

18498/2019

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

No. Labr/. 5.29. / (LC-IR)/22015(16)/69/2019

Date : 03.06.19

ORDER

WHEREAS an industrial dispute existed between M/s The Calcutta Silk Manufacturing Company Ltd., 23, B. T. Road, P.O. - Sukchar, Dist. - North 24 Parganas and Sri Trigunananda Jha, C/o Mohan Rao, H/o Raghunath Shaw, Siddheswari Road, P.O. - Sukchar, Dist. - North 24 Parganas regarding the issue, being a matter specified in the second schedule to the Industrial Dispute Act, 1947 (14 of 1947);

AND WHEREAS the workman has filled an application under section 10(1B)(d) of the Industrial Dispute Act, 1947 (14 of 1947) to the Judge, First Industrial Tribunal, Kolkata specified for this purpose under this Deptt.'s Notification No. 1085-IR/12L-9/95 dated 25.07.1997.

AND WHEREAS, the Judge of the said First Industrial Tribunal, Kolkata heard the parties under section 10(1B)(d) of the I.D. Act, 1947 (14 of 1947).

AND WHEREAS the said Judge First Industrial Tribunal, Kolkata has submitted to the State Government its Award under section 10(1B)(d) of the I.D. Act, 1947 (14 of 1947) 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


: 2 :

No. Labr./520/1(5)/(LC-IR)

Date 03-06-19

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

1. M/s The Calcutta Silk Manufacturing Company Ltd., 23, B. T. Road, P.O. - Sukchar, Dist. - North 24 Parganas.
2. Sri Trigunananda Jha, C/o Mohan Rao, H/o Raghunath Shaw, Siddheswari Road, P.O. - Sukchar, Dist. - North 24 Parganas.
3. The Asstt. Labour Commissioner, W.B. In-Charge, Labour Gazette.
4. The Labour Commissioner, W.B., New Secretariat Buildings, (11th Floor), 1, Kiran Sankar Roy Road, 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./520/2(2)/(LC-IR)

Date 03-06-19

Copy forwarded for information to :-

1. The Judge, First Industrial Tribunal, Kolkata, with respect to his Memo No. 587 - LT dated 13.05.2019.
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. The Calcutta Silk Manufacturing Co. Ltd., 23 B. T. Road, Post-Sukhchar, District-North 24 Parganas (West Bengal) and it's workman Sri Trigunananda Jha, C/o. Mohan Rao, H/o. Raghunath Shaw, Siddheswari Road, P.O. Sukchar, Dist. North 24 Parganas (West Bengal).

(Case No. 01/2012 u/s 10(1B)(d) of Industrial Dispute Act, 1947.

BEFORE THE FIRST INDUSTRIAL TRIBUNAL: WEST BENGAL

PRESENT

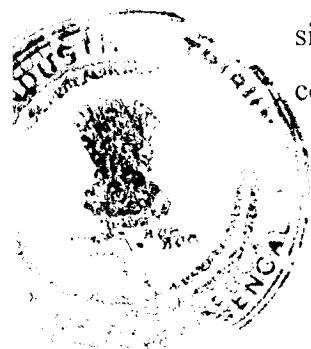
SHRI TANMOY GUPTA, JUDGE,
FIRST INDUSTRIAL TRIBUNAL, KOLKATA

A W A R D

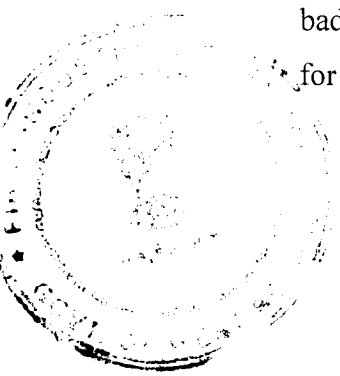
The instant case arose out of an application u/s. 10(1B) (d) of Industrial Dispute Act, 1947 as amended filed by the workman Trigunananda Jha against his employer M/s. The Calcutta Silk Manufacturing Co. Ltd. challenging the termination of service of the said workman by the company with effect of 3rd April 2005 by way of refusal of employment with a prayer for issuance of an award declaring the said termination as illegal and unjustified and for his reinstatement with full back wages.

On receipt of such claim statement submitted by the workman Sri Trigunananda Jha, notice was issued to the other side namely, the company who has appeared and contested the case by filing written statement.

