

I/86124/2020

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

No. Labr/183/(LC-IR)/11L-47/16

Date : 17/03/2020

ORDER

WHEREAS under the Government of West Bengal, Labour Department Order No. 563 -IR/11L-47/16 dated 09.06.2016 the Industrial Dispute between M/s Bengal Labour Suppliers, Beltala, P.O. - Panchla, P.S. - Uluberia, Dist. - Howrah, Pin - 711322 and their workman Miss Selly Das, P.O. - Khalisani, P.S. - Uluberia, Dist. - Howrah, Pin - 711307 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

No. Labr/183/1(5)/(LC-IR)

Date : 17/03/2020

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

1. M/s Bengal Labour Suppliers, Beltala, P.O. - Panchla, P.S. - Uluberia, Dist. - Howrah, Pin - 711322.
2. Miss Selly Das, P.O. - Khalisani, P.S. - Uluberia, Dist. - Howrah, Pin - 711307.
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.


Deputy Secretary

No. Labr/183/2(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. 260 - L.T. dated 26.02.2020.
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. Bengal Labour Suppliers, Beltala, P.O. – Panchla, P.S. – Uluberia, Dist. – Howrah, Pin – 711322 and Miss Selly Das, P.O. – Khalisani, P.S. – Uluberia, Dist. – Howrah, Pin – 711307.

(Case No. VIII-24/2016)

BEFORE THE SECOND INDUSTRIAL TRIBUNAL: WEST BENGAL.

PRESENT

SHRI SRIBASH CHANDRA DAS, JUDGE,

SECOND INDUSTRIAL TRIBUNAL, KOLKATA.

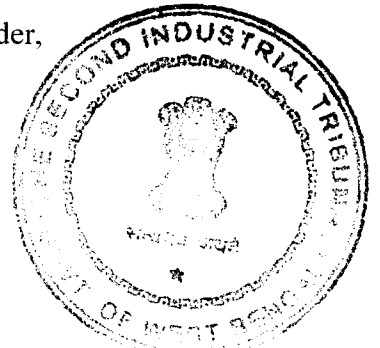
Date of passing award –24.02.2020

A W A R D

This case arose by way of order of reference having No. 563-I.R./IR/11L-47/2016 dt. 09.06.2016 by order of Governor signed by Deputy Secretary to the Government of West Bengal, Labour Department, I.R. Branch, New Secretariat Buildings, 12th floor, Block – A, 1, K.S. Roy Road, Kolkata – 700001. As per this order of reference an industrial dispute exists between M/s. Bengal Labour Suppliers, Beltala, P.O. – Panchla, P.S. – Uluberia, Dist. – Howrah, Pin – 711322 and its workman Miss Selly Das, P.O. – Khalisani, P.S. – Uluberia, Dist. – Howrah, Pin – 711307 relating to issues as mentioned in the order of reference, stated to be a matter specified in second schedule to the I.D. Act, 1947, mentioning further that it is expedient that this dispute should be referred to an Industrial Tribunal constituted under Section 7A of the Industrial Disputes Act and accordingly then 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 this 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 provision or provisions of the Act, the issues that have been framed in the order of reference are,

- 1) Whether the termination of Miss Selly Das by the management w.e.f. 24.10.2013 is justified?
- 2) If not, what relief is she entitled to?

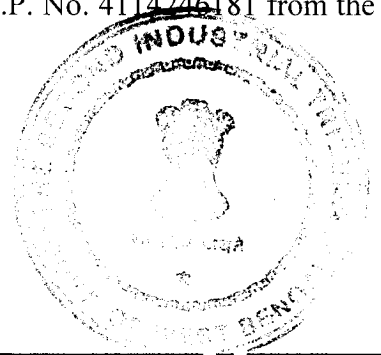
From the case record I further find that by order No. 21 dt. 15.05.2018 after hearing Ld. Lawyers of both sides an additional issue was framed, it is as under,



(Additional issue) – whether the workman Miss Selly Das abandoned her service under the management of the company by herself or not.

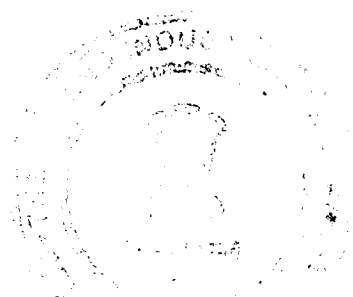
After receiving the order of reference summons were issued to both sides and then both sides entered into appearance and also filed written statement.

Ld. Lawyer for the workman in the written statement filed on behalf of the workman has stated that the workman had been in service under the management of the company with effect from 14.01.2013 and accordingly the workman had been continuing with her service to the full satisfaction of the management of the company and thus question of taking any disciplinary action against her never arose. It is next stated that the management of the company then directed the workman to perform her duties at that premises of the office of the Deputy Excise Collector, Alfa Malts Pvt. Ltd., C/s. Manufacture, Government of West Bengal, Raghudevpur Gram Panchayet, Beltala under P.S. – Panchla within District – Howrah but the management of the company then started subjecting the workman to harassment after a few months though the workman did not have any fault on her part and on 24.10.2013 the management of the company denied resumption of her duties with mala fide intention and the workman was not allowed to enter in the work-place. It is next stated that the workman reported for duty repeatedly after 24.10.2013 but the management of the company did not allow the workman to do her duty and then the workman filed one complaint before Assistant Labour Commissioner, Uluberia within district – Howrah praying for re-instatement in her service. After that the management of the company issued a letter dt. 24.02.2014 framing therein some allegations / charges on the basis of some alleged incident which were fabricated and after-thoughts and demanded reply from the workman in writing within subsequent 72 hours and at the same time the workman was also directed by the management of the company to show cause mentioning as to why disciplinary action would not be initiated against her. It is next stated that by a letter dt. 01.03.2014 the workman made a written reply and sent the same to the management of the company by speed post and in that reply the workman disputed categorically all the facts fabricated by management in that show cause notice dt. 24.02.2014 but this reply was returned with postal remark as Firm not verified on 03.03.2014. The workman further issued a reminder letter on 03.04.2014 to the Assistant Labour Commissioner, Uluberia praying for effective conciliation with the management of the company now regarded to her illegal termination by way of refusal of employment with effect from 20.10.2013. It is next stated that the Assistant Labour Commissioner, Uluberia then sent a copy of Memo dt. 24.01.2014 requiring the management of the company to appear for a joint conference on 28.01.2014. It is next stated in the written statement filed by Ld. Lawyer for the workman that the workman was the member of P.F. and E.S.I. being I.P. No. 4114246181 from the



