

I/45528/2019

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

No. Labr/ 435. /(LC-IR)/

Date : 30.4.19

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ORDER

WHEREAS under the Government of West Bengal, Labour Department Order No. 363-IR/IR/11L-25/13 dated 05.04.2013 the Industrial Dispute between M/s. Pathfinder Consultancy Service Ltd., Ripon Street, 3rd Floor, Kolkata-16 and their workman Shri Swapan Chakraborty, C/O. Ranjit Mukherjee, P.o & Vill.- Nowpala, P.S.- Bagnan, Dist- Howrah regarding the issue mentioned in the said order, being a matter specified in the Third Schedule to the Industrial Dispute Act, 1947 (14 of 1947), was referred for adjudication to the Judge, 2nd Industrial Tribunal, West Bengal.


AND WHEREAS the Judge of the said 2nd Industrial Tribunal, West Bengal, has submitted to the State Government its award on the said Industrial Dispute.

NOW, THEREFORE, in pursuance of the provisions of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Governor is pleased hereby to publish the said award as shown in the Annexure hereto.

ANNEXURE

(Attached herewith)

By order of the Governor,



Deputy Secretary
to the Government of West Bengal

No. L.abr/ 435/1(5) / (LC-IR)

Date: 30.4.19

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

1. M/s Pathfinder Consultancy Service Ltd., Ripon Street, 3rd Floor, Kolkata-16 .
2. Shri Swapan Chakraborty, C/O. Ranjit Mukherjee, P.o & Vill.- Nowpala, P.S.- Bagnan, Dist- Howrah .
3. The Assistant Labour Commissioner, W.B. In-Charge, Labour Gazette.
4. The Labour Commissioner, W.B. New Secretariat Buildings, 1, K. S. Roy Road, 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. L. adm. / 435/2(2) / (LC-IR)

Date ... 3.0.4.19

Copy forwarded for information to :

1. The Judge, 2nd. Industrial Tribunal, West Bengal with reference to his Memo No. 394-L.T. dated 26/03/19 .
2. The Joint Labour Commissioner (Statistics), West Bengal, 6, Church Lane, Kolkata -700001.

Deputy Secretary
Government of West
Bengal.

In the matter of an industrial dispute between 1) M/s. Pathfinder Consultancy Service Ltd., Ripon Street, 3rd floor, Kolkata-700016 and their workman Sri Swapan Chakraborty, C/o. Ranjit Mukherjee, P.O. & Vill. Nowpala under P.S.- Bagnan within Dist. – Howrah.

(Case No. VIII-19/2013)

BEFORE THE SECOND INDUSTRIAL TRIBUNAL: WEST BENGAL

PRESENT: SHRI SRIBASH CHANDRA DAS, JUDGE,

SECOND INDUSTRIAL TRIBUNAL, KOLKATA

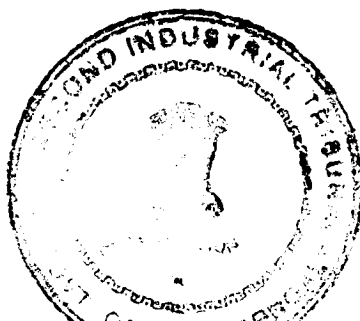
Date of passing award – 22.02.2019

A W A R D



As per order of reference this is a case between M/s. Pathfinder Consultancy Ltd., Ripon Street, 3rd floor, Kolkata-700016 and their workman Sri Swapan Chakraborty, C/o. Ranjit Mukherjee, P.O. & Vill. Nowpala under P.S.- Bagnan within Dist. – Howrah, but as per order of this Tribunal vide No. 54 dt. 16.10.2017 another company M/s. Dutta Ghosh associates became involved in this case due to framing of issue No. 2 in the order of reference by which it was stated as to whether termination of service of the workman Sri Swapan Chakraborty by way of transfer to M/s. Pathfinder Consultancy Service Ltd. with effect from 30.06.2007 by M/s. Dutta Ghosh Associates is justified or not and thus this case is also against both companies i.e. No. 1 M/s. Pathfinder Consultancy Service Ltd. and also M/s. Dutta Ghosh Associates.

Thus, the case came into existence by order of reference vide No. 363-I.R./IR/11L-25/13 dt. Kolkata, 05.04.2013 by order of Governor signed by Deputy Secretary to the Government of West Bengal, Labour Department, I.R. Branch, Writers' Buildings, Kolkata-700001, mentioning that an industrial dispute exists between M/s. Pathfinder Consultancy Service Ltd. as mentioned above and their workman Sri Swapan Chakraborty as also mentioned above relating to the issues as have been framed in the order of reference being a matter stated to be specified in the second schedule to the Industrial Disputes Act, 1947, mentioning further that it is expedient 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 was pleased by this order of reference to refer this dispute to this Tribunal stated to be constituted under Notification No. 808-I.R./IR/3A-2/57 dt. 11.03.1957 for adjudication and required this Tribunal to submit its award to the state government within a period of 3 months from the date of receipts of this order of reference by this Tribunal in terms of Sub-section (2A) of Section 10 of the



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Industrial Disputes Act, 1947 subject to other provision/ provisions of this Act, and the issues that have been framed in this order of reference are,

- 1) Whether the termination of the service of Sri Swapan Chakraborty by way of refusal of employment w.e.f. 20th March, 2010 by M/s. Pathfinder Consultancy Service Ltd. is justified?,
- 2) Whether the termination of service of Sri Swapan Chakraborty by way of transfer to M/s. Pathfinder Consultancy Service Ltd. w.e.f. 30.06.2007 by M/s. Dutta Ghosh Associates is justified?, and
- 3) To what other relief, if any, the workman is entitled?

After receiving the order of reference, this Tribunal initiated the proceeding of this case and issued summon to both parties requiring them to file written statement etc. as per rules i.e. West Bengal Industrial Disputes Rules, 1958 and then both parties entered into appearance engaging lawyers and I find that the management of the company engaged Ld. Lawyer Mr. S Dubey, advocate Sibani Halder Dubey by filing letter of authority and workman Swapan Chakraborty also engaged Lawyer Sujit Sharma by filing letter of authority and then as I find Ld. Lawyer for the workman filed written statement with documents with list thereto, on 14.08.2013 and Ld. Lawyer for the management of the company M/s. Pathfinder Consultancy Service Ltd. also filed written statement on behalf of the company along with documents with lists thereto. As I mentioned earlier, after receiving notice the company M/s. Dutta Ghosh Associates also entered into appearance on 15.11.2017 but did not file any written statement to contest the case and also did not file any letter of authority on behalf of anyone / advocate, and from order dt. 15.11.2017, I find that on that day on behalf of company M/s. Dutta Ghosh Associates Ld. Lawyer Mr. Sourav Dubey filed a petition praying for time for taking step but after that it is found that the company M/s. Dutta Ghosh Associates started becoming absent without any step.