The case as made out by the workman in the claim petition filed on 07.03.2012 is that the opposite party is a company having its factory situated in the address as mentioned above and having its registered office at 135 A, Biplabi Rashbehari Bose Road, Calcutta-700 001. The applicant/workman was appointed as Durwan in 1968 in the factory premises of the opposite party. The workman has given a meritorious and skilful service with hard work, intelligent execution and untiring zeal which earned for him an unblemished record of service and clear carrier to the complete satisfaction of all concerned. The opposite party/company is a highly prosperous concern and it maximises its profits time to time but without sharing the same with the exploited workers. The management of the company used to indulge in unfair labour practice of higher and fire without caring to abide by the laws of the land. The management of the opposite party/company without showing any reason all on a sudden declared total suspension of work with effect from 21.10.1999 vide its notice dated 17.10.1999 in total violation of the provisions of law. The management/ opposite party did not release the applicant from his duty since his working as Durwan of the factory wherein valuable property of the company are kept and there are other godowns rented out to outsider for trade and



business. The applicant having no other alternative on good faith, rendered his loyal service in the factory as Durwan with the assurance that the management will pay him his legal entitlements and also wages for the service rendered by him. But the management did not care to pay anything to the applicant. The applicant time to time approached the management for his wages but no satisfactory and fruitful answer was given to him and thereby put the applicant into starvation. The applicant then appeals to the Deputy Labour Commissioner for intervention stating all facts so that he could get his remuneration/benefits. The opposite party/company being dissatisfied and enraged with the aforesaid action of the applicant with a malafide intention on some false and fictitious allegation against the applicant and ousted him from his quarter and put him in Police custody and terminated the service of the applicant with effect from 3rd April 2005 by way of refusal of employment. The management did not draw up any disciplinary proceedings against the applicant and forced him out of his quarter where he has all his belongings which was not permitted to collect. The applicant/workman being totally helpless and financially handicapped as he is unemployed after termination has to take temporary shelter at his neighbour's residence where the applicant resides at present. Applicant approached the Labour Commissioner for redressal of his grievances by his letter dated 03.06.2005 against such illegal refusal of employment and non-payment of his legal dues. Due to adamant attitude of the opposite party/company all efforts taken by the Labour Commissioner felt flat and no conciliation/negotiation could be achieved. Ultimately, the applicant/workman by his letter dated 02.12.2005 applied to the Assistant Labour Commissioner for a certificate under Section 10(1B) of the Industrial Dispute Act, 1947 and the Assistant Labour Commissioner accordingly issued a certificate in Form-S. The applicant/workman filed the case before the Ld. Second Labour Court by the strength of such certificate being case no. 26 of 2005. The opposite party appeared in that proceeding by filing written statement. The Ld. Labour Court was pleased to pass a no dispute award and the applicant/workman made a prayer for recalling the said award but the Ld. Court rejected such prayer. The applicant/workman then made a prayer for issuance of certificate so that the applicant can approach the Ld. Court/Tribunal for adjudicate of the dispute as dispute is still subsisting and the Conciliation Officer issued a certificate. The applicant/workman still unemployed. He was not paid any compensation and notice pay as per Section 25F of the Industrial Disputes Act, 1947. The termination of his service by way of refusal of employment is ipso facto bad in law, unfair and malafide. On that score, the applicant/workman has prayed for an award declaring that the refusal of employment to the applicant by the



management/opposite party is illegal and unjustified and for his reinstatement with full back wages.

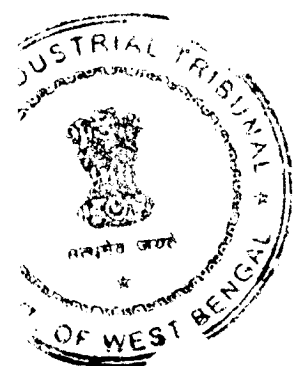
The opposite party/company namely, M/s. Calcutta Silk Mfg. Company Ltd., has contested the claim by filing a written statement containing two parts. **In Part-A** it is contended that the application filed by the workman is not maintainable in view of the latest amendment made in Section 2A of the Industrial Disputes Act, 1947 w.e.f. 15.09.2010 and the present application has been filed on 07.03.2012. The impugned certificate in Form-S has been issued by the Conciliation Officer without application of mind and without forming any opinion in favour of the adjudication of the purported dispute and in absence of that this tribunal cannot assume and/or exercise jurisdiction to adjudicate the purported dispute on merit. It is contended further that according to the applicant his service was allegedly terminated on 03.04.2005 and he first initiated the proceeding on the self-same cause u/s. 10(1B) (d) of the Industrial Disputes Act, 1947 before the Second Labour Court, West Bengal which was registered being Case no. 26 of 2005 and such case was filed on 14.12.2005 which was disposed off by the Labour Court by passing an Award on 22.11.2010 and such Award was published by the Govt. of West Bengal by its order no. 143-IR, dated 03.02.2011. The applicant filed one review application for setting aside such Award passed by the Second Labour Court on 22.11.2010 and on hearing the parties, the Ld. Labour Court by its order no. 59, dated 20.04.2011 rejected such review application dated 16.12.2010 filed by the applicant. All such matters were brought into the knowledge of the Assistant Labour Commissioner, Govt. of West Bengal, Barrackpore, North 24-Parganas, by letter dated 20.07.2011 but without application of mind and ignoring the points raised by the opposite party the Assistant Labour Commissioner issued the impugned certificate on the basis of which instant proceeding has been drawn up.