date of her joining. It is also next stated that the workman used to be paid Rs. 150/- as daily wages + Rs. 10/- as T.A. + Rs. 10/- for H.R.A. and accordingly the workman withdraw salary of Rs. 4505/- for the month of September, 2013 on 05.10.2013. it is also stated the deliberate refusal of work to the workman and refusing her to resume her normal duty amounted to illegal termination in violation of Section 25(F) of the Industrial Disputes Act, 1947, adding further that the workman has been facing dire financial crisis due to forced unemployment by the management of the company. With all these the workman has prayed for an award directing the management of the company to reinstate the workman into her service with back wages with consequential benefits.

To contest this case the management of the company in his written statement has raised some legal technicalities such as the appropriate government did not apply its mind in framing the issues as are in the order of reference, the workman remained unauthorised absent with effect from 24.10.2013 etc. to bar the dispute. It is next stated that the management of the company is a small farm dealing with four principle employers namely M/s. Alfa Malts Pvt. Ltd., M/s. Mapel Assoris Pvt. Ltd., M/s. Godrej Wire House and M/s. Megha, and the company has 145 employees and the workman was taken into service with effect from 14.01.2013 but on 24.10.2013 she was terminated from service and as reasons for such termination it has been stated that she resorted to anti-farm activities and the management of the company has further raised allegations against the workman in the way that the workman resorted to mis-behaviour with other co-female workers and she also used offensive languages towards the dignitaries of the principle employer and all such activities on the part of the workman caused paralysing the production system of the company. Mentioning further that after joining the service the workman was attentive for few months in her activities but after that she resorted to all such mis-behaviours without any reason and for doing all such activities she tried to get support from other co-workers and she also did not give any representation before management mentioning her grievance against the management of the company. It is also alleged in the written statement by the company that the lady workman had been in the habit of gossiping with other workmen and thus she disturbed the activities of the Firm and as she also instigated other co-workmen, the situation in the company aggravated and despite giving chances to her to rectify herself, she failed and then she was terminated on 24.10.2013. It is also stated that the principal employer M/s. Alfa Malts Pvt. Ltd., 65, Canal East Road, Kolkata-67 also wrote a letter dt. 15.07.2013 to the management of the company for sudden stoppage of work in the company by some workmen under leadership of the present workmen and as a result unhealthy situation was created in the farm. It is also stated in the written statement by company that the company received a letter from co-workman Miss Minara Begum on 22.10.2013 mentioning that the workman abused her and then on 23.10.2013 the workman was cautioned by the

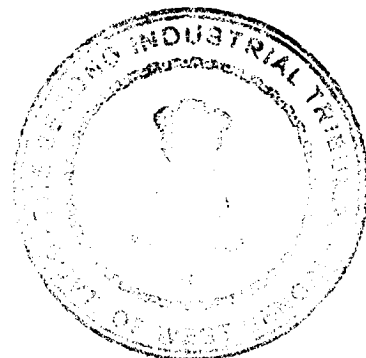


management and subsequently some other co-employees namely Miss BikisKhaloor, Murhida Begum, Minara Begum wrote letters on 03.09.2013, 18.09.2013 and 23.10.2013 respectively to the management of the company raising allegations against the workman and then on 15.07.2013 the workman admitted before Assistant Labour Commissioner, Uluberia that she took part in a stay-in-programme against the management of the company and after that the workman started becoming absent from duty with effect from 14.10.2013 but the name of the workman was in the muster-roll of the company, yet she would not be available on calls as per muster-roll.

Going through the case record I find that though the management of the company mentioned in the written statement for framing a preliminary issue on the maintainability of the case, yet it did not press for the same and the case came to the stage of hearing on the merit and during hearing on merit lady workman Selly Das aged 41 years examined herself as P.W.-1 and she also adduced documentary evidences which are :-

- 1) Copy of letter addressed to Assistant Labour Commissioner, Uluberia by workman Selly Das (Ext. 1),
- 2) A letter dt. 24.02.2014 addressed to lady workman Selly Das by management of the company (Ext. 2),
- 3) Copy of letter addressed to the company by Selly Das dt. 01.03.2014 (Ext. 3),
- 4) Copy of letter addressed to Assistant Labour Commissioner, Uluberia dt. 03.04.2014 by workman Selly Das (Ext. 4),
- 5) Copy of letter dt. 24.01.2014 addressed to Lijarul Mollah of company by Assistant Labour Commissioner, Uluberia,
- 6) 8 Nos. of salary slips in favour of workman Selly Das by company (Ext. collectively),
- 7) Identity Card certificate issued by E.S.I. in favour of workman Selly Das (Ext. 7),
- 8) Suspension of workman deployed by workman (Ext. 8),
- 9) A copy of warning letter to workman by company (Ext. 9),
- 10) A further warning letter dt. 18.09.2013 to workman by company (Ext. 10),
- 11) A further warning letter to workman by company (Ext. 11),
- 12) A letter addressed to Assistant Labour Commissioner, Uluberia by company (Ext. 12),
- 13) A letter to the company by Chebita Samanta and 5 others (X for reference.