As per written statement filed by Ld. Lawyer for the workman the case raised by the Ld. Lawyer for the workman is that the company M/s. Pathfinder Consultancy Service Ltd. is situated at 4, Ripon Street, Kolkata-16 and a good number of employees have been employed by this company but the management of the company does not follow the laws of the land as far as labour matter is concerned and the management of the company resorts to indulging unfair labour practices, as a result of which the workers in the company become subjected to sufferings and hardship and it is going on for long. It is also stated that this company Pathfinder Consultancy Service Ltd. has several other sister companies such as M/s. Dutta Ghosh Associates, M/s. Promak Pvt. Ltd., K. Roy & Co. etc. It is next stated that the workman Swapan Chakraborty was appointed by M/s. Dutta Ghosh Associates on 20.06.2004 at the office situated at 4, Ripon Street, Kolkata-16 and he was posted as City Bank Branch situated at where he had been working as an employee of the company M/s. Dutta Ghosh Associates. It has been further

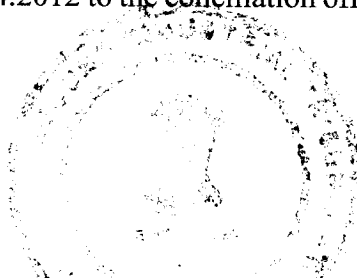
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stated that the workman accordingly had been working at the City Bank Branch locating at 41, Jawaharlal Nehru Road,

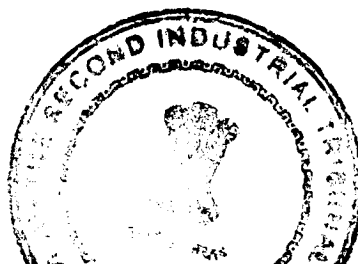
Kolkata-71 as an employee of M/s. Dutta Ghosh Associates and he continued working there till 2008 without any interruption. It has been further stated that at the end of 2008 the workman suffered leg injury resulting which he had to take leave and after recovering from that injury the workman reported for duty and then he came to know that he had been transferred from the company M/s. Dutta Ghosh Associates to the company M/s. Pathfinder Consultancy Service Ltd. without giving the workman any notice of such change in his service condition and thus he was not allowed to work in his earlier place of work. It is further stated that the workman had been performing his duty diligently in M/s. Pathfinder Consultancy Service Ltd. till 2009 with protest but suddenly he again felt ill requiring hospitalization in nursing-home and after recovery from his illness, the workman resumed his duty and continued working till 19.03.2010 but on and from 20.03.2010 the workman was not allowed to perform his duty without giving reason and opportunity. It is also mentioned that after that the workman tried to get back his job and with that intention he went to resume his duty but the management of the company M/s. Pathfinder Consultancy Service Ltd. only stated to him that he would be allowed to resume his duty soon, and after that the workman made several demands orally before the management of the company for the job but last of all the management of the company did nothing. It is next stated that after receiving no response from the management of the company, he raised the industrial dispute by a letter dt. 31.05.2010 to Assistant Labour Commissioner, Government of West Bengal requesting him to intervene in the matter and then the conciliation officer initiated a conciliation proceeding and after that the workman made several representations before the conciliation officer through letters on different dates i.e. 16.07.2010, 25.01.2011, 09.12.2011, 24.08.2012 and 27.09.2012. it is next stated that the workman also wrote a letter on 25.10.2010 to the management of the company M/s. Pathfinder Consultancy Service Ltd. and after receiving that letter, the company made a reply by its letter dt. 13.12.2010 and again the workman made a representation before the management of the company M/s. Dutta Ghosh Associates on 02.12.2010 and then Dutta Ghosh Associates also made a reply by writing a letter dt. 29.12.2010 to the workman. The workman then stated that the dispute could not be settled at conciliation level due to adamant / uncompromising attitude taken by the company and as a result the conciliation proceeding failed. It is next stated that after that the conciliation officer submitted failure report before the appropriate government, which then referred the dispute before this Tribunal by the order of reference. It is next stated by the workman that after such wrongful and illegal termination from his service by way of refusal of employment, he could not afford to get any other employment elsewhere despite his sincere effort and now he is totally unemployed facing acute financial stringency with his family members, and his last drawn salary was Rs. 2500/- per month. It is further stated that the company made an offer to the workman to join his service by writing a letter dt. 23.04.2012 to the conciliation officer but in that letter the company

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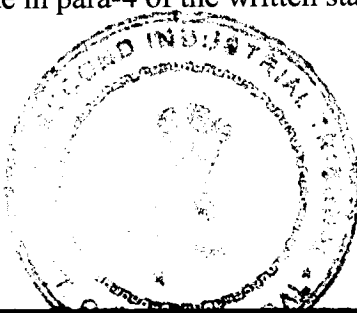
did not mentioned any date, place of joining, without giving back-wages and consequential benefits accrued to the workman and thus the offer to join was found to be vague and mala fide, further mentioning that the workman does not have any objection to join his service but the company did not show any efforts to allow him to join, although the workman duly made a reply to that letter offering him to join by writing letters dt. 24.08.2012 and 27.09.2012 further mentioning that he is ready to join his duty in the company. The written statement was concluded by mentioning that thus he was terminated from service by way of refusal of employment illegally and arbitrarily by the management of the company, further adding that the workman has a chance to succeed in this case. It is the prayer of the workman to pass an award holding inter alia that the action of the management of the company in terminating the service of the workman by way of refusal of employment from 20.03.2010 is arbitrary, unjustified, mala fide and illegal and he has further prayed for a direction on the management of the company to reinstate the workman with full back-wages with all consequential benefits.

The management of the company has also filed written statement to contest the case. I find that the written statement has been made in two parts, in part one the management of the company has raised some legal technicalities such as the instant dispute is not maintainable since the conciliation officer has no jurisdiction to entertain the application of the workman and to issue the order of reference and the alleged dispute as has been raised by the workman cannot assume the character of an industrial dispute and for that reason this Tribunal has no jurisdiction to entertain the instant matter and the government did not have any material on the basis of which it could made the order of reference and no dispute was also raised with the management of the company so as to transform the alleged dispute to be an industrial dispute. The management of the company has further raised that the case is also not maintainable as it was beyond the jurisdiction of the appropriate government to make the order or reference as the alleged dispute U/s. 10 of the Industrial Disputes Act, 1947 is not sustainable and the order of reference has been issued in violation of the principles of natural justice and therefore a nullity in the eye of law and the appropriate government issued the order of reference without application of mind. The management of the company has further raised that the order of reference is not maintainable since in absence refusal of employment by the management of the company, the order of reference issued by the appropriate government is totally without jurisdiction and Section 10 of the Industrial Disputes Act, 1947 cannot be invoked. The management of the company has further raised that the reference is not maintainable since the workman has not worked 240 days in the preceding 12 months from the date of alleged termination and the management of the company never terminated the workman on and from 20.03.2010. In part-2 of the written statement filed by the company, it has been stated that the company is a small organization at 4, Ripon Street, Kolkata-16 doing business of providing man-power to different banks for outward clearing, processing and endorsing cheques of customers of the banks, and the applicant / workman was appointed in the establishment of M/s.



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Pathfinder Consultancy Service Ltd. at 4, Ripon Street, Kolkata-16 from 01.01.2010 and he was deployed to one of its client namely City Bank, Kanak Building, 41, Chowringhee Road, Kolkata-71 and his last drawn salary was Rs. 2500/-. It is further stated that at that place the workman continuously worked in the company upto 14.03.2010 and on 15.03.2010 the workman started absenting himself from duty without giving any intimation to the management of the company, further mentioning that on 12.03.2010 the workman submitted one leave application to one of his colleagues Mr. C. Das who did not have any authority either to grant or reject that leave application and he also did not place the said leave application to the competent authority of the company but even then the management of the company granted leave to the workman from 16.03.2010 to 19.03.2010 but the workman attended his duty on 19.03.2010 without any explanation, and for that reason the management of the company asked the workman to submit an application for cancelation of the leave granted for 19.03.2010 and also directed the workman to explain as to why he did not place his leave application to the competent authority but the workman without complying with such direction of the management of the company left the company's premises without any information and started absenting himself from duty without any leave or permission from 20.03.2010 but the workman did not sign the attendance register on 19.03.2010 though he performed duty on that date. It is further stated that one Mr. Taraknath Dhar, Director of the company repeatedly asked the workman to join the duty and every-time the workman gave assurance the he would join the duty but he did not do so on and from 20.03.2010 and he left the company thus without repaying the loan of the company. it is also mentioned that after a few days the workman started his own business in front of the gate of the company and the company received a memo from conciliation officer along with a copy of letter submitted by workman to conciliation officer dt. 31.05.2010 directing the company to submit its comment and then the conciliation officer fixed several dates to settle the matter and at that time the company also asked the workman to join duty but did not get any proper reply from the workman positively and the dispute could not be settled and the dispute was referred to this Court for adjudication. In respect of contention of paragraph-1 of the written statement filed by workman, the company has stated that such contentions have been denied by it and also disputed the same excepting the matters on record and also denying the contention of paragraph-2 of written statement filed by workman, the company has sated that these are required to be proved by the workman strictly excepting the matters on record and the company has also denied that the company has other sister-concerns adding that the company is a registered company under Company's Act, 1956 and the company has also no knowledge regarding joining the company M/s. Dutta Ghosh Associates by the workman on 20.06.2004 and the company does not have any connection with that company M/s. Dutta Ghosh Associates and again denying the contention of paragraph-3 of the written statement filed by workman, it has been stated that the workman might have been transferred to M/s. Pathfinder Consultancy Service Ltd. Denying the contention made in para-4 of the written statement filed by workman,



