument that the workman Debasis Chatterjee left his service with effect from 06.06.2015 and also submitted that the workman Debasis Chatterjee did not attend office at the required time and he would not update the accounting works, Ld. Lawyer for the company has further raised that the workman had been in the habit of mis-behave with other workmen under the management of the company and for that reason the management of the company issued warning to the workman at least for three times but the workman did not try to change his attitude and the management of the company on 06.06.2015 raised with the workman that if the workman was not in a position to change his attitude then the workman could leave his service under the company and after that the workman left the company and never report for duty, it is the further submission by the Ld. Lawyer for the management of the company that the management of the company never terminated his service but the workman Debasis Chatterjee himself thus abandoned his service and for that reason he is not in a position to get any relief. Ld. Lawyer for the workman against all these argument by the Ld. Lawyer for the management of the company has raised that the workman has denied all such allegations that he did not attend the company regularly that he used to misbehave with other workmen / officials of the management of the company and O.P.W.- 1 he has also deposed accordingly in line his contention in his written statement. Ld. Lawyer for the workman has further argued that the workman never abandoned / left service under the management of the company but he was illegally terminated from his service, Ld. Lawyer for the workman has also mentioned in her argument that the law over this matter is very clear and if the workman had absented himself from service of company, then as per law, the management of the company was required to issue notice to the workman directing him to join his duty but in the present case the management of the company never issued any notice to the workman Debasis Chatterjee requiring him to attend his duties, Ld. Lawyer has further stated that the witness of the company i.e. O.P. No. 1 has admitted in cross-examination that he did not file any document to show that he asked the workman Debasis Chatterjee in writing to attend his duty and Ld. Lawyer for the workman has further raised a question that if the workman had been remaining absent in unauthorised manner from performing his duty, then as to why the management did not issue any show cause or charge-sheet against the workman, Ld. Lawyer has further raised that the workman was not given any opportunity of hearing before he was terminated illegally and Ld. Lawyer cited one ruling in 2007 (1) CLR 244 of Hon'ble Bombay High Court and mentioned that in that case Hon'ble Bombay High Court was pleased to hold that in case of abandonment of service the employer must give notice calling upon the workman to resume duty and must have also hold enquiry before terminating his service and Ld. Lawyer for workman has argued that in the present case the management of the company did nothing, citing another case alw in 1998 II LLF 632 of Hon'ble Delhi High Court, Ld. Lawyer submitted that in that case Hon'ble Court was pleased to observe and hold that termination on the ground of abandonment of service which is held to constitute a mis-conduct and such termination was



effected without giving any opportunity to show cause and hence it is to be unsustainable and Ld. Lawyer further submitted that in this case also the management of the company did not require the workman to make any show cause on that alleged assertion of absence from duty by the workman and accordingly this judgement of Hon'ble Court is also applicable in this case, citing another case law in 2003 (97) FLR page-262 Ld. Lawyer for the workman has submitted that the termination of service on the ground of abandonment of workman would be retrenchment and Section 25F of the Industrial Disputes Act, 1947 becomes applicable and it was also held that a dispute raised even after 12 years regarding termination in violation of Section 25F of the Industrial Disputes Act, 1947 would not become stale and Ld. Lawyer has asserted in his argument that all these case laws are similar to the present one and therefore applicable in this case, citing another case law reported in 1991 (93) FLR 679 of Hon'ble Bombay High Court Ld. Lawyer has submitted that in that case Hon'ble Court was pleased to hold that even if the workman abandoned the workman voluntarily, it is incumbent on the employer to hold an enquiry and submitted that in the present case no such domestic enquiry was conducted by the management of the company against the workman and thus the contention of the management of the company that the workman left the service of the company at his own desire is baseless and the workman was illegally terminated from service without complying with the mandatory provisions of law and also without complying with the principles of natural justice. As I already mentioned the workman Debasis Chatterjee examined himself as P.W.-1 and he deposed that he was appointed by the management of the company as accountant in the company with effect from 01.02.2013 but when he joined the company as accountant the management of the company required him to also work in its sister-concern M/s. J.M. Engineering Works with assurance by management of the company that he would be given Rs. 3000/- per month additionally in addition to its normal salary which P.W.-1 deposed as Rs. 9000/- per month and after joining the service the workman rendered meritorious service and as a result he maintained unblemished record of service to the full satisfaction of the management of the company which then covered him with the provision of E.S.I. Act and also Employees' Provident Fund and M.P. Act, P.W.-1 also deposed that though as per given assurance by the management of the company he worked in the sister-concern of the company but the management of the company did not pay him the agreed amount of salary and on 06.06.2015 when the workman (P.W.-1) reported for duty, the partner of the company did not allow him to join his duty and verbally stated to the workman that the workman was terminated from service of the company and then the workman made several requests to the management of the company / the partner of the company to allow him to join his duty and also to convey him the reason for termination of his service by the management of the company but the workman was not allowed to join, P.W.-1 also deposed that he had been rendering uninterrupted service to the company since his joining the service but the management of the company without showing any reason terminated him from his service with effect from 06.06.2015, P.W.-1 also deposed that he raised