The management of the company also examined its manager Mr. Sk. Alkash Murshid as O.P.W.- 1 with another Smt. Minara Begum as O.P.W.- 2 but the management of the company did not adduce any documentary evidence.



Thus it is appearing before the Court that in the written statement filed by Ld. Lawyer for the workman it has been stated that the lady workman was appointed by the management of the company with effect from 14.01.2013 and after joining she had been performing her duties satisfactorily and no disciplinary action whatsoever was taken against her by the management of the company but after that the management of the company started harassing the workman and on 24.10.2013 when the workman reported for duty the management of the company denied resumption of duties by her, and after that also the lady workman continued reporting for duties but she was not allowed to do any work, even she was not permitted to enter to her workplace and then on 10.12.2013 the lady workman made a prayer before the Assistant Labour Commissioner, Uluberia to reinstate her in her service and after that on 24.02.2014 the management of the company issued a letter to the lady workman framing therein some allegations / charges as have been described by Ld. Lawyer for the workman as baseless and fabricated instantly demanding reply from the workman and also required her to show cause mentioning as to why disciplinary action would not be initiated against her. On 01.03.2014 the Assistant Labour Commissioner, Uluberia took up the matter for re-conciliation arising out of the alleged illegal termination of the workman from service with effect from 24.10.2013 and issued a letter to the management of the company requiring it to appear before the Assistant Labour Commissioner for a joint conference on 28.01.2014. Thus, the deliberate refusal of work by the management of the company to the lady workman to resume normal duties amounted to illegal termination in violation of Section 25F. The management of the company has raised that the order of reference by the appropriate government is a product of non-application of mind by appropriate Government and as reason it is stated that the lady workman started absenting herself from duty without any intimation to the management of the company and therefore the appropriate government ought to have not passed the order of reference and thus the order of reference itself is illegal and case is not maintainable, it has also raised that in the company there are 145 workmen and the present workman was appointed by the company with effect from 14.01.2013 and even though she had been working for the first few months after joining attentively but after that she started mis-behaving with other co-workers for no reason and she also did not make any representation before management expressing her grievances. It is also alleged that the lady workman used to resort to gossiping with other co-workers and for all such reasons she was warned but she did not correct herself and all these affected the working atmosphere under the company and as a result she was terminated with effect from 24.10.2013. It is also stated that some lady co-workers namely Minara Begum and three others also wrote letters to the management of the company raising allegations against the lady workman that she misbehaved with them and last of all the lady workman admitted before Assistant Labour Commissioner, Uluberia that she took part in a stay in program on 15.07.2013 against the management of the company but her name was in existence in the muster-roll of the company but she was not available on calls as per muster-roll.

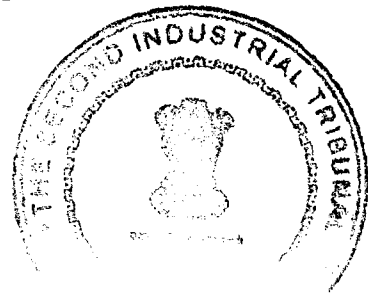


I have already mentioned the issues as have been framed by the appropriate government in the order of reference and during hearing of the case on merit after hearing both sides an additional issue was also framed as mentioned earlier.

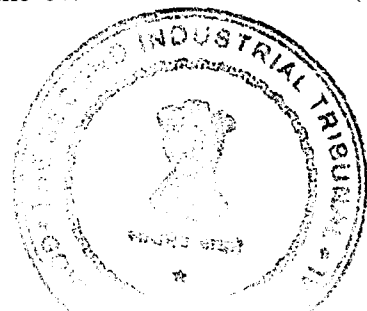
Decision with reasons thereto

During argument Ld. Lawyer for the workman has submitted that the workman is lady workman and she was appointed by the management of the company with effect from 14.01.2013 and after joining the service by being so appointed she had been performing her duties under the company to the satisfaction of the management and the matter of such appointment and her proper performance to the satisfaction of the management have also been admitted by management of the company in its written statement. Ld. Lawyer for the workman has also argued that after few months from joining the service by the lady workman, the management of the company started harassing her and on 24.10.2013 she was refused employment when she reported for duty and even after that she had been reporting for duty but the management of the company refused her to enter into the place of her work and after that on 10.12.2013, she filed a prayer before Assistant Labour Commissioner to get reinstatement in her service. Ld. Lawyer for the workman also cited a few case laws in support of his argument and all these shall be discussed later. Against all these Ld. Lawyer for the management of the company has argued that the case itself is not maintainable because during passing the order of reference the appropriate government did not apply its mind as the workman had not been reporting for duty and thus she abandoned the service by herself and accordingly the order of reference is bad in law and the present case cannot proceed with that order of reference. Ld. Lawyer also raised that the workman had been remaining absent without informing the management of the company and without taking proper leave and thus she did not complete 240 days of work in proceeding year immediately before the order of reference and accordingly the workman remained a casual worker and consequent she cannot get any right under the Industrial Disputes Act, 1947 and as a result the Court also is not in a position to give any relief to the workman. Ld. Lawyer for the management of the company also emphasised that as the workman remained absent without any intimation to the management of the company and also without taking any proper leave, it can be supposed that the workman abandoned the service by herself and as she remained simply a casual worker she cannot get any right under the law for any relief.