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the company has stated that the workman is required to prove it strictly with the addition that the workman joined the company in January, 2010 and continued attending his duty till 19.03.2010 and the company also denied that the workman was admitted in the nursing-home and after recovery from illness he resumed his duty and worked till 19.03.2010 further mentioning that on 12.03.2010 the workman submitted a leave application to one of his colleagues Mr. C. Das who did not have any authority to consider that leave application, yet the company granted him leave of the nature P.L. but the workman attended his duty on 19.03.2010 without any explanation and despite directing the workman by the management of the company to submit an application for cancellation of leave for 19.03.2010 with explanation as to why he did not place his leave application before the competent authority of the company but the workman did not comply with the direction and left the company and started becoming absent without any leave or permission on and from 20.03.2010 and thus question of refusal of employment on the part of management of the company does not arise. Denying the contention of para-5 / 6 of the written statement of the workman, the company has stated that such contentions require strict proof specially mentioning denying that the company wrote a letter dt. 13.12.2010 but the company submitted its comments by the letter dt. 09.12.2010 submitted on 3.12.2010 before the conciliation officer. Denying the contention of the para-7 of the written statement filed by workman and requiring it to be proved strictly, the company has stated that during conciliation meeting the management of the company had taken lenient view and requested the workman both verbally and in writing to join his duty but the workman did not make any positive answer and the entire incident was recorded in the conciliation proceeding. Further denying the contention of para-8 of the written statement submitted by workman and requiring the same to be proved strictly excepting the matters on record, it has been stated that only after few days from the alleged date of termination, the workman started a fast-food stall in front of gate of the company and earned a lot of money more than his salary, and denying the contention of para-9 of the written statement filed by workman and requiring it to be proved strictly excepting the matters on record, it has stated that during conciliation proceeding the company tried its level best to settle this dispute and according offered the working to join his service on 23.04.2012 and again on 03.08.2012 mentioning that the workman might join his duty in the company on any day with prior intimation to the management of the company and the management of the company would allow him to join duty with continuity of service with same benefits and facility as he availed of prior to his alleged date of termination but the workman did nothing and also did not make any reply to the letter of management dt.23.04.2012 and 03.08.2012. Regarding contention of para-10 of the written statement filed by workman it has been stated that all these are contrary to record mentioning that the workman had lost his right to claim re-instatement with back-wages by not accepting the offer of the management of the company as also mentioned in the letter dt. 27.05.2014 by the management of the company as has been filed before this Tribunal and again denying the contention of para-11 of the written

statement filed by the workman it has been stated that the service of the workman was never refused by the management of the company and the contention of para-11 of written statement filed by workman requires strict proof, with the addition that the prayers of the workman are devoid of substance and are totally imaginary and the case of the workman is required to be dismissed, and with all these the management of the company has prayed that the Tribunal does not have any jurisdiction to decide the matter entering into the merit of the case and the workman cannot get any relief as has been prayed by him.

As I already mentioned summon was issued to M/s. Dutta Ghosh Associates by order dt. 16.10.2017 and accordingly that company i.e. M/s. Dutta Ghosh Associates (as per issue No. 2 of the order of reference) entered into appearance authorising Ld. Lawyer Mr. Sourav Dubey by one Mr. Pranab Ghosh of M/s. Dutta Ghosh Associates and accordingly opportunity was given to M/s. Dutta Ghosh Associates to take necessary steps in this case but after that, as the case record shows the company M/s. Dutta Ghosh Associates after entering into appearance started becoming absent without any step and as per liberty as was given to this company M/s. Dutta Ghosh Associates for taking necessary steps, the Ld. Lawyer for M/s. Dutta Ghosh Associates did not take any step, neither did it file any written statement to contest the case but continued remaining absent without any step. The case record further shows that on 30.08.2017 Ld. Lawyer for the workman filed one petition to add M/s. Dutta Ghosh Associates as a party in this case on the ground that name of this company M/s. Dutta Ghosh Associates is mentioned in the issue No. 2 and therefore before passing any order opportunity was required to be given to M/s. Dutta Ghosh Associates for hearing and also enable it to take steps to do the needful in connection with the relief as also wanted against this company M/s. Dutta Ghosh Associates and accordingly by passing an order dt. 16.10.2017 a petition dt. 30.08.2017 filed by Ld. Lawyer for the workman was allowed and just at that time of passing the order on 16.10.2017 on the petition dt. 30.08.2017 Ld. Lawyer for the M/s. Dutta Ghosh Associates also appeared and also submitted to challenge the petition dt. 30.08.2017 as mentioned above by filing written objection and scope was also given to him for further hearing but last of all the company M/s. Dutta Ghosh Associates started becoming absent without any step and Ld. Lawyer also did not appear, and also did not contest the case, neither did not adduce any evidence.

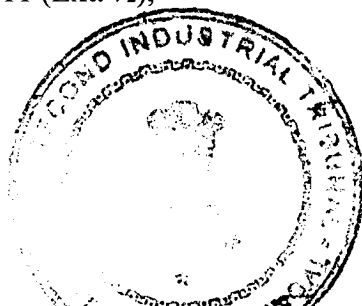
The case record shows that during the stage of hearing of the case on merit, Ld. Lawyer for the workman examined the workman Swapan Chakraborty as P.W.-1 on 13.01.2015 and this P.W.-1 was also cross-examined by Ld. Lawyer for the company M/s. Pathfinder Consultancy Service Ltd. in the way that cross-examination of P.W.- 1 was started from 11.12.2015 and it continued on different dates upto 04.05.2017, on which Ld. Lawyer for the company wanted time to cross-examine P.W.-1 further and order dt. 04.05.2017 shows that as per his prayer Ld. Lawyer for the company M/s. Pathfinder Consultancy Service Ltd. was allowed time as per his prayer fixing 01.06.2017 for further cross-examination of P.W.-1 Swapan Chakraborty but the