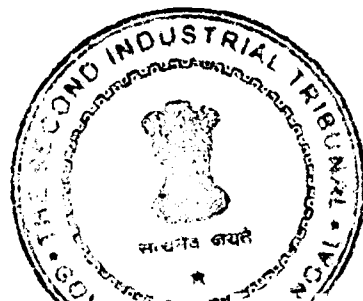


strong protest against his such illegal termination by the management of the company and also demanded to allow him to resume his duty and also requested the partner of the company / the management of the company to inform him the reason for such illegal termination, P.W.-1 also deposed that thus he was terminated from service summarily in violation of principles of natural justice with effect from 06.06.2015 and then he raised protest against his such illegal termination but the management of the company did not do anything, P.W.-1 also deposed that then he made several calls to the office of the company and also requested the management of the company to reinstate him in his service and also demanded to convey him the reasons for termination of his service the reasons for termination but to no effect. P.W.-1 also deposed that the company has not issued any charge-sheet to him also did not issue any show cause notice to him and also did not conduct any domestic enquiry against the workman before his such termination, P.W.-1 also deposed that before such illegal termination, he was not given any opportunity of hearing and when all his persuasions, approaches and demands before the management of the company failed, he raised an industrial dispute before the Labour Commissioner, Government of West Bengal by his letter dt. 18.09.2015 requesting him to intervene into the matter. P.W.-1 also deposed that during the material time his monthly salary was Rs. 9000/-. The workman as P.W.-1 denied that he was not a workman, also denied that he was working in managerial post, also denied that he had not completed his work, also denied that he did not attend his duty regularly, P.W.-1 further denied that he did not follow the instruction of the management of the company or disrespected the management of the company. P.W.-1 also stated that there was no question of getting any warning by the management of the company as he did nothing wrong and also denied that he voluntarily left the service and asserted that the management of the company illegally terminated him from service. Ld. Lawyer for the company cross-examined P.W.-1 and from cross-examination of P.W.-1 I find that there is nothing in the cross-examination of P.W.-1 to distort any of the evidences adduced by P.W.-1. The management of the company examined one Mr. Laxmi Kanta Bhowmik as O.P.W.-1, this O.P.W.- 1 deposed that in May, 2015 he gave the warning to the workman for his misconduct and then workman stopped attending duty on and from 07.06.2015 and thus the workman abandonment the service by himself, O.P.W.-1 also deposed that the workman was appointed as accountant at a monthly salary of Rs. 9000/- and asserted that the workman is not entitled to get due salary of Rs. 18,000/-, O.P.W.- 1 also stated that there was no industrial dispute between the management of the company and the workman, O.P.W.- 1 denied that M/s. J.M. Engineering Works is the sister-concern of the company and also denied that the company assured the workman to pay him additional salary of Rs. 3000/- per month for deputing the workman for doing works in its sister-concern i.e. M/s. J.M. Engineering Works and also denied that the workman gave meritorious and skilful service to the management of the company with unblemished record and also denied that the company covered workman under the provisions of E.S.I. Act or Employees' Provident Fund and M.P. Act. O.P.W.- 1 also denied that on 06.06.2015 when the workman reported for duty, the partner of the company did



not allow him to join and instead verbally stated to the workman that the workman was terminated from his service. Going through the examination-in-chief of O.P.W.-1 I find that O.P.W.- 1 has made lengthy statement repeating all the above matters. But this witness O.P.W.-1 during cross-examination by Ld. Lawyer for the workman admitted that he is the partner of the company, in cross-examination he further stated that as in para-2 of his affidavit-in-chief, he mentioned that the case is barred by limitation, O.P.W.- 1 also admitted in cross-examination that the matter of dispute in this case was not disposed of by Labour Commissioner, in cross-examination O.P.W.-1 further admitted that he cannot say if there was any mistake on the part of the workman during his course of service under the company as he has mentioned in para-4 of his affidavit-in-chief and O.P.W.-1 further admitted in cross-examination that there is no document in the company to show any sort of misconduct on the part of the workman Debasis Chatterjee, O.P.W.-1 also admitted that there is also no document in the company to show that the workman Debasis Chatterjee had not been attending duty regularly. O.P.W.-1 also admitted in cross that O.P.W.- 1 / management of the company did not issue any show cause notice to the workman Debasis Chatterjee over the matter of his alleged remaining absent from duty and denied a suggestion that on 06.06.2015 when the workman reported for his duty this O.P.W.-1 verbally stopped him from performing his duty in the company and also denied a further suggestion that the workman repeatedly reported for duty but the management of the company did not allow him, O.P.W.-1 also admitted in cross clearly that there is document in the company to show that the company had given the salaries to the workman up to May, 2015, O.P.W.- 1 further stated in cross that he has nothing to say about the matter that workman applied for Legal Aid due to financial hardship on the part of the workman and accordingly the workman got legal aid in the way that the Legal Aid Authority has provided one Lawyer to the workman to proceed with the case at the cost of the Government.