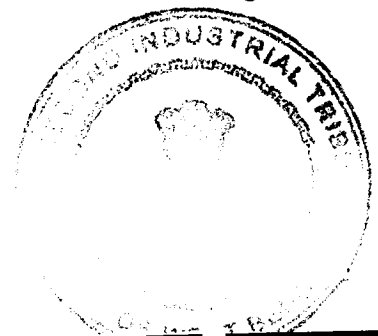
Against the argument by Ld. Lawyer for management of the company that the order of reference is bad in law on the ground of that during passing the order of reference the appropriate government did not taken into consideration the fact that the workman remained absent without taking any proper leave and intimation and this aspect of the matter was not taken into consideration by the appropriate Government and the workman also did not give any representation to the management of the company demanding reinstatement, Ld. Lawyer for the workman submitted that the workman during the proceeding one year immediately before the



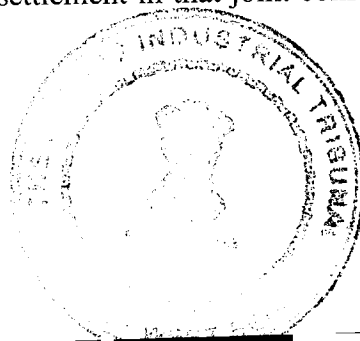
order of reference in question completed more than 240 days in continuous service and therefore the workman cannot be called any longer a casual workman and by continuing 240 days of continuous service under the company, the workman cleared the status of a permanent workman. Ld. Lawyer for the workman has also submitted that the workman as P.W.-1 has also stated all these and her said evidence could not be controverted in her cross-examination by the management of the company and the documents (Ext. 6 collectively) as have been admitted by manager of the company Mr. Sk. Alkas Murshid have also clearly proved that the management of the company have also knowledge that the workman had been in continuous service in the last proceeding year immediately before the date of alleged termination of the service of the lady workman by the management of the company. Ld. Lawyer for the workman has also explained that Ext. 6 collectively are salary slips issued by the management of the company in favour of workman and all these (Ext. 6 collectively) have the details in the way that number of days worked, number of holidays, total days work, rate of daily wages, T.A., H.R.A. have been mentioned therein and this salary slips are for every month starting from the month of January, 2013 till the month of October, 2013 and if all the working days mentioned therein are added together the number of total working days worked by the workman during the presiding year immediately before the date of termination comes to 270 days in total. The Ld. Lawyer also mentioned that the manager of the company (O.P.W.-1) in cross-examination on 01.11.2018 candidly admitted that the workman worked up to 24.10.2013 and also admitted that he did not file any other documents. To support his such contention Ld. Lawyer for the workman cited one case law in Tarlok Singh Vs. Labour Court, Jalandhar and Others 1989 LLN 762 of Punjab and Haryana High Court and submitted that in that case Hon'ble Court observed that what is continuous service has been defined and explained in Section 25B of the Industrial Disputes Act, 1947 and in view of the provisions of sub-section (2) of Section 25B, the workman shall be deemed to be in continuous service if he has actually worked under the employer for a particular period, the expression actually worked under the employer cannot mean those days only when the workman worked with hammer, sickle or pain but most necessarily all those days during which he was in the employment of the employer and for which he had been paid wages either express or imply contract of service or by compulsion of statute, standing orders etc. and the Sundays of and other paid holidays should be taken into account for the purpose of reckoning the total number of days on which the workman could be said to have actually worked, Ld. Lawyer for the workman also submitted that the documents (Ext. 6 collectively) were issued by the company to the workman and the number of working days have been mentioned therein and as per the observation of Hon'ble Court in the above cited case law it can be found that the workman during the preceding year immediately before her termination of service by refusal of employment, completed 270 days of service. Ld. Lawyer also submitted that similar observation was also made by Hon'ble Supreme Court of India in the case of American Express International Banking Corporation (1985)-II-LLN-817. Going through the evidences of workman (P.W.-1) I



find that the workman has clearly deposed that she had been in continuous service under the company during the immediate preceeding year before her termination by way of refusal of employment and from her cross-examination by Ld. Lawyer for the company I find that there is nothing to distort her such evidence. I further find that the slips (Ext. 6 collectively) was issued by the management of the company to the workman mentioning details of number of days worked by the lady workman from the months of January, 13 to October, 2013 and all these documents (Ext. 6 collectively) were admitted into evidence without any objection by Ld. Lawyer for themanagement of the company and thus all these documents (Ext. 6) collectively are admitted ones. Ld. Lawyer for themanagement of the company have not raised any question about the application of the cited case law in the present case and going through the cited case law as mentioned above I find that it is similar to the present one and it is also applicable in this case and accordingly the paid holidays are also included in the number of working days for the purpose of completing the requirement of law U/s. 25B of the Industrial Disputes Act, 1947, further the O.P.W.-2 Smt. Minara Begum in her deposition mentioned same holidays and also mentioned that the company did not give her salary during holidays and on the basis of such evidence of O.P.W.- 2 Ld. Lawyer for the company raised that the workman did not complete 240 days of continuous work but by applying the observation of Hon'ble Court in the above mentioned case law I find that such submission by Ld. Lawyer for the company is not as per law. Thus, it is to say that the workman has clearly proved that she completed continuous service for more than 240 days during the preceding year immediately before her retrenchment from service by way of refusal of employment. Ld. Lawyer for the workman cited one case law in 2009(4) CHN 67 submitted that in that case also question of incompetency of the order of reference was raised and the Hon'ble Court explaining the doctrine of noscitur a sociis observed that when the word – refuses of employment and the word – refusal of employment have been grouped together with discharge, dismiss, retrench and termination in Section 2A of the Act, each words draws colour from the words therein and also observed that the very fact that the workman insisted for reinstatement in service to the conciliation officer and the employer did not agree to take him back, in course of conciliation proceeding is sufficient proof of a demand being raised which resulted in its refusal and the parties were at logger-heads and therefore an industrial dispute did exists which could be referred and discussing the decision in sindhu re-settlement and also discussing the Sombhunath Goel cases reported in 1978(1) LLJ Hon'ble Court was also pleased to observe that when the union approached the conciliation officer and the management appeared before him and contested the claim of reinstatement and in view of decisions of above-mentioned cases that on the date the reference was made an industrial dispute did exist between employer and the workman and the Hon'ble Court answered the question in the way that the reference was accordingly not bad in law but competent Ld. Lawyer for the workman also argued that as P.W.-1 the workman clearly deposed that after joining this service she had been performing her duties to the satisfaction of the management but after that the management of the