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company became absent without any step and the case was further fixed for cross-examination of P.W.-1 by Ld. Lawyer for the company on 07.07.2017 and on that day also the company M/s. Pathfinder Consultancy Service Ltd. became absent without any step and during passing of the order dt. 07.07.2017 Ld. Lawyer for the company mentioned through another Ld. Lawyer junior to him that Ld. Lawyer for the company did not have any instruction from the company regarding further proceeding of the case by the company and by order dt. 07.07.2017, the company M/s. Pathfinder Consultancy Service Ltd. was directed to file written show cause mentioning as to why necessary order as per law would not be passed due to long absence of the company without any step, and S/R of this show cause notice was received on 30.08.2017 with postal remark – left, and then fresh show cause notice was issued to both companies i.e. M/s. Pathfinder Consultancy Service Ltd. as per given address by Ld. Lawyer for the workman and M/s. Dutta Ghosh Associates, as M/s. Dutta Ghosh Associates also started becoming absent without any step. The letter containing show cause notice to M/s. Pathfinder Consultancy Service Ltd. was sent back with postal remark - left but the same as was issued to M/s. Dutta Ghosh Associates was received by it and on 16.10.2017 Ld. Lawyer for the Dutta Ghosh Associates also appeared and filed letter of authority and opportunity was given to Ld. Lawyer for the M/s. Dutta Ghosh Associates for hearing and to take step accordingly but after that as I mentioned earlier also M/s. Dutta Ghosh Associates also started becoming absent without any step, yet opportunity was given to the companies to further cross-examine the P.W.-1 and this opportunity to the companies continued up to a few dates more till 07.03.2018 but the companies did not turn up and continued to remain absent without any step and on 06.04.2018 Ld. Lawyer for the workman filed a petition to close the evidence of P.W.s on the ground the P.W.-1 being workman had been facing sheer economic difficulties in attending Court as a witness but the company had been remaining absent without any step for long, and after hearing of the Ld. Lawyer for the workman, his petition was allowed and the evidences of O.P.W.s was closed. Thus, though the P.W.-1 was cross-examined by Ld. Lawyer for the company M/s. Pathfinder Consultancy Service Ltd. for several dates, yet last of all the company started becoming absent and never turned up to cross-examine P.W.-1 up to concluding level till date.

Ld. Lawyer for the workman also adduced documentary evidences which are :

- 1) Letter dt. 31.05.2010 by workman Swapan Chakraborty to City Bank mentioning address of company M/s. Dutta Ghosh Associates and Pathfinder Consultancy Service Ltd. (Ext. 1),
- 2) Letter addressed to Deputy Labour Commissioner by workman Swapan Chakraborty dt. 16.07.2010 (Ext. 1/1),
- 3) Letter addressed to Labour Commissioner, Government of West Bengal by workman Swapan Chakraborty containing seal of Labour Directorate, Government of West Bengal with date as 25.01.2011 (Ext. ½),



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- 4) Letter addressed to Assistant Labour Commissioner, Government of West Bengal dt. 09.12.2011 (Ext. 1/3),
- 5) Letter addressed to Labour Commissioner, Government of West Bengal dt. 24.08.2012 by workman Swapan Chakraborty (Ext. ¼),
- 6) Letter addressed to Assistant Labour Commissioner, dt. 27.09.12 by workman Swapan Chakraborty (Ext. 1/5),
- 7) Daily attendance register of M/s. Dutta Ghosh Associates and leave application (Ext. 2),
- 8) Salary slip and copy of pass-book of Allahabad Bank (Ext. 3),
- 9) Copies of attendance register (Ext. 4),
- 10) Copy of identity card of workman Swapan Chakraborty (Ext. 5),
- 11) Salary slip in the name of workman Swapan Chakraborty by company M/s. Dutta Ghosh Associates (Ext. 6),
- 12) Copy of cheque dt. 01.01.2007 (Ext. 7),
- 13) Copy of cheque in the name of Swapan Chakraborty (Ext. 7/1),
- 14) Copy of leave application dt. 15.12.2006 (Ext. 8),
- 15) Daily attendance register of company M/s. Dutta Ghosh Associates (Ext. 9),
- 16) Copy of letter dt. 13.12.2010 addressed to Assistant Labour Commissioner by management of company M/s. Pathfinder Consultancy Service Ltd. (Ext. 10),
- 17) Letter dt. 29.12.2010 addressed to Assistant Labour Commissioner Mr. N.K. Kotal by Dutta Ghosh Associates, (Ext. 10/1),
- 18) Letter addressed to Assistant Labour Commissioner, Government of West Bengal dt. 03.08.2012 by Pathfinder Consultancy Service Ltd. (Ext. 10/2),

As I mentioned earlier the company i.e. M/s. Pathfinder Consultancy Service Ltd. filed written statement to contest the case but after cross-examining P.W.-1 partly comprising a long time, this company started becoming absent despite direction on it to show cause as to why necessary order would not be passed against it for becoming unauthorised absent for long but to no effect and this company did not turn up till date and also did not adduce any evidence either oral or documentary and last of all it was the submission of the Ld. Lawyer for M/s. Pathfinder Consultancy Service Ltd. that there was no instruction from the management of the company M/s. Pathfinder Consultancy Service Ltd. to proceed with the case further. As I also mentioned earlier that the other company M/s. Dutta Ghosh Associates entered into appearance after getting summon and also engaged lawyer who, as I mentioned earlier also, who wanted to take step after opportunity was given to it for hearing but it also became absent without any step and did not file any written statement neither did it adduce any evidence either oral or documentary.

As many as three issues have been framed by appropriate government in the order of reference, these are 1) If the termination of the service by way of refusal of employment of



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workman Sri Swapan Chakraborty w.e.f. 20.03.2010 by the company M/s. Pathfinder Consultancy Service Ltd. is justified or not, 2) If the termination of the service of workman Sri Swapan Chakraborty by way of transfer to M/s. Pathfinder Consultancy Service Ltd. w.e.f. 30.06.2007 by M/s. Dutta Ghosh Associates is justified or not, and 3) To what other relief, if any, the workman is entitled.

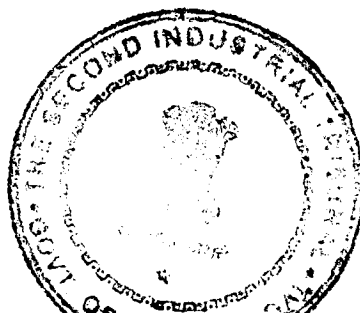
Ld. Lawyer for the workman in his written argument has mentioned that the company M/s. Pathfinder Consultancy Service Ltd. is located at 4, Ripon Street, Kolkata-16, it has a good number of employees but the management of the company does not follow the laws of the land as far as labour matter is concerned. This company has many other sister companies namely M/s. Dutta Ghosh Associates, M/s. Promak Pvt. Ltd. and M/s. K. Roy & Co. etc. It is also stated that the workman was appointed by M/s. Dutta Ghosh Associates locating at 4, Ripon Street Kolkata-16 on and from 20.06.2004 and he was posted at City Bank branch at 41, Jawaharlal Nehru Road, Kolkata-71 and the workman had been working in that City Bank branch till the end of 2008 without any interruption in his service but what happened in 2008 is that the workman suffered leg injury for which he had to go on leave for his medical treatment and after recovery from that illness he came to resume his duty and at that time only the workman came to know that he had been transferred by his employer M/s. Dutta Ghosh Associates to M/s. Pathfinder Consultancy Service Ltd. without giving him any notice of change in his service condition and he was thus not allowed to work in his earlier place of working. Ld. Lawyer has also mentioned in his written argument that accordingly the workman had been working in M/s. Pathfinder Consultancy Service Ltd. till 2009 with protest, but he again fell ill and he was admitted to a nursing-home and after his recovery from that illness he resumed his duty and accordingly continued working till 19.03.2010 but on and from 20.03.2010 he was not allowed to resume his duty without any reason and after that the workman run pillar to post to get his service back and though the management of the company assured him to give his service back, yet last of all the management of the company did nothing and the workman became bound to raise an industrial dispute by writing a letter dt. 31.05.2010 to the Assistant Labour Commissioner, Government of West Bengal requesting him to intervene in that matter. Accordingly, the conciliation officer initiated a conciliation proceeding and then workman also submitted written representation by letters dt. 16.07.2010, 25.01.2011, 19.12.2011, 24.08.2012 and 27.09.2012 before the conciliation officer. It is also mentioned in the written argument that the workman wrote a letter dt. 25.10.2010 to M/s. Pathfinder Consultancy Service Ltd. and this company M/s. Pathfinder Consultancy Service Ltd. also made a reply by a letter dt. 13.12.2010 and the workman also made a representation before his employer M/s. Dutta Ghosh Associates on 02.12.2010 and this company also made a reply by a letter dt. 29.12.2010. It is also mentioned in the argument that the dispute could not be settled during conciliation proceeding and then conciliation officer submitted a failure report before the appropriate government which then made the order of reference as a result of which this case arose, and the workman after such