Thus it is to say that the workman as P.W.-1 has adduced sufficient evidence to show that he was appointed by the company as accountant with effect from 01.02.2013 and after he joined the company as accountant, the management of the company then required him to perform duty at its sister-concern which is M/s. J.M. Engineering Works and for this purpose the management of the company assured the workman to give him additional salary of Rs. 3000/- per month with his normal agreed monthly salary of Rs. 9000/- per month but after that the management of the company refused to pay him additional amount of salary Rs. 3000/- for his performing his duties in the sister-concern of the management of the company and then the workman started making demands to the management of the company verbally and also in writing to get his full salary but the management of the company did nothing and on 06.06.2015 when the workman reported for duty, the partner of the company who is found to be O.P.W.-1 did not allow the workman to join his duty and O.P.W.- 1 also stated to the workman that the workman was already terminated from service by O.P.W.- 1 / management of the company, and all these evidences by workman as P.W.-1 has been further substantiated by the admission of the O.P.W.-1 Sri Laxmi Kanta

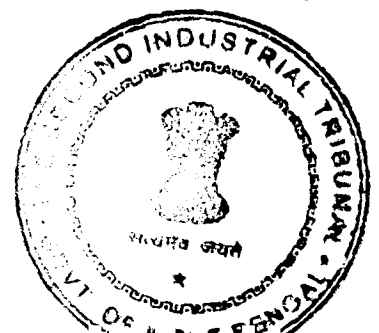


Bhowmik who is the partner of the company in the way that there is nothing in the company to show that the workman Debasis Chatterjee committed any misconduct, there is also nothing in the company to show that the workman had not been attending his duties from before his alleged termination, and further in the way that the partner i.e. the O.P.W.- 1 / management of the company did not make any show cause notice to the workman over the matter of his alleged non-attendance and further admission by O.P.W.- 1 that O.P.W.- 1 / management of the company did not issue any show cause notice to the workman over the allegation by the management that workman Debasis Chatterjee committed theft or on matters that the workman to go away him documents from the company etc.

Thus from the evidence of the witness of the company i.e. O.P.W.- 1 it is established that it is the admitted position by the management of the company that workman was appointed by the company as accountant. Further the workman as P.W.-1 has proved some documents, Ext. 2 is an Identity Certificate by Employees State Insurance Corporation, it contains that the workman was appointed by the management of the company with effect from 01.02.2013 and the name of the company is S.S. Industrial Complex who is the present O.P. in this case, Ext. 3 is a letter by partner of the company addressed to Deputy Commissioner of Sales Tax, West Bengal at Howrah dt. 21.06.2013 authorising the workman to file some papers before Deputy Commissioner of Sales Tax at Howrah and in that letter the management of the company described the workman as accountant and also described the workman as being regularly employed, Ext. 4 is also a letter by the M/s. J.M. Engineering Works addressed to sales tax Officer, Howrah dt. 13.11.2013 describing that the management of the J.M. Engineering Works sent the workman Debasis Chatterjee to meet Commercial Tax Officer at that place to receive the copy of assessment order etc, Ext. 5 by the management of the company M/s. J.M. Engineering Works addressed to Sales Tax Officer, Howrah dt. 19.11.2013 authorising workman Debasis Chatterjee to receive papers from that authority, Ext. 6 shows that M/s. J.M. Engineering Works is a company under proprietorship of Smt. Jayanti Bhowmik and she has been carrying on that business under name and style of M/s. J.M. Engineering Works, Ext. 7 shows that contribution by workman Debasis Chatterjee towards Employees State Insurance Corporation from his salary. Further Ext. 8 is a letter addressed to Deputy Labour Commissioner, Howrah by the management of the company dt. 14.10.2015 and in that letter the management of the company has admitted that workman Debasis Chatterjee was an employee under the company as accounts clerk and he had been workman in the company from 01.02.2013 to 06.05.2015 in the same capacity i.e. accounts clerk, in this letter the management of the company has further mentioned that the reasons for termination of the workman Debasis Chatterjee by the management of the company are that he did not attend office at scheduled time, he mis-behaved with other office workman / clerks etc., and all these documents have been supporting the deposition of P.W.-1 that the management of the company has terminated him from service with effect from 06.06.2015 from the post of accountant without giving any reason and without following requirement of law. It is