It is contended further that the service of the applicant/workman was allegedly terminated on 03.04.2005 and the present proceeding has been initiated by the applicant on 07.03.2012 i.e. about after 7 years from the so called cause of action and for that alleged dispute as a matter of fact is non-existence in character and the impugned certificate in Form-S has been issued on the basis of the stale claim and as such the instant proceeding is ex-facie not maintainable. The company has been reviewed under a scheme framed by the BIFR pursuant a settlement between the workman and the company and it is presumed all disputes have been settled between the parties and the company and as a matter of fact payment of dues and gratuity was settled by virtue of one settlement dated 05.08.2003 and the cut of date was fixed as 20.10.1999 and it is further noted almost all the workmen have



accepted all the benefits in terms of settlement dated 05.08.2003 including the applicant also and that being so, there cannot be any case of refusal of employment and alleged termination of service.

It is further contended that the applicant/workman has already attended the age of superannuation and that as such on the date of filing instant application he was not a workman within the meaning of Section 2S of the Industrial Disputes Act. The applicant received his terminal benefit as well as part of gratuity in terms of agreement dated 05.08.2003 and for that the applicant is estopped from raising any dispute. **In Part-B** of the written statement it is contended that opposite party/company was functioning well upto 1978 but since 1979 the company was facing financial crisis and that was sharply deteriorated in 1980. On 25.02.1988 the company being a sick under the sick industrial company's (Special Provision) Act 1985 was referred to both for BIFR and the said authority declared the company as a sick Industrial company on 10th April 1988. The cause of the sickness of the company determined by the BIFR was huge wage cost and engagement of huge surplus additional worker and thereafter winding process initiated after dismissal by the appellate authority for Industrial and Financial Reconstruction (AAFR) on 12.09.2000. However subsequently winding of proceeding was stayed by the Hon'ble High Court, Calcutta and operating two unions negotiated with the management of the company and agreed to make sacrifice to the extent as mentioned in the terms of the agreement dated 28.10.2000 and the scheme for revival of company was approved by BIFR which was also subsequently accepted by the High Court by order dated 17.01.2002. Thereafter both the operating unions made one agreement with the management of the opposite party on 05.08.2003 and the management of the company was forced to suspend operation by notice dated 17.10.1999 w.e.f. 21.10.1999 and mode of payment of dues and gratuity was also settled by virtue of such settlement wherein it was also mentioned that the wages and salaries will be calculated and paid upto 20.10.1999 to all employees including contractor's workers and for the purpose of all other payment. One union namely Calcutta Silk Mfg. Ltd. Shramik Union raised one dispute over the issue of suspension of work and the Govt. of West Bengal initially was not making any reference for adjudication of the disputes, but as per order of the Single Bench of the Hon'ble High Court, one reference was made on 17.11.2004 at the instance of the union which was admittedly not in existence at the time of cause of action. However, by virtue of order of Division Bench of Hon'ble High Court, Calcutta, dated 10.08.2005, such reference as made by the Govt. was set aside and it was held that the resolution of disputes through settlement since acted upon by revival and re-opening of the company, such issue can no more be re-opened by an union,



forming long after and therefore the issue cannot be said to be in existence and such case was registered as MAT No. 1799 of 2005. It is stated that the applicant never performed his duty as Darwan after 20.10.1999. The concerned workman in terms of agreement dated 05.08.2003 accepted the bonus for the year 1998-1999 and 1999-2000, amounting to Rs. 3,706 and 40 paise by signing one payment voucher on 13.09.2003 and similarly a sum of Rs. 2,247 and 92 paise were received by the workman towards privilege leave and casual leave encashment amount being full and final payment on such head of accounts in terms of the said agreement dated 05.08.2003 by putting his signature on payment voucher on 19.01.2004 in presence of witnesses. Over and above on 03.03.2004 the applicant/workman has received a sum of Rs. 7,500/- being advance against his gratuity. From these circumstances, it is clear that the applicant also acted upon the terms of agreement dated 05.08.2003 and that the applicant has never performed his duty as Darwan or in any other capacity after 20.10.1999 and that being so it is incorrect to say that service of the applicant was terminated w.e.f. 03.04.2005 by refusal of employment. The applicant/workman filed a case under Section 144 Cr. P.C. before the Ld. Executive Magistrate, Barrackpore, which was registered as M.P. Case No. 963/2005 which was dropped by the statutory authority on the basis of police report. One police case was started on the basis of complaint lodged by Khardah Police Station before the Ld. Sub-Divisional Judicial Magistrate, Barrackpore (Reference-G.D.E. 1806 dated 19.04.2005 u/s 151 Cr. P.C.) and the applicant was arrested and from such police complaint it would be evident that the case set up by the applicant in the instant proceedings is incorrect. **In Part-C** of the written statement the company has denied the statement made by the applicant/workman in the written statement. On that score the opposite party/company has prayed for passing an award holding that the instant proceeding is not maintainable.