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wrongful and illegal termination of service by way of refusal of employment could not secure any other employment elsewhere despite his sincere efforts and has remained unemployed and facing economic stringency with his family members and his last drawn pay was Rs. 2500/-. It is also mentioned in the argument that during conciliation proceeding the company made an offer to the workman to join his service by writing a letter dt. 23.07.2012 to the conciliation officer but did not mention any date and place for joining and also did not pay any back wages with other consequential benefits and the offer was found to be vague and mala fide, with addition that the workman is very much willing to join his duty if the company allows him to do so and accordingly replied to the company by writing letter dt. 24.08.2012 and 27.09.2012 mentioning that he is ready to join his duty. Ld. Lawyer for the workman has further mentioned in the argument that the workman Swapan Chakraborty as a witness adduced oral evidence and also adduced documentary evidences which were marked exhibited without any objection by Ld. Lawyer for the company and the company never denied any of these, with addition that the company is the custodian of records and therefore it was necessary on the part of the companies to justify their stance by producing their documents from their records but did not do so and asserted that direction is required to be given on M/s. Dutta Ghosh Associates to reinstate the workman with full back-wages and consequential benefits. Ld. Lawyer for the workman orally also argued that only the company M/s. Pathfinder Consultancy Service Ltd. filed written statement to contest the case and in the written statement this company has mentioned that the service of the workman was never terminated by the company and the management of the company wanted the workman to resume his duties and by way of allegation the company mentioned in the written statement that after falling ill the workman wrote a leave letter addressing the company but the workman never placed the leave letter before the management of the company but handed over the same to one of his colleague who gave the letter to the management of the company and the company ultimately accepted the letter and granted leave and then asked the workman as to why he did not give the leave letter directly to the management of the company with a further allegation that the workman had not been in continuous service for 240 days prior to his alleged termination of service by way of refusal of employment. Ld. Lawyer for the workman has also mentioned in his argument that though the company has mentioned that it wanted the workman to resume his duty but actually the management of the company did not do so with sincerity and never required the workman to resume his duties by mentioning date and time and place, mentioning further that the employer of the workman is M/s. Dutta Ghosh Associates which deputed the workman firstly at city bank and then in the company m/s. Pathfinder Consultancy Service Ltd. and therefore date and time and place of joining were essential but the company never did so and the workman could not join / resume his duties. Ld. Lawyer also orally argued that the workman became ill suddenly and any how wrote a leave letter addressing the company and sent it to the management of the company through his colleague as he was unable to do so due to his illness which compelled him to get

admission in a hospital and sending letter for grant of leave through his colleague was not illegal and calling for explanation from the workman by the management of the company was therefore not required by any law over the matter, yet the workman has shown full sincerity and informed his illness by the letter by which he wanted leave. Ld. Lawyer has further argued that the workman examined himself as P.W.-1 and after completion of his examination-in-chief, Ld. Lawyer for the company M/s. Pathfinder Consultancy Service Ltd. started cross-examining him and cross-examination continued for several dates consuming a long period of time and last of all wanted further time for further cross-examination but after that the company M/s. Pathfinder Consultancy Service Ltd. started becoming absent without any step and never turned up despite direction by this Tribunal to show cause for its long absence without any step, thus the company abandoned the case altogether and never turned up to adduce any evidence to justify its allegation that the workman never worked continuously for 240 days, neither did it adduce any evidence of any sorts – oral or documentary. Ld. Lawyer further submitted that the workman was a permanent workman and he worked continuously without any gap and before his termination by way of refusal of employment, he was given no opportunity for hearing and even no domestic enquiry was conducted against the workman and the company terminated the workman without following the requirements of law and thus such act on the part of the management of the company has become ultra vires the relevant statutory provisions or principles of natural justice. Ld. Lawyer further submitted that the employer of the workman M/s. Dutta Ghosh Associates after receiving notice entered into appearance and wanted to contest the case but never turned up and never took any step for the purpose of contesting the case either by filing written statement or otherwise. To support his such argument Ld. Lawyer for the workman has cited one decision of Hon'ble Supreme Court of India in 2013 (139) FLR 541 mentioning that Hon'ble Supreme Court of India in that case was very much pleased to observe that if action taken against the employee by the employer is found to be ultra vires the relevant statutory provisions of principles of natural justice, the employee is required to be reinstated – restoring him to the possession he has before his dismissal.

As I already mentioned earlier the company M/s. Pathfinder Consultancy Service Ltd. filed written statement to contest the case and during the stage of hearing of the case on merit, evidence of workman as P.W.-1 started and after completion of his examination-in-chief, Ld. Lawyer for the company started cross-examining him and he continued cross-examining P.W.-1 for several dates involving a long period of time and then wanted time to cross-examine P.W.-1 further and after that this company M/s. Pathfinder Consultancy Service Ltd. started becoming absent without any step and last of all the Ld. Lawyer for this company on being enquired by this Court stated that there was no instruction from the management of this company to proceed with the case further and then this Tribunal issued show cause notice to the management of the company mentioning as to why necessary order would not be passed due to its absence without

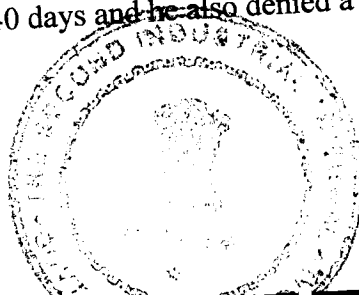


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any step for long, yet the company did not turn up. After getting notice from this Court, the other company M/s. Dutta Ghosh Associates appeared and then its Ld. Lawyer submitted to take step to contest the case but never turned up despite show cause notice issued on it for this purpose, M/s. Dutta Ghosh Associates being the employer of this workman.

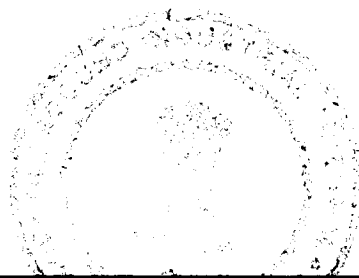
The workman Swapan Chakraborty has examined himself as P.W.-1, and he deposed that he was the employee of the company, he was appointed by M/s. Dutta Ghosh Associates on 20th June, 2004 and he joined the duty on that day only in the office of M/s. Dutta Ghosh Associates at 4, Ripon Street Kolkata-16 and he worked there as a peon and he continued working accordingly in the company up to 2007 and then he was deputed at City Bank branch 41, Jawaharlal Nehru Road, Kolkata-1 as labour on behalf of his employer M/s. Dutta Ghosh Associates and then he was transferred to M/s. Pathfinder Consultancy Service Ltd. verbally at the end of 2008 and he had been continuing working under M/s. Pathfinder Consultancy Service Ltd. up to 20.03.2010. P.W.-1 also proved during his examination-in-chief some documents that were marked Ext. 1 to Ext. 10/2. P.W.-1 also deposed that the company did not inform him in writing as to when he was transferred from Dutta Ghosh Associates to other company M/s. Pathfinder Consultancy Service Ltd. and his nature of work in M/s. Pathfinder Consultancy Service Ltd. was same and the owner of both companies i.e. M/s. Pathfinder Consultancy Service Ltd. and M/s. Dutta Ghosh Associates is also same. The P.W.-1 also deposed that he has remained unemployed from 20.03.2010 and on 20.03.2010 he requested the management of the company to allow him to join in his service but the management of the company did not allow him to join and he also deposed denying that he never worked in the company for 240 days in a year and also denying that his service was not terminated from 20.03.2010, mentioning further that the company verbally told him to join subsequently but never give him anything written and he also denied that the allegations against him as mentioned in the written statement filed by M/s. Pathfinder Consultancy Service Ltd. are correct and also denied that he had been running his own business adding that he is not employed elsewhere. This P.W.-1 was cross-examined by Ld. Lawyer for the company and during cross-examination it is further coming that the P.W.-1 worked in the company M/s. Pathfinder Consultancy Service Ltd. till 19.03.2010 and on that day he also signed the attendance register and also worked but from 20.03.2010 he was refused to work. Admittedly ext. A is a leave application and this Ext. A was filed by the workman (P.W.-1) praying for leave and Ld. Lawyer for the company after showing this to the P.W.-1 wanted to know from the P.W.-1 about the Ext. A and P.W.-1 replied that it was his leave application and by that leave application (Ext. A) he prayed for grant of leave from 16.03.2010 to 19.03.2010 and then Ld. Lawyer for the company gave a suggestion to the P.W.-1 that the P.W.-1 left his service voluntarily but the P.W.-1 denied it. The P.W.-1 also deposed that on 20.03.2010 he i.e. workman, P.W.-1 went to the company for doing duty but the company did not allow him to join and he (P.W.-1) also denied a suggestion that he never worked in the company continuously for 240 days and he also denied a further suggestion that