the argument by Ld. Lawyer for the workman that in the written statement filed by the company and also in the argument made by Ld. Lawyer for the company it has been raised that the workman did not attend office regularly but the company did not file the attendance register to substantiate the same, Ld. Lawyer for the workman citing documents of the company i.e. Ext. 3 and Ext. 5 argued that those letters were written by management of the company to the Government Authority and in all those letters the management of the company admitted that workman Debasis Chatterjee was appointed as accountant and also specially mentioned that he was regularly employed. It is further to say that all the documents as mentioned above were admitted into evidence without any objection from Ld. Lawyer for the management of the company and from the cross-examination of workman as P.W.-1 Ld. Lawyer for the management of the company also did not put any question challenging authenticity etc. of all these exhibited documents. Though management of the company admitted that the workman Debasis Chatterjee was appointed as accountant but he used to perform managerial duties which has been denied by the workman as P.W.-1 and from the evidences of O.P.W.- 1 it has been clearly found that there is no even an iota of evidence by the management of the company to support that the workman had been working in the managerial capacity. Under the circumstances I find that the case laws cited by Ld. Lawyer for the workman that in 1975(II) LLJ 372 (SC) where Hon'ble Court held that an accountant is a workman and also held that in the absence of proper records to show entrustment of supervisory, managerial or administrative responsibility while working as accountant, he was held to be workman, in 1964 (1) LLJ 19 where the Hon'ble Court held that accountant is a workman etc. as also mentioned earlier are found to be applicable in the present case. Further the management of the company through its witness O.P.W.- 1 has admitted that the management of the company never issued any show cause notice to the workman requiring him to join duties, never conducted any domestic enquiry raising allegations that workman had been abandoning his work in the company as discussed earlier and on such clear admission by the management of the company, the case law cited by Ld. Lawyer for the workman in 2007 (1) CLR 244 of Bombay High Court where Hon'ble Court held that in case of abandonment of service, employer must give notice calling upon the workman to resume duty and must also held enquiry before terminating his service and further in 1998 (2) LLJ 632 where Hon'ble Court was pleased to held that termination on the ground of abandonment of service as admitted by management of the company in the document (Ext. 8), which is held to constitute misconduct and such termination was effected without giving opportunity to show cause and hence it is held to be unsustainable, further in 2003 (97) FLR 262 of Jharkhand High Court where Hon'ble Court held that terminated from service due to abandonment of work would be retrenchment and Section 25F of the Industrial Disputes Act, 1947 becomes applicable with further observation that a dispute raised even after 12 years regarding termination in violation of Section 25F would not become stale, further in 1991 (93) FLR 679 of Bombay High Court where Hon'ble Court was pleased to hold that even after the workman abandon the work voluntarily, it



is incumbent on the employer to hold an enquiry, have become applicable in the present case, it is being the admission by management of the company through its witness O.P.W.- 1 that the management of the company did not issue any notice requiring the workman to show cause on the allegation of abandonment of service by the workman with further admission by O.P.W.- 1 that management of the company also did not comply with the requirement of provision of Section 25F of the Industrial Disputes Act, 1947 before his termination as has been admitted by company in his document (Ext. 8) which is a letter by management of the company addressed to Deputy Labour Commissioner, Howrah. Thus the workman as P.W.-1 has become able to prove with sufficient evidence that he was terminated from service by the management of the company in violations of mandatory requirement of law and it is also found to be admitted by witness of the company (O.P. No. 1).

It is the argument by Ld. Lawyer for the company that during the time of his tenure as accountant under the company, the workman committed theft of mobile phone and SIM card of mobile phone, both belonging to the company, Ld. Lawyer further argued that the workman also committed theft of some important and confidential documents of the company adding further that the workman committed theft of those confidential documents for making wrongful gains against the company. Ld. Lawyer for the company has also argued that the workman during his tenure as accountant under the company illegally, unlawfully and motivatedly made false complaints against the management of the company before sales tax authority and also before income tax authority, and as a consequence both sales tax authority and income tax authority conducted raids in the premises of the management of the company and thus the workman maligned the name and goodwill of the company and as a result the management of the company economically suffered. Ld. Lawyer for the company has also argued that the management of the company adduced sufficient evidence both oral and documentary to substantiate all such illegal activities by the workman against the company. Against all these Ld. Lawyer for the workman has argued that the management of the company in an attempt to cover up the illegalities purposefully committed by it in terminating the permanent service of the workman as accountant, the management of the company nefariously has wanted to bring some imaginary allegations of theft of property of the company like mobile phone, SIM card etc. against the workman but in support of such allegations / contention, the company has not adduced any single documents / evidence to prove the same, Ld. Lawyer for the for workman has further raised that the allegation of theft is a major misconduct and therefore the management of the company was legally in need of issuing charge-sheet with all such matters of theft etc. as charges therein and also to hold domestic enquiry against the workman but the management of the company did nothing against the workman and the reason for not doing so is also not explained and the company knows that the allegations / complaints against the management of the company by the workman before income tax authority / sales tax authority etc. are falsely manufactured by the management of the company and in case of conducting domestic enquiry against the workman