On the basis of the aforesaid pleadings of the parties the following issues have been framed.

ISSU(S)

- 1) Is the case arising out application u/s 10(1B) (d) of the Industrial Disputes Act filed by the applicant maintainable in law?
- 2) Is the termination of service of Sri Trigunananda Jha w.e.f. 3rd April, 2005 by way of refusal of employment justified?
- 3) To what relief/reliefs is the applicant entitled under law and equity?

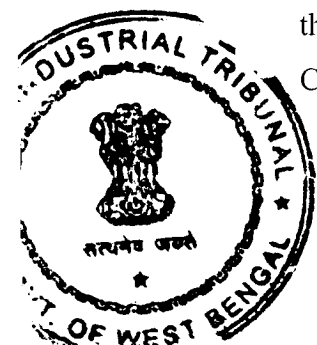
Decision with Reasons



In support of his case the applicant/workman (Sri Trigunananda Jha) examined himself by tendering his evidence-in-chief as WW1. He has placed reliance on some documents which have been marked as exhibit-1 to exhibit -11. The witness was cross examined in full by the other side. The management of the company, namely the opposite party examined one Sri Partha Manna by way of tendering his evidence-in-chief supported by affidavit as CW1. The opposite party has also relied on some documentary evidences which have been marked as exhibit-A to exhibit-T. The witness was also cross examined by other side.

Let us now decide on the basis of the aforesaid oral and documentary evidences as adduced by parties, the issues as framed in the instant proceeding.

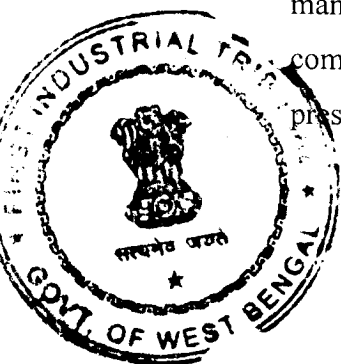
The applicant Trigunananda Jha has stated in his evidence-in-chief that he was an employee working in M/s. Calcutta Silk Manufacturing Co. Ltd. as Darwan on and from 12.02.1968 and was posted at the factory at Sukhchar. He has produced the xerox copy of his identity card issued by the ESI authority which has been marked as exhibit-1. In paragraph no. 4 of his evidence-in-chief said Sri Jha (WW1) has stated that the company issued a certificate certifying his employment since February 1968 but no such certificate has been produced. The witness then stated that the company issued leave pass and one such pass has been marked as exhibit-2. He has also produced a xerox copy of letter of complaint (exhibit-3) submitted by him on 22.12.2003 to the Inspector of factory, Barrackpore. Amongst the other documents filed exhibit-4 is a complaint dated 10.03.2005 lodged before the Officer in charge, Khardaha Police Station by Sri Jha. Exhibit-5 is a representation submitted by Shri Jha to the management of the opposite party/company stating that on 3rd April 2005 when he went to resume his duty management did not allow him to join the duty and on being asked the management disclosed that the management has decided to terminate his service w.e.f. 03.04.2005 and by such representation Sri Jha prayed for his reinstatement in service with back wages and other consequential relief. The opposite party/company in the written statement filed has not challenged that Sri Jha was not under employment of the company as claimed by him. However, in paragraph no.-13 of the written statement it is specifically contended that Sri Jha never performed his duty as Darwan after 20.10.1999 and it is claimed by the company that the workman Sri Jha accepted the bonus for the year 1998 to 1999 and 1999 to 2000 in terms of agreement dated 05.08.2003. The said agreement dated 05.08.2003 has been marked as exhibit-K/1. On perusal of the same it appears that such agreement entered into by and between the opposite party/company and two unions namely, Calcutta Silk Manufacturing Co. Workers union and Calcutta Silk Manufacturing Employees Union. Exhibit-A



is a notice dated 17.10.1999 issued by the company relating to suspension of operation w.e.f. 05.00 A.M. on 21.10.1999. From exhibit-K/1 it is seen that it has clearly been mentioned therein that it is well known to both the unions and the workers of the company the management explained the circumstances in which the company was forced to suspend operation on 20th October 1999. It appears from the said agreement that the management sought the cooperation of the unions and the workmen in smooth implementation of the BIFR scheme including disposal of surplus machine and landed assets etc. to generate funds for payment of outstanding dues including gratuity to all the workers and other creditors and statutory liabilities such as PF, ESI, Professional Tax, Municipal Tax etc. It has further been mentioned therein that the unions and the workmen also expressed their views and agreed to extent full cooperation on the above points and further agreed to accept the extinguishing of their service w.e.f. 21st October 1999 and requested the management to arrange the payment of their dues.