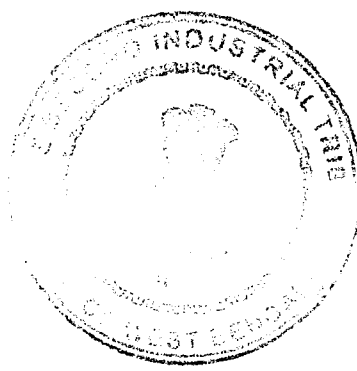
company started harassing her and then on 24.10.2013 when the workman reported for duty the management of the company did not allow the workman and even after that the workman reported for duty but the management did not allow her to go to her working place and all these evidences by the P.W.-1 could not be distorted during cross-examination by Ld. Lawyer for the management of the company. P.W.-1 also deposed that then on 10.12.2013 she made a prayer before the Assistant Labour Commissioner, Uluberia praying for reinstatement in her service and then the Assistant Labour Commissioner, Uluberia also issued notice to the management of the company requiring it to appear for joint conference but the management of the company did not agree to take her back in the service. From the evidences I find that the lady workman as P.W.-1 deposed that after a few months the management of the company started harassing her and when she reported for duty on 24.10.2013 the management refused to give her any work and even after that date she also reported for her duty but she was not allowed by the management and then on 10.12.2003 she filed a letter before Assistant Labour Commissioner, Uluberia praying for her reinstatement. The letter the lady workman filed before the Assistant Labour Commissioner, Uluberia was admitted into evidences (Ext. 1) without any objection from Ld. Lawyer for the company, in that letter P.W.-1 mentioned that she joined the service under the company on 14.01.2013, it was a country liquor shop and there are also other female workers and she got ISI benefit, she also mentioned in that letter (Ext. 1) that on 15th July the workers resorted to Abasthan Dharmaghot and she (P.W.-1) also took part in that Ahasthan Dharmaghat and for that reason the management of the company dismissed her service on 24.10.2013 and she prayed for reinstatement in her service before Assistant Labour Commissioner, Uluberia, and by a further letter dt. 03.04.2014 (Ext. 4) the workman (P.W.-1) issued a remainder to the Assistant Labour Commissioner, Uluberia for her reinstatement in her service and then the Assistant Labour Commissioner, Uluberia issued notice to the management of the company to attend a joint conference over the matter on 28.01.2014 at 12.00 noon (Ext. 5) and the manager of the company as O.P.W.- 1 admitted receipt of this notice (Ext. 5). From the letter dt. 06.01.2014 addressed to the Assistant Labour Commissioner, Uluberia (Ext. 12) by management of the company, the management of the company informed the Assistant Labour Commissioner that the workman was terminated by the management of the company mentioning that she caused trouble to her co-workman in the company, she used abusive languages towards co-workmen inside the factory premises during duty hours and the management of the company warned her requiring her to correct herself but she did not and on 15.07.2013 the lady workman took part in an illegal strike against the company and the police was called for to intervene against that strike called by the workers in the company. Thus the documents (Ext. 12) as was written by the management of the company to the Assistant Labour Commissioner, Uluberia, it is found that on the basis of the letter written by the lady workman to the Assistant Labour Commissioner, Uluberia praying for re-instatement in her service, the Assistant Labour Commissioner, Uluberia called for a joint meeting and as per evidence of P.W.-1 there was no settlement in that joint conference held by



Assistant Labour Commissioner, Uluberia and in the letter dt. 06.01.2014 addressed to the Assistant Labour Commissioner, Uluberia, the management of the company also mentioned that the management of the company terminated her from service and also mentioned that in view of those allegations as mentioned in the documents (Ext. 12), the lady workman was terminated from service and this action by the company on that lady workman was justified.

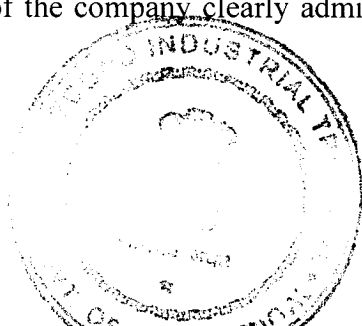
Thus all these materials were placed before the appropriate government and the appropriate government issued the order of reference framing the issues therein, and having taken the observations of Hon'ble Court in the case laws referred by Ld. Lawyer for the workman as mentioned above it is coming out that the appropriate government before making the order of reference applied its mind fully and after that only the appropriate government made the order of reference and question of incompetency of the order of reference as has been raised by Ld. Lawyer for the management of the company as challenged against the same is found to be based on mis-conception of law and nothing else.