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the company never terminated his service from 20.03.2010. The workman as P.W.-1 denied all the allegations made by company against him as mentioned in para-16 to para-20 of the written statement filed by the company. During cross-examination Ld. Lawyer for the company wanted to know from the workman (P.W.-1) as to if the company issued any appointment letter to him and the P.W.-1 replied that the company did not give him any appointment letter adding that he was a permanent employee of the company and he worked as a peon and he also deposed that he raised disputes verbally with his employer M/s. Dutta Ghosh Associates. P.W.-1 also stated in cross-examination that the address of O.P. companies i.e. M/s. Dutta Ghosh Associates, M/s. Promak Pvt. Ltd., M/s. Pathfinder Consultancy Service Ltd. and M/s. K. Roy & Co. are same i.e. 4, Ripon Street Kolkata-16 and also stated that he has filed document to show that M/s. Dutta Ghosh Associates is the sister concern of Pathfinder Consultancy Service Ltd. adding that M/s. Dutta Ghosh Associates and M/s. Pathfinder Consultancy Service Ltd. are same and denied a suggestion put to him by Ld. Lawyer for the company that M/s. Dutta Ghosh Associates and M/s. Pathfinder Consultancy Service Ltd. are different companies. Ld. Lawyer for the company wanted to know from the P.W.-1 about his leave application and P.W.-1, identifying his leave application (Ext. A) replied that he wanted leave for 4 days from 16.03.2010 to 19.03.2010 due to illness and P.W.-1 also denied a suggestion that para-4 of his written statement is not correct, para-4 of the written statement filed by workman contains that the workman had worked diligently in the M/s. Pathfinder Consultancy Service Ltd. till 2009 with protest, all of a sudden he again fell ill and was admitted in the nursing home and after recovery from his illness he resumed his duty and worked in the company till 19.03.2010 but on and from 20.03.2010 he was not allowed to resume his duty without giving any reason and opportunity, the reason being best known to company, it also contains that after that the workman run from pillar to post to get his service back and every-time he went to resume his duty he was told by the management of the company that he would be allowed to resume his duty soon and thereafter the workman made several oral demands before the company but all went in vain and the company sat tied over the matter and the workman after finding no response from the company had to raise an industrial dispute by filing a letter dt.31.05.2010 with the Assistant Labour Commissioner, Government of West Bengal for intervention in the matter and the conciliation proceeding was initiated by the conciliation officer. P.W.-1 also stated in cross that by filing the application (Ext.1) he raised dispute before the labour commissioner because he was not allowed to join in the work. P.W.-1 also stated in cross that his family consists of himself and his mother and he now maintains his family with the help of his friends and relatives. In cross-examination P.W.-1 also deposed that by filing a letter (Ext. 1) he raised dispute against the company M/s. Dutta Ghosh Associates. Ld. Lawyer for the company during cross-examination wanted to know about Ext. 2 and Ext. 3 and the workman as P.W.-1 stated that Ext. 2 relates to the company M/s. Dutta Ghosh Associates and Ext. 3 is the voucher issued by the company M/s. Dutta Ghosh Associates with the addition that M/s. Dutta Ghosh Associates opened the saving A/c. in the name of the

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workman. P.W.-1 also deposed in cross that M/s. Dutta Ghosh Associates and M/s. Pathfinder Consultancy Service Ltd. are owned by same person / owner. On the attendance register of the company, Ld. Lawyer for the company put questions to the P.W.-1 and P.W.-1 stated that Ext. 4 is the attendance register of Pathfinder Consultancy Service Ltd. and it is of December, 2009, adding that he joined the company in Dutta Ghosh Associates in 2004. P.W.-1 also deposed in cross that he also worked in M/s. Pathfinder Consultancy Service Ltd. as the owner of this company is same but he was not given any transfer order and also deposed that the owner got him worked in Pathfinder Consultancy Service Ltd. after issuing identity cards. P.W.-1 denied a suggestion put to him by Ld. Lawyer for the company that the company asked him in writing to join the company again during the proceeding before labour commissioner. From the order sheet of the case and from also from the cross-examination of P.W.-1 dt. 04.05.2017 it is found that on 04.05.2017 Ld. Lawyer for the company did not conclude cross-examination of the P.W.-1 and wanted time to further cross-examination of P.W.-1 and the time was allowed but after that the company started becoming absent without any step despite directing it to show cause mentioning as to why necessary order would not be passed because of its absence without any step for long, yet the company continued remaining absent without any step and when it was raised with its Ld. Lawyer, Ld. Lawyer stated before Court that there was no instruction from the company to proceed with the case further as found in the order-sheet, i.e. order No. 51 dt. 07.07.2017.

Ld. Lawyer for the workman orally argued that the workman as P.W.-1 deposed mentioning all as per his contention in the petition / written statement and it has been established by the evidences that the employer of the workman M/s. Dutta Ghosh Associates appointed the workman as a peon and he was made permanent. Ld. Lawyer also mentioned that M/s. Dutta Ghosh Associates then deputed the workman to work in City Bank in Calcutta and after that he was orally transferred to M/s. Pathfinder Consultancy Service Ltd. and just a few days before his dismissal from service by way of refusal of employment, the workman became ill and after filing a leave application, workman had to get medical treatment and after returning back from medical treatment he again joined his duty on 19.03.2010 and also signed the attendance register but when he reported for duty on 20.03.2010 he was not allowed to do his work and after that he repeatedly requested the employer to take him back to his service but to no effect and after that he raised the dispute before the Labour Commissioner, Government of West Bengal by submitting a written letter and a conciliation proceeding was initiated. Ld. Lawyer further stated that during conciliation proceeding the company expressed that the workman would be taken back to his service but the company did not do anything substantive to take him back. Ld. Lawyer further argued that as per evidences it has been proved that the companies i.e. M/s. Dutta Ghosh Associates and M/s. Pathfinder Consultancy Service Ltd. and a few other companies are owned by same owner and all these companies are located in the same address i.e. 4, Ripon