So, from the aforesaid discussions it has become clear that suspension of operation of work was issued by the management of the company on 17.10.1999 vide exhibit-A w.e.f. 21.10.1999. It is also clear that both the unions have accepted such suspension operation w.e.f. aforesaid date. In the instant case it is claimed by the workman that his service has been terminated w.e.f. 3rd April 2005 by the management of the company by way of refusal of employment. It is argued by the Ld. Advocate for the workmen that from Clause No. 10 of exhibit-A which is a notice for suspension of operation issued by the management of the company that the said notice will cover for all the workmen/employees of the company except watch and ward and essential services of the mills. Relying on such terms of such exhibit-A it is argued that the employee of Sri Jha was not ceased in terms of the suspension notice since he was a Darwan. The Ld. Advocate for the management, on the other hand argued that the said Clause is not applicable to the Darwan and as such the argument advanced by the Ld. Advocate for the workmen cannot be accepted.

WW1 has stated in his evidence-in-chief that he lodged a complaint before the Officer in charge, Khardaha Police Station on 14.04.2005 for not allowing him to enter the factory etc. A xerox copy of the complaint has been marked as exhibit-6. In the said complaint it has been stated that he was a regular darwan of the said company namely the opposite party and a dispute was going on with the management of the company regarding salary gratuity PF etc. for which a false complaint has been lodged against him. It has further been stated therein that presently he had been to his home but one Suresh Gandawala asked him not to go



to the factory. No date has been mentioned in the said exhibit-6 as to when Sri Jha was told not to go to the factory. Exhibit-3 is a representation submitted to the factory Inspector by Sri Jha claiming that the lock out notice issued by the management was illegal and the management has not paid his wages. It is claimed by the workman in said exhibit-3 that on 3rd April 2005 when he went to resume his duty he was not allowed to join. When such claim has been made by the WW1 then why he has stated in his complaint (exhibit-6) submitted to the Khardaha Police Station that he was working as a regular Darwan of the company in stead mentioning that he has been working as regular darwan of the company as on the date when such complaint was lodged. As per statement made by WW1 in his evidence-in-chief in paragraph-no. 7 that such complaint was lodged on 14.04.2005. When according to WW1 that he was not allowed to resume his duties on and from 3rd April 2005 then why not he promptly reported the matter to the police station and why he waited up to 14.04.2005. WW1 then stated in his evidence-in-chief that he filed a complaint u/s 144 CRPC before the Executive Magistrate, Barrackpore and an order was passed by the said Magistrate on 18.04.2005. The order passed by the Ld. Executive Magistrate, Barrackpore and the application u/s 144(2) CRPC has been marked as exhibit-7 & 7/1. In the said application it has been admitted by the WW1 that the opposite party/ company is under the lockout/work suspension since 1999. However, it is claimed that the WW1 is discharging his duties when such application was made before the Ld. Magistrate. The said application u/s 144 CRPC was registered as MP No. 963 of 2005 as it appears from exhibit-7 and 7/1. The opposite party has also produced the copy of the order passed by the Ld. Executive Magistrate, Barrackpore in the said case no. MP 963 of 2005 and the report submitted by the Police Officer before the Ld. Magistrate which have been marked as exhibit-M & M/1 respectively. In the said police report (exhibit-M/1) it has categorically been that on an enquiry the concerned Police Officer could learnt that the petitioner i.e. the present WW1 was residing in the quarter of the mill till 20.10.1999 and after suspension of operation of the mill petitioner occasionally used to come at the mill quarter with a view to get his dues from the authority of the mill. It has further been mentioned in the said report that the factory in question is under complete suspension of operation of total establishment from 21st October, 1999 and since then there is none working in the factory in question. Such report was submitted on 15.05.2005. From the copy of the order sheet (exhibit-M) passed by the Ld. Executive Magistrate, it appears that such report was received by the Ld. Magistrate on 17.05.2005 on which date the opposite party namely the present workman remained absent without steps and on that date the Ld. Magistrate dropped the said case which was registered on the



prayer of the present workman namely, Trigunananda Jha. Had there been any iota of truth in the statement made by the workman/applicant of the present case before us in his said application u/s 144 CRPC, he certainly would have remained present before the Ld. Magistrate to controvert the police report. But no such attempt has been made by him. All such aspects of the evidences and materials on record do not support the case as put forward by the applicant/workman that the management of the company terminated his service w.e.f. 3rd April 2005 by way of refusal of employment.