by appointing an independent enquiry officer, the management of the company would have been caught red handed that it manufactured all such allegations purposefully falsely against the workman and Ld. Lawyer for the workman to support his such submission as referred the admission on the part of company witness (O.P.W.- 1) in this regard and mentioned that O.P.W.- 1 has admitted in cross-examination that the management of the company has not filed any document to show that the workman committed theft of any document or mobile phone or SIM card etc. from the company and O.P.W.- 1 also admitted in cross-examination that the company or O.P.W.- 1 being himself a partner of the company did not file any First Information Report (FIR) involving all such allegations of theft in the local police station against the workman and O.P.W.- 1 also admitted that the management of the company also did not issue any show cause notice to the workman requiring him to show cause as to why the company would not take appropriate action against him. Ld. Lawyer for the workman has further stated that in the written statement filed by the workman, the workman has categorically denied committing of any theft of company property such as mobile phone, SIM card or any other documents and Ld. Lawyer has explained that the management of the company most illegally terminated the workman from his permanent post of accountant and now the management of the company has resorted to character of assassination of the workman motivatedly to give cover up to all such illegalities by the management of the company and all such allegations of theft are motivatedly false. Ld. Lawyer for the workman has added in his argument that the allegations of theft of mobile phone, SIM card belonging to the company against the workman as mentioned in the written statement by the company is itself vague as it does not contain any particulars of the SIM card such as SIM Card No., mobile No, the name of the company of which the mobile phone and the SIM Card are, further the management of the company has also not filed any document to show that the SIM card is still functioning and the Court also cannot determine anything in specific manner under such vague circumstances. Ld. Lawyer for the workman has further raised that the management of the company has not produced any document to show that the workman filed false complaints against the management of the company before Sales Tax / income tax authority and the Ld. Lawyer for the management of the company also did not take any step to bring anyone from sales tax authority / income tax authority as witness in support of such allegations / assertions against the workman and Ld. Lawyer for the workman has asserted in his argument that the management of the company has raised all such vague allegations against the workman in a bid to cover up its illegalities resorting to which the management of the company dismissed the workman from service illegally rendering the workman and his dependents to face starvation.

Myself going through the evidences of workman as P.W.-1 find that he (P.W.-1) has denied all such allegations, during cross-examination of P.W.-1 by Ld. Lawyer for the company, Ld. Lawyer for the company put a suggestion to the workman that he (P.W.-1) did not return the mobile phone and the SIM card belonging to the company and P.W.-1 denied the same, volunteering further that he (P.W.-1) was not supplied with any mobile phone and SIM card and



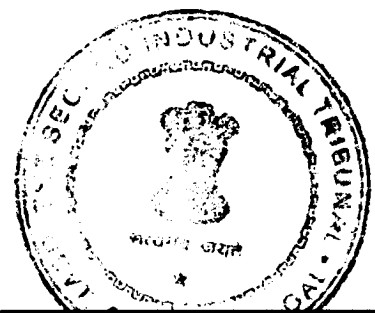
question of returning the same did not arise, adding further that the management of the company did not provide him with any mobile phone having any number and whenever needed he (P.W.-1) would make missed calls to the phone of the company with his own mobile phone and then the company used to ring him back for making talks and he (P.W.-1) would also use the land phone of the company for purpose of official matters of the company and I find that Ld. Lawyer for the company did not put any other question further on all such matters of alleged theft of mobile phone or SIM card belonging to the company by the workman, I also find that Ld. Lawyer for the company did not put any question to the workman (P.W.-1) on the matter mentioned in the written statement of the company that the workman filed false complaints before the Sales Tax Authority / Income Tax Authority against the management of the company intending to make illegal gains. Further from the affidavit-in-chief of the company witness (O.P.W.- 1), I find that the management of the company has mentioned all such allegation of theft against the workman and also filing of false complaints before Sales Tax Authority / Income Tax Authority against the workman by the company but during cross-examination of O.P.W.- 1, O.P.W.- 1 admittedly being a partner of the company, clearly admitted that he (P.W.-1) cannot say anything about any mis-conduct about the workman as he mentioned in his examination-in-chief, and O.P.W.- 1 also never issued any show cause against the workman requiring the workman to say anything, O.P.W.- 1 also admitted that he (P.W.-1) did not file any document about any mobile phone or SIM card alleging those to have been stolen by workman and also did not file any FIR before police against the workman alleging anything including allegations of theft of mobile phone or SIM card belonging to the company or on matters of filing false complaints by workman before Sales Tax Authority / Income Tax Authority, O.P.W.- 1 also admitted in his cross-examination that he (P.W.-1) has also not filed any paper relating to description of mobile phone, SIM card alleged to have been stolen by the workman or of filing of false complaints before Sales Tax Authority / Income Tax Authority against the company by the workman.