Ld. Lawyer for the management of the company has also argued that the workman was not terminated from service and the name of the workman has been continuing in the muster-roll of the company, Ld. Lawyer also added that the workman had not been reporting for duty lastly continuously with effect from 24.10.2013 and thus the workman has abandoned her service by herself. Ld. Lawyer for the management of the company has also raised that over this aspect of the matter an additional issue has been framed by the Court and the management of the company has also adduced sufficient evidence to prove such a stance on the part of the company and thus the workman has suppressed material fact in her written statement and on that ground also the case is liable to be dismissed. Against all these Ld. Lawyer for the workman has argued that the management of the company in its written statement has clearly mentioned that the workman as terminated from service and when the workman prayed before Assistant Labour Commissioner, Uluberia for re-instatement of the workman in the service, the Assistant Labour Commissioner, Uluberia issued notice to the management of the company requiring the management of the company to appear for a conciliation and after that the management of the company also filed written comment before the Assistant Labour Commissioner and in that written statement also, the management of the company admitted that the workman was terminated from his service, Ld. Lawyer for the workman has further argued that Ld. Lawyer for the management of the company has resorted to double standard in the way that in both written statement filed by the company and also in the written comment filed by the company before the Assistant Labour Commissioner, Uluberia the management of the company has clearly mentioned that the workman was terminated from service but now Ld. Lawyer for the management of the company has been raising this stance that the workman was not terminated from service and this is totally baseless in view of the written admission by the management of the company in those documents

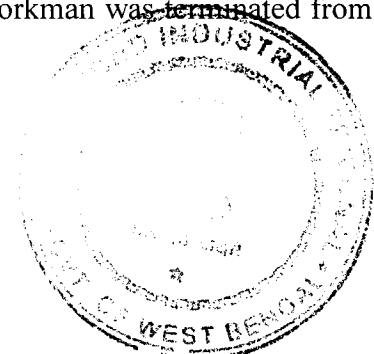


and at the same time the manager of the company O.P.W.- 1 has also clearly admitted in the cross-examination that the workman was terminated from his service.

From the written statement filed by the workman the workman has clearly stated that the management of the company denied the workman resumption of her duties with effect from 24.10.2013 and before that the management of the company started harassing the workman due to her taking part in sit-in-demonstration with other workers and the company for some matters and even after 24.10.2013 the workman reported for duties but she was not allowed to go to her work-place and after that the workman on 10.12.2013 made a complaint against the management of the company before Assistant Labour Commissioner, Uluberia praying for reinstatement in her service. The lady workman Selly Das as P.W.-1 also deposed similarly mentioning that she joined the service under the company on 14.01.2013 and she had been after that performing her duties to the full satisfaction of the management of the company and then the management of the company after a few months from her joining the service started harassing her and on 24.10.2013 she was terminated from service by way of refusal of workman and even after 24.10.2013 she reported for duties repeatedly but the management of the company did not allow her and then on 10.12.2013 she informed all these to the Assistant Labour Commissioner, Uluberia and also prayed for reinstatement in her service. P.W.-1 also deposed that after that by a memo dt. 24.10.2014 by Assistant Labour Commissioner, Uluberia required the management of the company to appear for a joint conference on 28.01.2014 over that matter, P.W.-1 also deposed that those the management of the company made deliberately refusal of employment to the workman and that has amounted to illegal termination in violations of provisions of Section 25F of the Industrial Disputes Act, 1947. The workman as P.W.-1 also adduced documentary evidences which are Ext. 1 to Ext. 12, Ext. 1 is found to be a letter addressed to Assistant Labour Commissioner, Uluberia by workman (P.W.-1) mentioned that she was appointed in the service by the Company with effect from 14.01.2013, there are also many other male / female workers in the company and she was given the benefit of ISI, on 15th July of the male and female workmen made a sit-in-demonstration in front to the gate of the company and the workman (P.W.-1) also participated in that demonstration and for that reason the management of the company expressed grudge against her and arising out of that grudge she was refused employment with effect from 24.10.2013 and then she requested the management of the company to re-instate her in her service but the management of the company did nothing, and then the workman (P.W.-1) sent a further letter to the Assistant Labour Commissioner, Uluberia (Ext. 4) requesting Assistant Labour Commissioner, Uluberia to take action in view of her letter to the Assistant Labour Commissioner (Ext. 1), Ext. 5 is found to be a notice dt. 24.01.2014 on the management of the company to attend the joint conference in the chamber of Assistant Labour Commissioner on 28.01.2014 at 12.00 noon, and then the Ext. 12 shows that it is a written comment by the management of the company addressed to the Assistant Labour Commissioner, Uluberia dt. 06.01.2014 and in that written comment the management of the company clearly admitted that