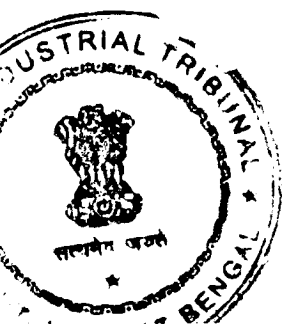
From exhibit-C & C/1 it appears that a proceeding u/s 151 CRPC was registered against Sri Jha before the Ld. A.C.J. M, Barrackpore. Exhibit-C/1 is the forwarding report submitted by the police before the Ld. Magistrate in connection with such proceeding with reference to Khardaha Police Station GDE No. 1806, dated 19.04.2005. The said report is dated 20.04.2003 wherein the concerned police officer has stated that on 19.04.2005 said Sri Jha tried to enter into the mill premises which is closed since 5 years and said Sri Jha has a quarter earlier inside the mill and at present said Sri Jha is residing in another place and outside the mill. Nothing could be produced for the applicant/workman to controvert such report of the police officer (exhibit-C/1). The said document also negatives the case of the applicant/workman that he was terminated from service w.e.f. 3rd April, 2005 by way of refusal to join his duties.

It is an admitted fact that by a notice dated 17.10.1999 the management of the company suspended the operation w.e.f. 6:00 AM on 21.10.1999 and said notice of suspension has been marked as exhibit-A. Exhibit-K & K/1, two agreements dated 28.12.2000 and 05.08.2003 executed by and between the management of the opposite party/company and the unions. By executing exhibit-K it was agreed upon by the parties of such agreement i.e. union for the workman and the management of the company being desirous to undertake the rehabilitation of the company and also to formulate a scheme for ensuring revival of the company as a matter of common interest for smooth running of the company as well as for the welfare of the labour force joined hands together to promote and augment the causes of sick company. Such agreement was made in view of the fact that the mill's operation had been suspended since October 1999. Thereafter another agreement namely exhibit-K/1 was entered into by and between the unions and the management. So, from those documents it is well established that management of the company was compelled to issue notice of suspension of operation of work w.e.f. 21.10.1999 by issuing such notice on 17.10.1999. From exhibit-3 on which applicant/workman has placed reliance it appears that therein he has categorically mentioned that the



management of the company has declared lock out on 17.10.1999 w.e.f. 21.10.1999. However, he has claimed therein that such lock out was declared illegally. Same statement has been made by the applicant/workman in a written statement filed by him as appearing in paragraph-5. It is argued by the Ld. Advocate for the management of the company that nothing could be produced by the applicant/workman that such suspension of work/lock out of the company and was declared as illegal by any competent authority or court of law at any point of time. The Ld. Advocate has placed reliance on exhibit-1/12 which is a copy of order dated 10.08.2005 passed by the Hon'ble High Court, Calcutta in M.A.T. No. 1799 of 2005 (CAN 6490 of 2005) arising out of writ petition no. 19169(W) of 2004. It is argued that in view of the said order/judgement passed by the Hon'ble High Court, Calcutta there is no scope to make any such statement as appearing in paragraph no. 5 of the written statement by the workman that the said suspension of work of the company is illegal. On careful perusal of the said exhibit no. 1/12, I find substantial legal force in the argument as made by the Ld. Advocate for the company.

As discussed earlier that after such order of suspension of work, two agreements were executed by and between the management of the company and the unions for the workman and those two agreements namely exhibit-K and exhibit -K/1 are dated 28.12.2000 and 05.08.2003 respectively. Amongst the document filed for the applicant exhibit-4 is the application dated 10.03.2005 submitted by the applicant/workman before the Deputy Labour Commissioner, Barrackpore. Therein he has categorically stated that the Calcutta Silk Company Manufacturing Ltd. Shramik Union is a registered union to espouse the cause for the workman of the opposite party/company and he and others are the members of the said union. During his cross examination the applicant/workman has admitted the issuance of notice to lockout and on such admission the said notice has been marked as exhibit-A. Then he stated that the Darwans have no union and he was not a member of Calcutta Silk Company Manufacturing Ltd. Shramik Union. He then stated that it was incorrectly mentioned in exhibit-4 in that regard. So, the statement made in exhibit-4 and the statement made by WW1 during cross examination dated 25.04.2013 appears to be contradictory. I have every reasons to believe on perusal of the materials on record that the applicant/workman was very much aware about the said order dated 10.08.2005 passed by the Hon'ble High Court, Calcutta (exhibit-1/12) and thereby he deliberately stated during cross examination that he was not a member of Calcutta Silk Company Manufacturing Ltd. Shramik Union and thereby contradicted himself from his own statement in that regard as appearing in exhibit-4.