It is now to be said that the allegations of theft of company property such as mobile phone or SIM card by workman or filing of false complaints by workman against the management of the company to make unlawful gain by the workman are nothing but allegations relating to committing crime involving punishment under Indian Penal Code (IPC) and therefore legally it is necessary on the part of the management of the company to sufficiently prove the same even though strict proof as required before a criminal court is not warranted, but the management of the company through its partner (O.P.W.- 1) has admitted clearly that the management of the company did nothing and it has no evidence to support all such allegations and also admitted that the management of the company even did not issue any show cause notice to the workman over the matter, did not frame any charge-sheet against the workman and also did not conduct any domestic enquiry against the workman, and thus all such allegations of theft against the workman are found to be simply baseless altogether and it appears that there is at all



no evidence that the management of the company gave any mobile phone / SIM Card to the workman. It is also the argument by the Ld. Lawyer for the workman that the management of the company resorted to making all such false allegations against the workman in an attempt to give cover up to its gross illegalities doing which the management of the company terminated the workman from his service as become established and all the allegations against the workman as mentioned in the written statement of the company are found to be totally baseless.

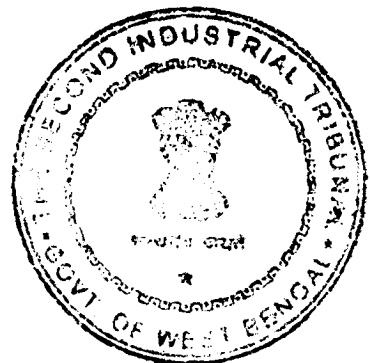
The workman Debasis Chatterjee as P.W.-1 deposed that he was appointed as accountant by the management of the company on permanent basis with effect from 01.02.2013, and as discussed earlier also, it is in the written statement of the company that the management of the company has also admitted the same clearly. The workman as P.W.-1 also deposed that his monthly salary was fixed Rs. 9000/- but immediately after being appointed in the company, the management of the company required him to work in its sister-concern M/s. J.M. Engineering Works with an assurance to the workman that for his work in its sister-concern of the company the company would pay him an additional salary of Rs. 3000/- per month and accordingly he had been working in that company also and the management of the company being satisfied with the meritorious performance of the workman covered the workman under the provisions of E.S.I. Act or Employees' Provident Fund and M.P. Act, P.W.-1 also deposed that though he (P.W.-1) had to work in the sister-concern of the company i.e. M/s. J.M. Engineering Works, the management of the company did not give him the agreed salary and then he demanded the same both orally and also in writing but to no effect. The workman as P.W.-1 also deposed that on 06.06.2015 when he (P.W.-1) reported for duty in the company the partner of the company did not allow him and orally stated to him that he was already terminated from service, and then he (P.W.-1) made several requests to the partner of the company to allow him to join in the service and also to inform him the reason for his termination from service but the company did not do anything, P.W.-1 also deposed that he gave uninterrupted service to the company as accountant since joining but the management of the company terminated his service without showing any reason from 06.06.2015 and then the O.P.W.- 1 raised protest against his such illegal termination before the management of the company, further requesting the management of the company to allow him to join the service and also requested the partner of the company to inform him the reason for his termination but the management of the company did nothing and thus the workman was terminated from his service in summary manner in violation of principles of natural justice and also in violation of fundamental requirements of law without requiring the workman to make any show cause, without issuing any charge-sheet against him and without affording him any opportunity of hearing and when all his such requests, persuasions before the management of the company to allow him to join the service failed, he (P.W.-1) raised an industrial dispute before the Labour Commissioner, Government of West Bengal in writing on 18.09.2015 requesting to intervene into the matter. The (P.W.-1) also deposed that the management of the company terminated his service in violation of Section 25F of the Industrial