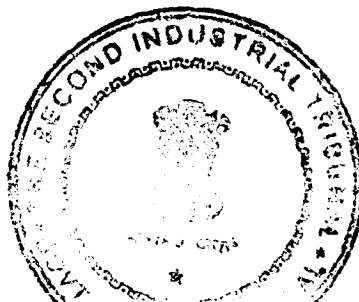
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Street, Kolkata-16. Ld. Lawyer for the workman also argued that on the part of the workman there was no fault in performing his duties and there was no adverse report against him in any way. In the written statement filed by the company the company has raised that the workman did not file his leave application for his medical treatment directly before the management of the company but through his colleague admitting that the company of course granted his leave, so no fault on the part of the workman in any way arose. Ld. Lawyer further raised that in the written statement filed by the company some allegations had been raised mentioning that the workman took a loan from the company but the workman did not pay the same back to the company and he never worked continuously for 240 days immediately preceding his alleged termination of his service by way of refusal of employment and Ld. Lawyer has further argued that all these allegations are baseless and the company did not adduce any evidence to substantiate all such allegations, further mentioning that in para-17 of the written statement filed by the company the company has admitted that the workman worked in the company continuously and due to such admission, the company cannot say that the workman did not complete continuous service for 240 days immediately preceding his alleged termination. Ld. Lawyer for the company has further raised that the workman was a permanent employee of the company and it is the stance of the company that the company never terminated him and also mentioned that it wanted the workman to re-join his duty but the company did not do anything substantive to enable him to take him back to his duty. Ld. Lawyer for the workman has further raised that the company did not give any opportunity to the workman for any hearing before his dismissal by way of refusal of employment and this is against the compulsory requirement of law and the company also did not follow the requirement of law in any way. Ld. Lawyer also raised that the workman raised the dispute with the management of the company by repeatedly requesting it to take him back to his service and the company simply pretended that the workman would be taken back to his service but the company never allowed him to join his duty, and then the workman became bound to raise the dispute before Labour Commissioner, Government of West Bengal and then during conciliation proceeding the company further raised that the workman would be taken back to his service but it was only a pretention to avoid legal requirement. Ld. Lawyer for the workman also argued that the workman has also adduced documentary evidences in support of his case besides his oral evidence.

Ext. 1 is a letter dt. 31.05.2010 written by workman to M/s. city back, 41 Chowranghee, Kolkata-71 and also to both M/s. Dutta Ghosh Associates and M/s. Pathfinder Consultancy Service Ltd. having common address as 4, Ripon Street Kolkata-16 and it appears to have contained all his grievances as mentioned in the written statement filed by workman, Ext. 1/1 is found to be a letter addressed to Labour Commissioner, Government of West Bengal, New Secretariat Buildings, Kolkata-1 by workman Swapan Chakraborty, and it appears to have contained all as per his deposition as P.W.- 1, mainly contending that he was terminated from

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service by way of refusal of employment by the company without assigning any reason or without affording him any opportunity of hearing and requested the Labour Commissioner to intervene the matter, Ext.-1/3 is a letter by the workman Swapan Chakraborty mentioning some matters relating to enhancement of salaries, Ext. ¼ is another letter addressed to Labour Commissioner, Government of West Bengal dt. 24.08.12 by workman Swapan Chakraborty requesting Labour Commissioner to do the needful to enable the workman to get his service back, Ext. 5 is a letter dt. 27.09.2012 by workman Swapan Chakraborty mainly contending that his service was illegally taken away by way of refusal of employment and he prayed before Labour Commissioner for appropriate relief by getting back his service. Ext. 2 is found to be an attendance register / leave application in the name of Dutta Ghosh Associates and the attendance register contains the name of the workman Swapan Chakraborty and the leave application shows that Swapan Chakraborty prayed for leave on ground of his own purpose and it was granted by the company, Ext. 3 is found to be salary slip by the company mentioning basic pay of the workman as Rs. 1100/- with other allowances, Ext. 3 is found to be a savings bank A/c. in Allahabad Bank in the name of workman Swapan Chakraborty who as P.W.-1 deposed that this bank A/c. was opened in his name by the management of the company, Ext. 4 is the attendance register of the company mentioning the name of Swapan Chakraborty, Ext. 5 is found to be the identity card in the name of Swapan Chakraborty by the company M/s. Dutta Ghosh Associates, Ext. 6 is found to be the salary slip of workman Swapan Chakraborty by company M/s. Dutta Ghosh Associates by which Rs. 1700/- was given to workman Swapan Chakraborty by cheque drawn on Allahabad Bank, Ext. 7 is found to be another cheque paying salary to Swapan Chakraborty drawn on Allahabad Bank, Ext. 7/1 is also a salary cheque in the name of workman Swapan Chakraborty, Ext. 8 is found to be a letter by Allahabad Bank, 46C, Rofi Ahmed Kidway Rod, Kolkata addressed to workman Swapan Chakraborty thanking him for opening a bank A/c., Ext. 9 is the daily attendance register of Dutta Ghosh Associates and it contains the name of workman Swapan Chakraborty. As P.W.-1 workman Swapan Chakraborty deposed that the conciliation was started on the basis of his letter by conciliation officer who also issued notice to the company to participate in the conciliation proceeding and also deposed that due to adamant attitude on the part of the management of the company, no fruitful result could be attained by the conciliation officer and to prove this Ld. Lawyer for the workman has filed one document which was marked Ext. 10 without any objection from the Ld. Lawyer for the company, Ext. 10 is found to be a Letter addressed to assistant Labour Commissioner, Government of West Bengal, New Secretariat Buildings, Kolkata-700001 by management of Pathfinder Consultancy Service Ltd. containing that the management of the company wrote this Ext. 10 after receiving letter 3157/MISC/10/2CC dt. 25.10.10 and a further letter No. 3340/MISC/10/2CC dt. 22.11.2010 mentioning that the company sent its representative Mr. Taraknath Dhar for discussion with conciliation matter, further mentioning that workman Swapan Chakraborty was not attending office of the company from 20.03.2010 expressing that

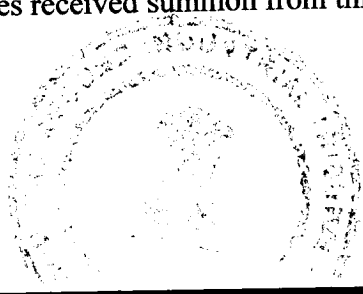
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the management of the company did not have any idea about the position of the workman during the time of writing this letter (Ext. 10) and denied refusal of employment admitting that the Assistant Labour Commissioner requested the management of the company for joint conference with workman Swapan Chakraborty and the management of the company also mentioned in that letter that the company was sustaining loss and for that reason the company did not have any option to further accommodate the workman Swapan Chakraborty. From this document it is coming out that in the written statement filed by the company, as indicated by Ld. Lawyer for the workman, the management of the company has repeatedly mentioned that the workman Swapan Chakraborty was never refused employment and he had left the service voluntarily and did not join the service on being asked by the company, and now from this document of the company as has been sent to Assistant Labour Commissioner, Government of West Bengal by the company, it is coming out that on the part of the workman Swapan Chakraborty there was at all no fault and nothing has been mentioned in the letter (Ext. 10) raising any allegation against the workman, and the management of the company has simply raised that the company is sustaining loss and it is not possible on the part of the company to take back the workman to his job in the company, and now this admitted position by this document (Ext. 10) has clearly and at the same time sufficiently substantiated the assertion of the workman that his service was taken away by the management of the company by refusal of employment illegally without any fault whatsoever on the part of the workman and without affording any right to hearing to him in any way, further the assertions of the company in the written statement filed by the company that the workman did not file leave application directly before the management of the company and he never completed continuous work for 240 days preceding his alleged taking away of service by way of refusal of employment are found to be false and manufactured due to admission by the management of the company in their document (Ext. 10).