Then it is argued by the Ld. Advocate for the management that the instant case is not maintainable since at the time of filing of the instant case the age of the applicant/workman 65 years and as per provisions of Industrial Employment (Standing Order Act, 1946) the date of retirement of a workman is 58 years. Accordingly, it is argued that at the time of filing of the instant case there was no employer and employee relationship between the applicant and the company and as such the instant proceeding is not maintainable. Considered the submissions. Perused the evidence of WW1, from the documents filed by the applicant nothing could be gathered as to his age. However, in the evidence-in-chief supported by affidavit affirmed by the applicant on 06.03.2013 therein the applicant has stated his age to be 67 years as on that date. During his cross examination he has also admitted that at present he is 67 years old. It is alleged by the applicant that he was terminated from the service by the management of the company w.e.f. 03.04.2005 by way of refusal of employment. So, on calculation it is seen that on the alleged date of termination of service by way of refusal of employment applicant crossed the age of 58 years. In his cross examination the WW1 has stated that the age of retirement of the employment in the opposite party/ company is 62 years but no authenticate document could be produced by the applicant in that regard. During course of hearing Ld. Advocate for the management has drawn attention to this tribunal the provision of standing order certified by the Govt. of West Bengal, Labour Department, u/s 53 of the Industrial employment (standing order) Act, 1946 wherein in Clause 13(c) the age of retirement of men workers has been stated to be 58 years. The Ld. Advocate for the applicant could not put any contrary argument or place any other document in that regard. So, it is clear that the question of termination of service of the applicant on 03.04.2005 by the management cannot and does not arise. In the instant case the applicant has prayed for reinstatement of his service. In view of aforesaid discussions such prayer is not tenable.

The CW1 has stated in his evidence-in-chief that the applicant never performed his duty as Darwan after 20.10. 1999 and in terms of the agreement dated 05.08.2003 he accepted the bonus for the year 1998-99 and 1999-2000 amounting Rs. 3706.40/- by signing one payment voucher on 13.09.2003 and similarly a sum of Rs 2247.90/- was received towards privilege leave and casual leave encashment being full and final payment on such head of accounts by putting his signature on payment voucher on 19.01.2004 and over and above on 03.03.2004 the applicant received a sum of Rs.7500/- being advanced against his gratuity. To substantiate such contention the CW1 has produced three payment vouchers which have been marked as exhibit-R, exhibit-S & exhibit-T. It appears from exhibit-R that he applicant received bonus for the year 1998-99 & 1999-2000 by putting his signature

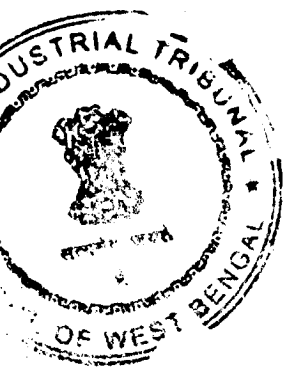


on the revenue stamp and the President of the Calcutta Silk Manufacture Workers Union have signed the same as witness. From exhibit-S, it appears the original voucher relating to the payment of PL encashment and sale encashment to the applicant and the same was received by him by putting his signature on revenue stamp and the Joint Secretary of the said union signed the same as witness. Exhibit-T shows that Rs. 7500/- was paid to the applicant being advanced against his gratuity. Authenticity and genuinity of those documents have not been challenged by the applicant. Those documents rather established that the management of the company has acted in terms of the agreement dated 28.12. 2000 (exhibit-K) and dated 05.08.2003 (exhibit-K/1) entered into by and between the management and the union for the workman. During his cross examination CW1 has stated that prior to commencement of suspension of work i.e. 20.10.1999 there were 5/6 Darwans in the company and functioning of the factory was totally stopped w.e.f. the aforesaid date of suspension of work and 1/2 private guards were deputed in the factory. Such answer which has come out from the mouth of CW1 during cross examination establishes the case put forward by the company that since such date of suspension of work no employee/workman including the applicant worked under the company. CW1 has further stated during cross examination that the factory was not reopened since after declaration of the suspension of work after 20.10.1999. In his claim statement the applicant has stated the management did not release him from his duty after the declaration of suspension of work and on good faith he rendered his service in the factory as Darwan with assurance that the management will pay him his legal entitlement and also wages for the service rendered by him but the management did not care to pay him any wages etc. However, in his evidence-in-chief he has not made all such statements specifically as appearing in paragraph no. 6 & 7 of his claim statement. In my considered opinion all such statement which have been made in the claim statement filed by the workman can not be accepted to be true because suspension of work of the company admittedly took place w.e.f. 21.10. 1999. It is impossible to believe that thereafter the present applicant put his service to the company without getting any remuneration from the management. Not a single document could be produced by the applicant that he actually rendered service to the company after the such date of suspension of work. No corroborative witness is there to support such contention of the applicant. Considering the totality of the evidences on record I am constrained to hold that after issuance of notice on suspension of work w.e.f. 21.10.1999 (exhibit-A), the applicant did not work in the company in any capacity. Consequently, I hold further that the case set up by the applicant that the management of the company terminated his service w.e.f. 03.04.2005 by way of refusal of employment is a myth and cannot