Disputes Act, 1947. It is further deposition of P.W.-1 that the conciliation officer then called for joint meetings but due to adamant attitude on the part of the management of the company, there was no settlement before the conciliation officer. As already mentioned in the written statement filed by the company, the management of the company has clearly admitted that the workman Debasis Chatterjee was appointed as accountant under the management of the company and he performed work till 06.06.2015. I also mentioned that Ld. Lawyer for the company cross-examined the workman (P.W.-1) but in the cross-examination of P.W.-1 nothing has come to distort all such evidences adduced by P.W.-1. Further the company witness (O.P.W.- 1) has admitted in cross that the matter of dispute was taken up by Labour Commissioner, O.P.W.- 1 also admitted that he does not have any knowledge about any misconduct on the part of the workman Debasis Chatterjee, O.P.W.- 1 also admitted that there is no document in the company to show that workman Debasis Chatterjee had not been attending any duty, O.P.W.- 1 denied the suggestion put to him by Ld. Lawyer for the workman that management of the company forcibly stopped the workman from performing his duty and also denied a further suggestion that workman Debasis Chatterjee repeated reportedly for duty but the management of the company did not allow him, O.P.W.- 1 also admitted that the company does not have any paper to show that the company requested the workman to resume his duty in writing, O.P.W.-1 also admitted that there is nothing in the company to show that workman committed theft of any property of company and company also did not file any FIR against the workman. O.P.W.- 1 also admitted in cross that he has nothing to say about the matter that the workman being poor got legal aid. Thus as in the written statement filed by the company, the witness of the company O.P.W.- 1 has also admitted orally that workman Debasis Chatterjee was appointed by the management of the company as accounts clerk in the company, and there is nothing in the evidence of O.P.W.- 1 to distort the oral evidence adduced by workman as P.W.-1. The workman has filed documentary evidences, Ext. 1 is a letter by workman addressed to Deputy Labour Commissioner, Howrah dt. 18.09.2015, it was admitted into evidence without any objection from Ld. Lawyer for the company, from this document (Ext. 1) it is found that for being appointed as an accountant or accounts clerk in the company the management of the company on 25.01.2013 took interview of the workman and then found him suitable for the post of accounts clerk and then he was appointed in the company as an accounts clerk with a salary band of Rs. 8000/- to Rs. 9000/- per month. But he was terminated from service with effect from 06.06.2015 at 8 p.m. and the management of the company also did not give him salaries, I find that Ld. Lawyer for the company did not put any question covering this document (Ext. 1) to the workman (P.W.-1), Ext. 2 is the Identity Card in the name of the workman, it shows that the workman was appointed by the company with effect from 01.02.2013 and then he was covered by Employees' State Insurance, I also find that this document (Ext. 2) was admitted into evidence without any objection by Ld. Lawyer for the company and Ld. Lawyer for the company also did not put any question covering this document (Ext. 2), Ext. 3 is the declaratory letter by management of the



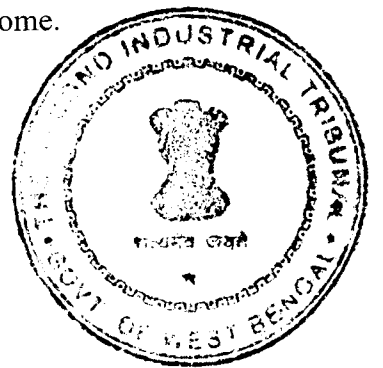
company(O.P.W.- 1) addressed to the Deputy Commissioner, , Sale Tax at Howrah dt. 21.06.2013 and in that letter the management of the company described the workman as accountant regularly employed and he was authorised by the company to receive documents from that Sales Tax Authority, this document (Ext. 3) was also admitted into evidence without any objection from Ld. Lawyer for the company and Ld. Lawyer for the company also did not put any question over this document to P.W.-1, Ext. 4 is a document by partner of M/s. J.M. Engineering Works addressed to Sales Tax Officer, Howrah, dt. 13.11.2013, by this letter (Ext. 4) the partner of M/s. J.M. Engineering Works authorised the workman to receive documents from Sales Tax Officer, it was also admitted into evidence without any objection from Ld. Lawyer for the company and Ld. Lawyer for the company also did not put any question covering this document (Ext. 4) to P.W.-1. P.W.-1 to challenge that M/s. J.M. Engineering Works is not the sister concern of the company in line with the contention in written statement by company deposed that M/s. J.M. Engineering works is not the sister-concern of the company, and Ext. 5 which is also a letter of authority authorising the workman to receive papers from Sales Tax Authority by J.M. Engineering Works also supported the contention of the workman that the management of the company authorised the workman to work in that sister-concern of the company and Ext. 6 supported that sister-concern of the company had a dispute before Commercial Tax Officer for which M/s. J.M. Engineering Works authorised workman (Ext. 5) to receive papers from sales Tax Authority, Ext. 7 is the contribution details from the salary of the workman, Ext. 8 which is a letter by the company to the Deputy Labour Commissioner, Howrah and in that letter the company admitted the reasons for termination of the workman from service as misbehaviour by workman with other office colleagues, not updating the works etc., it (Ext. 8) also contains that the partner of the company then asked the workman to leave the service, Ext. 9 shows that the management of the company did not pay him the salary / additional salary and then workman demanded the same, yet the management of the company did not pay him money / salary and then the management of the company terminated the workman, yet the workman requested the management of the company to allow him to join and also requested the company to inform him the reasons for termination and also demanded the due salaries but last of all the company did not do anything and then he wrote this letter (Ext. 9) to Deputy Labour Commissioner, Howrah requesting his intervention, Ext. 10 shows that after that the management of the company wrote this letter (Ext. 10) to Deputy Labour Commissioner, Howrah raising allegations against the workman, Ext. 11 shows that the workman wrote the letter (Ext. 11) to Deputy Labour Commissioner, Howrah mentioning that he was illegally terminated for demanding due salaries. It is also the admitted position that both management of the company and the workman were called by the conciliation officer for joint meeting, over which workman as P.W.-1 raised that due to adamant attitude on the part of the company no settlement could be arrived at. Ext. D and Ext. A show that Assistant Labour Commissioner



issued notice to both management of the company and workman for joint conference over the dispute.