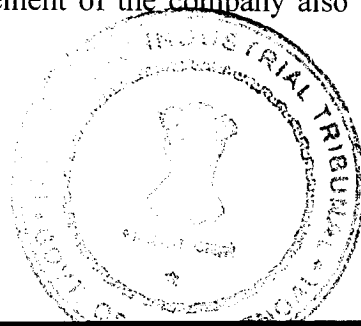


the workman was terminated from service and also from the muster-roll of the company, thus all these evidences are found to be uniform in the way that these have established that the management of the company terminated the workman Smt. Selly Das from the service of the company and also struck out her name from the muster-roll of the company. It is further to say that from the evidences of P.W.-1 I find that all the above-mentioned documents were admitted into evidence without any objection from the Ld. Lawyer of the management of the company. Ld. Lawyer for the management of the company also cross-examined the P.W.-1 but there is nothing in the cross-examination to distort any such evidences adduced by the lady workman as P.W.-1. The O.P.W.- 1 Mr. Sk. Alkash, who is the manager of the company has admitted during his examination-in-chief that the workman Selly Das was appointed by the management of the company, she was a daily rated workman but she started remaining absent without information of the company and on and from 24.10.2013 the workman totally stopped reporting for duty and for that reason the workman cannot get any relief by this case, the company adduced no documentary evidence. In cross-examination Mr. Murshed (O.P.W.- 1) admitted that in para-3 of the written statement filed by the company, the company has mentioned that the workman has terminated from service with effect from 24.10.2013, O.P.W.- 1 also admitted that the company has not filed the attendance register to show that the workman remained absent. O.P.W.- 1 also admitted that the company issued salary slips (Ext. 6 collectively), O.P.W.- 1 also admitted that the company did not file the muster-roll of the company in the Court. Ext. 8 is a letter addressed to the management of the company by the principal employer M/s. Alfa Malts Pvt. Ltd, it was admitted into evidence on the basis of evidence of P.W.-1, the contention of this letter is that some workers were not discharging duties properly and they also started resorting to agitation in the factory of the principal employer and the principal employer also asked management of the company to take action against them, and Ld. Lawyer for the workman raised this letter with the O.P.W.- 1 during cross-examination and O.P.W.-1 also admitted the same further mentioning that the workers of the factory resorted to agitation against the management of the principal employer and all those workers had been under the leadership of the workman, from the cross-examination of O.P.W.- 1 I find that all the documents admitted into evidence were showed to the O.P.W.-1 but there is nothing in the cross-examination of O.P.W.- 1 to distort all such evidence, O.P.W.- 1 also admitted that the management of the company never issued any letter to the workman requiring the workman to join her duty and from the cross-examination dt. 12.12.2018 I find that O.P.W.- 1 in cross admitted that the workman was terminated from service without giving any notice to her. Thus O.P.W.- 1 being the manager of the company has clearly admitted all as has been deposed by workman as P.W.-1 along-with documentary evidences. Thus these evidences have clearly proved that all the factory workers including female workers resorted the agitation against the principal employer arising out of matters of some demands and the workman also participated in that agitation and O.P.W.- 1 has described the workman as the leader of that agitation and as admitted by O.P.W.- 1 the workman was terminated from service



with effect from 24.10.2013 and it is also proved as asserted by the workman as P.W.-1 that as she participated in that agitation the management of the company maintained a grudge against her and for that reason she was terminated from service by way of refusal of employment with effect from 24.10.2013. Thus I find no merit in the argument forwarded by Ld. Lawyer for the management of the company, rather it is clearly proved that before such termination the management of the company did not issue any notice to the workman in that regard, also did not pay her any notice pay and thus it is found that the management of the company violated the mandatory provisions of law in terminating the lady workman from her service.

Ld. Lawyer for the company in his argument has also raised that the management of the company was forced to terminate the female workman on 24.10.2013 for her anti-farm activities and also for her absent, mis-behaviour with other female worker, for using abusive languages against the dignitaries of the principal employer, paralysing production of the principal employer, gossiping on her part with other workman and then she was given warning but she did not rectify herself. Ld. Lawyer also argued that some female workman namely Bikis Khloor, Murida Begum, Minara Begum made complaints in writing before the management of the company and all these complaints were placed before Assistant Labour Commissioner, Uluberia and during conciliation proceeding before the Assistant Labour Commissioner, the lady workman also admitted that she took part in the agitation with other workers against the management of the company. Ld. Lawyer has also submitted that all these have been proved by evidence and a female workers of the company who is O.P.W.-2 has also substantiated all these by her evidences. Against all these Ld. Lawyer for the workman has argued that all such allegations and complaints are manufactured by the company because the management of the company resorted to illegalities against the female workman and also terminated the female workman illegally and Ld. Lawyer has added that all the workers of the company including the female workers resorted to agitation against the management of the company arising out of some demands and the lady workman also took part in that agitation by the workers and for that reason the management of the company had been maintaining a grudge against her and then started harassing female workman and last of all terminated her service. Ld. Lawyer has also submitted that there is at no evidence to support such contention as have been raised by Ld. Lawyer for the management of the company, Ld. Lawyer for the management of the company has not adduced any documentary evidence. Ld. Lawyer for the workman has also submitted that after the workman was terminated from service on 24.10.2013 by way of refusal of employment the management of the company issued a show cause notice dt. 24.02.2014 on the lady workman mentioning that on 03.09.2013 she whimsically behaved with one worker namely Bilkis Khatun, on 18.09.2013 she used offensive in against one worker Murshed Begum, on 23.10.2013 she provoked another co-worker Minara Begum and the workman has proved that documents as P.W.-1 and it was marked Ext. 2 and then lady workman Selly Das made a reply (Ext. 3) mentioning that all the allegations are false and the management of the company also did not



mention all these allegations in the G.D.E. as was stated to have been filed by management of the company (Ext. 3). Going through the evidences of the lady workman as P.W.-1 I find that he has denied all such allegations and about the warning letters issued to her (Ext. 10, Ext. 11) P.W.-1 has further deposed that all these warning letters are also groundless and going through the cross-examination of this P.W.-1 I find that there is nothing at all to distort her such evidences, further going through the evidences of O.P.W.-1 has admitted that actually the management of the company did not terminate her service which is already found to be false due to admission over the matter in the documents, O.P.W.- 1 also admitted that he did not hang those warning letters on notice board and also did not publish the warning letters in the newspaper and also admitted that he also did not inform any of these matters to the Labour Commissioner, O.P.W.- 1 also admitted that he did not send any letter to the workman requiring her to join duties as in the documents mentioned earlier the management of the company admitted that the workman was terminated from service with effect from 24.10.2013. Though in the written statement the management of the company has alleged that some women co-workers filed written complaints against Selly Das i.e. workman but none of them turned up to say nothing and the management of the company also did not take any step to bring them as witness. Only Smt. Minara Begum was examined by management of the company to justify such allegations but in cross Minara Begum as O.P.W.- 2 admitted that she has come to depose because workman has filed a case, she also admitted that the workman was terminated from her service by the management of the company, she also admitted that she O.P.W.- 2 cannot say if the lady workman used to be asked by management of the company to work in the factory on declared holidays also. O.P.W.-2 also admitted that she filed a complaint against the workman but she did not explain any reason for such complaint against the workman. Ld. Lawyer for the workman has also argued that all these allegations against the workman are manufactured and false and for that reason only the management of the company did not go for any enquiry against the workman and as the workman took part in the agitation by all the workman against the management of the company and principal employer, the lady workman was targeted on allegation that she was the leader of that agitation and principal employer also wrote a letter over the matter to the management of the company (Ext. 8) and then arising out of that grudge the management of the company terminated the workman.