be accepted. As discussed earlier on such date i.e. 03.04.2005 there was no employer and employee relationship of the applicant with the company.

Let us now come to another aspect of the materials on record. Admittedly on previous occasion the present applicant initiated a proceeding against the present opposite party u/s 10 (1B) (d) of the Industrial Disputes Act, 1947 and the same was registered as case no. 26/2005 before the Ld. 2nd Labour Court. Both parties appeared and filed written statement. From exhibit-P, it appears that the said Ld. Labour Court passed a 'No dispute award' in the said case on 22.11.2010. It is also an admitted fact that the present applicant on 16.12.2010 filed an application before the said Ld. Labour Court for review of the said award dated 22.11.2010 and after a contested hearing the said Ld. Labour Court vide order dated 20.04.2011 rejected the said application as not maintainable. Thereafter the applicant has again come up with the instant application before this tribunal making an identical prayer u/s 10(1B) (d). It is argued by the Ld. Advocate for the company that the instant application is not maintainable in view of the fact of passing said earlier award in an identical proceeding by the Ld. Labour Court. In support of his contention the Ld. Advocate had placed reliance on case law as reported in 2000 LAB.I.C. 2703. From the copy of the order no. 59 dated 20.04.2011 (exhibit-B) passed by the Ld. 2nd Labour Court in case no. 26/2005 while rejecting the application for review filed by the applicant that after passing of 'No Dispute award' by the said Ld. Court, Govt. of West Bengal published notification vide memo no. 143-IR/11L-71/04 dated 03.02.2011 u/s 17 of the Industrial Disputes Act, 1947. Considered the submissions of the Ld. Advocate for the both sides on the said point. Perused the observations made by the Hon'ble Court in the aforesaid reported case. From the materials as discussed earlier it is clear that the applicant did not move any superior forum against the order passed by the Ld. 2nd Labour Court dismissing his review application. Instead of doing so he again approached the Government for a further reference. In paragraph no.17 of the aforesaid reported case it has been observed by the Hon'ble Court that --- "17. Thus, the reference made by the appropriate Government can be dismissed for want of prosecution, where the party, at whose instance, the reference has been made, does not appear. In such a case, keeping in view the high public policy that there must be a finality to the litigation and the individual should not be harassed twice over with the same kind of litigation, the only remedy is to get the reference restored for good reason. In a case where the Labour Court or the Tribunal has refused to restore, the party can approach to the higher forum if there existed good grounds and can ask for mandamus to restore the proceedings and answer the award as required by Section 15 of the Act. But, so long as the first reference has not been answered, the appropriate government is not



competent to make the second reference". In the instant case before us as already discussed the first case initiated by the applicant a 'no dispute award' was passed by the Ld. 2nd Labour Court. The applicant made attempt to restore the said case by filing a review petition which was also rejected by the said Ld. Labour Court by issuing a speaking order. Against the same the applicant did not approach any higher forum and in stead of doing so he has again approached the State Government to make a further reference over the self-same issue and on obtaining a pendency certificate from the appropriate government the applicant has filed the instant proceedings. On due consideration of all aspects of the materials and following observations made by the Hon'ble Court in the aforesaid reported case, I am of the view that the instant application is not maintainable.

Therefore considering all aspects of the evidences and materials on record and in view of foregoing discussions and the reasons stated therein, I am constrained to hold that instant application filed u/s 10(1B)(d) of the Industrial Disputes Act, 1947 by the applicant is not maintainable and the question of termination of service of the applicant w.e.f. 03.04.2005 by way of refusal of employment cannot arise since on that date there was no employer employee relationship between the applicant and the management in view of suspension of work of the company w.e.f. 21.10.1999. Consequently, the applicant is not entitled to any relief. The issues taken up for consideration are thus decided and disposed of accordingly.

This is my A W A R D.

Dictated & corrected by me.

Sd/ —
Judge.



Sd/- TANMOY GUPTA

Judge
First Industrial Tribunal
Kolkata
24.04.2019