It has already been found that all the legal technicalities raised by Ld. Lawyer for the management of the company that the case is barred by limitation, doctrine of estoppel workman worked in supervisory / managerial capacity etc. have been proved to be baseless and it is also found that the workman by adducing sufficient evidence as discussed has proved that management of the company appointed the workman as accounts clerk with effect from 01.02.2013 at a monthly salary of Rs. 9000/- and after the workman joined as accounts clerk the management of the company required workman to work in its sister-concern M/s. J.M. Engineering Works assuring him to pay additional salary of Rs. 3000/- per month in addition to his agreed monthly salary but the management of the company did not pay him the agreed monthly salary and then the workman demanded to get the salary and on 06.06.2015 when the workman reported for duty, the management of the company through its partner (O.P.W.-1) did not allow him to join his duty and also orally stated to him that he was already terminated from service and after that the workman repeatedly requested the management of the company to allow him to join and also to inform him the reasons for termination but the management of the company did not do anything and last of all the workman raised the dispute before Deputy Labour Commissioner, Howrah (Ext. 9, Ext. 11) and then Assistant Labour Commissioner called for joint conference and it is established by evidence that due to adamant attitude on the part of the management of the company, the dispute could not be solved at that stage and then the case came into existence by way of order of reference. It is the admitted position by the management of the company through its partner that before termination of the service of the workman the management of the company did not issue any show cause notice to the workman, did not frame any charge against the workman and also did not conduct any domestic enquiry and also did not comply with the fundamental requirement of Section 25F of the Industrial Disputes Act, 1947 as already discussed earlier.

In the written statement filed by the workman, workman stated that after being terminated from the service by the company in such manner he tried to get a service elsewhere but nothing was available and then he applied before District Legal Services Authority, Kolkata to get legal aid and after getting legal aid, he filed the written statement and has been contesting the case and he has been facing starvation with his dependents, P.W.-1 also deposed accordingly. Though in the written statement management of the company denied all these asserting that workman has been doing service under another company, yet the management of the company has failed to justify the same and as O.P.W.-1 the partner of the company failed to say anything. Case record shows that the workman filed the case through his lawyer appointed by District Legal Service Authority and thus it has been proved that after termination from service by the management of the company illegally, the workman could not afford to get any source of income.



In the summing up it is to say that it is the admitted position that workman was appointed by the company as accounts clerk and then the management of the company terminated the workman from service illegally and at the same time the management of the company attempted to assassinate the character of the workman by raising wild allegations that have been found to be simply baseless. Thus the issues are to be decided in favour of workman. It is, therefore,

ORDERED

that the issues - whether the termination of services of Shri Debasish Chatterjee of South Baksara, Pal para, Sitalatala, P.O. – Baksara, Howrah – 711110 by the management of the company M/s. S.S. Industrial Complex of Baltikuri, Kalitala, Howrah – 711113 w.e.f. 06.06.2015 is justified or not, and what relief, if any, the workman is entitled to – are decided in favour of workman Sri Debasish Chatterjee on contest and it is held that termination of the service of the workman Sri Debasish Chatterjee with effect from 06.06.2015 by way of refusal of employment as mentioned in the order of reference is illegal, unjustified and void ab initio and the same is quashed and it is also held that the workman Debasish Chatterjee is entitled to be reinstated in service with full back salaries / additional salaries and also with other consequential benefits arising there from with effect from the date of his termination and accordingly the management of the company M/s. S.S. Industrial Complex is directed to reinstate the workman Sri Debasish Chatterjee in his post with effect from 06.06.2015 and management of the company is also directed to give him arrear salaries with other consequential benefits as mentioned above immediately and this order and direction by this Tribunal in view of the order of reference having No. Labr./660/(LC-IR)/IR/11L-41/17 dt. 20.06.2017 by order of Governor signed by Deputy Secretary to the Government of West Bengal, Labour Department, I.R. Branch, New Secretariat Buildings, (12th Floor), 1, K.S. Roy Road, Kolkata – 1 is to be treated as an award by this Tribunal on contest. There is no order to cost. It is also directed that necessary No. of copies of this judgement and award be sent to the Ld. Additional Chief Secretary to the Government of West Bengal, Labour Department, New Secretariat Buildings, 1, Kiran Sankar Roy Road, Kolkata – 1.

Dictated & Corrected by me.

Judge

Sd/-

(Sribash Chandra Das)
Judge

Second Industrial Tribunal
20.12.2019