Admitted position is that the management of the company did not resort to conducting any domestic enquiry against the workman over the allegations as has been raised as mentioned above. Going through the evidences of both sides, I find that there is no evidential support of the allegations over the lady workman and the possibility of the allegations being manufactured by the management of the company as asserted by Ld. Lawyer for the workman cannot be ruled out after the discussion of the evidences that have found to support of the allegations, even O.P.W.-2 has not stated anything against the workman, about whom it is coming out that the management



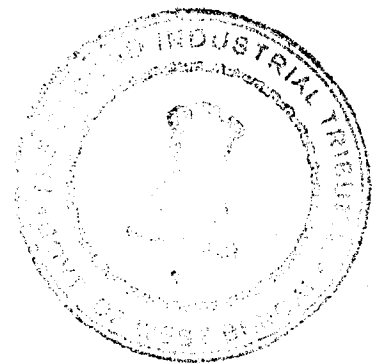
of the company any how brought O.P.W.-2 who wanted to say something against the workman but it is also found that she never uttered any single word against the lady workman.

The lady workman P.W.- 1 has deposed that after she was terminated from service abruptly, she has become incomeless and for that reason she along with her family has been suffering from poverty, and Ld. Lawyer for the management of the company has not raised any challenge over such evidences by the lady workman as P.W.-1. Thus it is to say that there is at all no basis of any allegation against the lady workman by the management of the company and it is also the admitted position that the lady workman took part in the agitation by all the workers of the company against the management of the company over the matters of some demands by them and for that reason the principal employer give a written instruction the management of the company to take action (Ext. 8) and the management of the company then resorted to harassment on the lady workman and last of all terminated her from her service with effect from 24.10.2013 without giving any notice, without issuing any show cause notice and without resorting to any domestic enquiry/ and the admitted documents (Ext. 6 collectively) have clearly proved that during the preceding year immediately before termination of the lady workman by the management of the company, the workman completed more 240 days of continuous service and there is also no challenge by the management of the company that after her such termination she has remained incomeless and has been facing starvation with her family.

As per observation of Hon'ble Supreme Court of India in 2015 LLR 225 effect of 240 working days continuous service during preceding 12 calender months, termination of the workman without complying with the mandatory provisions of Industrial Disputes Act, 1947 make the workman entitled to reinstatement with back wages, Hon'ble Court also observed in 1999(3) LLN 887 that when termination of service is illegal, the workman is entitled to get full backwages and again in 1999 LLR 722 Hon'ble Court observed that when the workman is terminated from service illegally, and when the workman is not in gainful employment after termination the workman is entitled to re-instatement with full back-wages.

It has already been found that as the lady workman participated in the demonstration by all the workman of the company against the management of the company, the management of the company thinking the lady workman to be the leader of all the workman started maintaining a grudge and started resorting to harassment upon the lady workman and last of all terminated her service with effect from 24.10.2013 by way of refusal of employment most illegally and even without considering the mandatory requirements of law as laid down in Section 25F of the Industrial Disputes Act, 1947, and thus all the issues going to be decided in favour of the lady workman. It is, therefore,

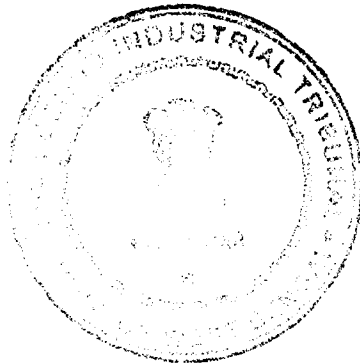
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that the issues i.e. 1) Whether the termination of Miss Selly Das by the management w.e.f. 24.10.2013 is justified, 2) If not, what relief is she entitled to and the additional issue whether the lady workman Miss Selly Das abandoned her service by herself or not – are decided in favour of workman Selly Das, P.O. – Khalisani, P.S. – Uluberia, Dist. – Howrah, Pin – 711307 on contest and it is held that the termination of service of the workman Miss Selly Das by management of the company i.e. M/s. Bengal Labour Suppliers with effect from 24.10.2013 is held to be illegal and void ab initio and consequently the termination from service of workman Miss Selly Das by management of the company with effect from 24.10.2013 is quashed and it is also held that the workman Miss Selly Das is entitled to get reinstatement in her service with effect from the date of termination as mentioned above with full back wages and other consequential benefits and accordingly the management of the company i.e. M/s. Bengal Labour Supplier is directed to re-instate the workman Miss Selly Das with immediate effect and also directed to make payment of all the back wages with consequential benefits thereto to her immediately. There is no order to cost. This order and direction are treated as an award of this Tribunal on contest and the matter of dispute as per order of reference having No. 563-I.R./11L-47/2016 dt. 09.06.2016 by order of Governor signed by Deputy Secretary to the Government of West Bengal, Labour Department, I.R. Branch, N.S. Buildings, 12th Floor, Block-A, 1, K.S. Roy Road, Kolkata – 1 and issues framed therein with the additional issues as also framed are disposed of on contest accordingly. It is further directed that necessary number of copies of this judgement and award be prepared and sent to the Ld. Additional Chief Secretary to the Government of West Bengal, Labour Department, N.S. Buildings, 1, K.S. Roy Road, Kolkata – 1 as per rule.

Dictated & Corrected by me.

Judge



sd/r
(Sribash Chandra Das)
Judge
Second Industrial Tribunal
24.02.2020
Judge
2nd Industrial Tribunal
West Bengal