The Ld. Lawyer for the workman vehemently raised that as per evidence the workman happened to be the permanent workman of the company and before taking away his service by refusal of employment no opportunity was given to him for hearing as compulsorily required by law and even no domestic enquiry was also conducted mentioning that there was no ground of course to conduct any domestic enquiry by the company. Ld. Lawyer further submitted that Ld. Lawyer for the company M/s. Pathfinder Consultancy Service Ltd. filed written statement to contest the case and during the stage of hearing on merit the workman examined himself as P.W.-1 and Ld. Lawyer for the company continued cross-examining P.W.-1 but before concluding the cross-examination the company M/s. Pathfinder Consultancy Service Ltd. started remaining absent without any step despite issuing show cause notice over that matter by the court and last of all on being initiated by court Ld. Lawyer for the company appearing before the Court mentioned that there was no instruction from the management of the company to further proceed with the case, Ld. Lawyer for the workman also submitted that the other company M/s. Dutta Ghosh Associates received summon from this Court and it also appeared

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written statement filed by the company M/s. Pathfinder Consultancy Service Ltd. It is already been proved by the workman Swapn Chakraborty that he was the permanent employee of the company and his service was taken away by the management of the company without any reason whatsoever infringing all the fundamental requirements of law and at the same time in violation of natural justice which is found to be most dangerous and all these have amounted to unfair labour practices in all respects. I have already discussed the document (Ext. 10) which is a letter by management of the company M/s. Pathfinder Consultancy Service Ltd. addressed to the Assistant Labour Commissioner, Government of West Bengal, wherein the management of the company clearly admitted that the management of the company has no option to accommodate the workman any further and it shows nothing excepting that the termination of service of the workman by refusal of employment was done by the management of the company illegally and without assigning any reason, of which there is no support in law. The management of the company did all these in violation of the mandatory requirements of law. It is therefore to say that the termination of service by way of refusal of employment of the workman Sri Swapn Chakraborty w.e.f. 20.03.2010 by M/s. Pathfinder Consultancy Service Ltd. is not justified and the termination of service of the workman by way of transfer to M/s. Pathfinder Consultancy Service Ltd. w.e.f. 30.06.2007 by M/s. Dutta Ghosh Associates is also not justified and all these are illegal.

Issue No. 3 says as to what relief, if any, the workman is entitled. It is the prayer for the workman that his service was illegally taken away by way of refusal of employment and after that he tried to get any other service but no service was available to him and he has become totally income-less and has been facing starvation with his family comprising workman himself and his aged mother. Against all these in the written statement filed by the company M/s. Pathfinder Consultancy Service Ltd., it has been mentioned that after such termination of service the workman started a stall just in front of the gate of premises of the company M/s. Pathfinder Consultancy Service Ltd. and by selling different article from that stall the workman has been earning much more what he earned as salary from the company. during the time of hearing on merit, P.W.-1 i.e. workman has deposed that he does not have any source of income and he has been facing starvation immediately after termination of his service by way of refusal of employment as he failed to get another despite attempts by him and he is any how remaining alive with his mother by getting financial another helps from relatives and friends. P.W.-1 was cross-examined by Ld. Lawyer for the company M/s. Pathfinder Consultancy Service Ltd. at length but nothing has come during his cross-examination to distort any of such evidences adduced by workman. It is the assertion of the company M/s. Pathfinder Consultancy Service Ltd. that the workman has been earning huge money by installing a stall in from of the gate of the company and therefore it was necessary on the part of management of the company to prove the same independently but the company did not adduce any evidence and left the case as I

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mentioned earlier. The document (Ext. 10) is a letter by company to the Assistant Labour Commissioner, Government of West Bengal and the management of the company wrote it mentioning all about the workman and in that letter mentioning comments by the management of the company, no such plea by the management of the company regarding business of he workman in front gate of the company's premises by installing a stall has been mentioned and thus such plea on the part of the management of the company is found to be frivolous and baseless in view of the evidences by workman that he tried to get an employment after being dismissed from service by way of refusal of employment and he has been facing starvation with his family comprising his aged mother and any how pulling on with the help of friends and relatives, all of which are found to be unchallenged.

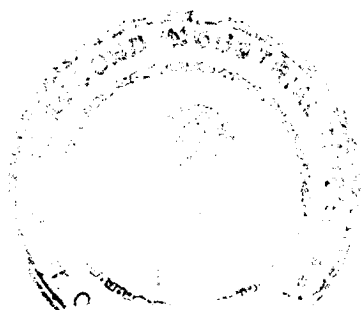
Ld. Lawyer for the workman has argued that the workman was the permanent employee of the company and he was terminated from his service by way of refusal of employment without following even the fundamental requirements of law. Ld. Lawyer has also mentioned that the workman has prayed for reinstatement in service with full back-wages with consequential benefits and to support his such argument Ld. Lawyer for the workman has cited one ruling in 2013(139) FLR 541 of Hon'ble Supreme Court of India decided by Hon'ble Mr. Justice G.S. Singhvi and Hon'ble Mr. Justice V. Gopala Gowda and submitted that in that case Hon'ble Court found that service of the workman was taken away in violation of fundamental requirements of law and Hon'ble Court in that case was very much pleased to reinstate the workman with full back-wages and Ld. Lawyer urged the Court to apply this decision in this case being similar to it. It has already been found that the workman was a permanent employee of the company and his service was taken away by the management of the company without following even the fundamental requirements of laws and it is found that the action taken against the employee Swapna Chakraborty by the management of the company is found to be ultra vires of the relevant statutory provisions and also principles of natural justice and therefore as per observation of Hon'ble Supreme Court of India in the above referred case, the workman Swapna Chakraborty is entitled to get reinstatement restoring him to the position he held before his dismissal or removal from service by way of refusal of employment as the ruling cited by Ld. Lawyer for the workman is found to be similar to the present case.

In the summing up it is to say that the action taken against the workman Sri Swapna Chakraborty by the employer nothing but ultra vires the relevant fundamental requirements of law and also the principles of natural justice.

It is therefore,

ORDERED.

that the issue No. 1 as to whether the termination of service by way of refusal of employment



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of workman Sri Swapan Chakraborty with effect from 20.03.2010 by M/s. Pathfinder Consultancy Service Ltd. is justified or not, is decided in favour of the workman Sri Swapan Chakraborty and the termination of service by way of refusal of employment of Sri Swapan Chakraborty w.e.f. 20.03.2010 by M/s. Pathfinder Consultancy Service Ltd. is illegal, unauthorised and the same is set aside, and he issued No. 2 as to whether the termination of service of Sri Swapan Chakraborty by way of transfer to M/s. Pathfinder Consultancy Service Ltd. w.e.f. 30.06.2007 by M/s. Dutta Ghosh Associates is justified or not, is also decided in favour of the workman and the termination of service of Sri Swapan Chakraborty by way of transfer to M/s. Pathfinder Consultancy Service Ltd. w.e.f. 30.06.2007 by M/s. Dutta Ghosh Associates is illegal, unauthorised and the same is set aside and regarding issue No. 2, as to what relief, if any, the workman is entitled, it is to say that the workman Sri Swapan Chakraborty is entitled to get reinstatement in his service restoring him to the position he held during the time of his dismissal from service by way of refusal of employment w.e.f. 20.03.2010 and accordingly the management of the company M/s. Dutta Ghosh Associates is directed to reinstate the workman Sri Swapan Chakraborty in his service restoring his position he held in the company just before the date of dismissal on 20.03.2010 immediately and also directed to pay the back-wages with all consequential benefits to the workman Sri Swapan Chakraborty immediately, and this order and direction of this Tribunal is to be treated as an award of this Tribunal on contest in view of order of reference vide No. 363-I.R./IR/11L-25/13dt. 05.04.2013 by order of Governor, signed by Deputy Secretary to the Government of West Bengal, Labour Department, I.R. Branch, Writers Buildings, Kolkata-700001. It is directed that Necessary number of copies of this award be prepared and send to the appropriate government i.e. Additional Chief Secretary to the Government of West Bengal, Labour Department, New Secretariat Buildings, 12th floor, 1, K.S. Roy Road, Kolkata – 700001.

Dictated & corrected by me.

Signature
Judge



Signature
Judge
2nd Industrial Tribunal
21.02.2019