

1170/2019

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

No. Labr./ 605/(LC-IR)

Date : 27.06.2019.

ORDER

WHEREAS an industrial dispute existed between the employee of M/s. Howrah Mills Co. Ltd., 493/C/A, G.T. Road, Shibpur(South), Howrah-711102 and Sri Akbar Ali, 139, G.T. Road, Shibpur (South) Howrah-711102 regarding the issues, being a matter specified in the Second schedule to the Industrial Dispute Act, 1947 (14 of 1947);

AND WHEREAS the workman has filed an application under section 10(1B)(d) of the Industrial Dispute Act, 1947 (14 of 1947) to the Judge, Second Industrial Tribunal specified for this purpose under this Deptt.'s Notification No. 101-IR/12L-14/11 dated 02.02.2012.

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

AND WHEREAS the said Judge, Second Industrial Tribunal 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

J/2019

: 2 :

No. ~~Labr./605/1(5)/(LC-IR)~~Date ~~27.06.2019.~~

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

1. of M/s. Howrah Mills Co. Ltd., 493/C/A, G.T. Road, Shibpur(South), Howrah-711102.
2. and Sri Akbar Ali, 139, G.T. Road, Shibpur (South) Howrah-711102.
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./605/2(2)/(LC-IR)~~Date ~~27.06.2019.~~

Copy forwarded for information to :-

1. The Judge, Second Industrial Tribunal, Durgapur, with respect to his Memo No. 742-Lt dated 13/06/2019.
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. Howrah Mills Co. Ltd., 493/C/A, G.T. Road, Shibpur (South), Howrah – 711 102 and their workman Sri Akbar Ali, 139, G.T. Road, Shibpur (South, P.S. Shibpur, Howrah – 711102.

(Case No. 06/2012 U/s. 10(1B)(d).

BEFORE THE SECOND INDUSTRIAL TRIBUNAL: WEST BENGAL.

PRESENT

SHRI SRIBASH CHANDRA DAS, JUDGE,

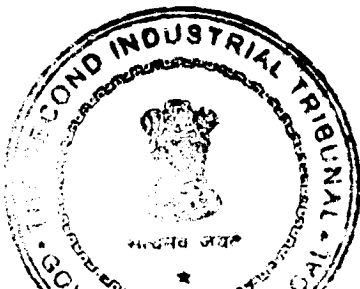
SECOND INDUSTRIAL TRIBUNAL, KOLKATA.

Date of passing award – 29.05.2019

A W A R D

Accompanying with an application in FORM T as per rule 12A(4) of the West Bengal Industrial Disputes Rules, 1958, stated to be specified under Government of West Bengal, Labour Department, Notification No. 101-IR/IR/12L-14/11 dt. 02.02.2012, the applicant Sri Akbar Ali, 139 G.T. Road, Shibpur – South under P.S. – Shibpur within district Howrah-711102 is stated to have raised an industrial dispute against opposite party (O.P.) M/s. Howrah Mills Co. Ltd., 493/C/A, G.T. Road, Shibpur (South), Howrah-711102 as per his representation dt. 21.02.2011 addressed to the Labour Commissioner, Government of West Bengal in the matter of termination of service of the applicant by the O.P. and the said dispute was not settled within 60 days from the date of raising the said dispute and was pending before the conciliatory authority, and under that circumstances the applicant preferred an application in Form P-4 dt. 02.08.2012 praying for issuance of a certificate regarding pendency of conciliation proceedings and it is further stated that the conciliatory authority then issued the certificate in Form – S under Section 10(1B) of Industrial Disputes Act, 1947 with a prayer to take cognizance on the same, and as per certificate by conciliation officer Mr. A. Biswas dt. 17.08.2012 in Form – S as per Rule-12A(3) of the West Bengal Industrial Disputes Rules, 1958, it is stated that as an industrial dispute relating to illegal termination from service was raised by Sri Akbar Ali as per his representation dt. 21.02.2011 and as the conciliation proceeding in respect of the aforesaid dispute was started but no settlement could be arrived at by that time and as the party raising the dispute filed an application on 02.08.2012 for the certificate as per section 10 (1B) of the Industrial Disputes Act, 1947 in the prescribed form i.e. Form – P4 and then in pursuance of provisions of Section 10(1B) of the Industrial Disputes Act, 1947, it was certified that the aforesaid conciliation proceeding was still pending before the conciliation officer.

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The contention of the written statement filed by applicant as mentioned above is that the workman Sri Akbar Ali was engaged by the O.P. as workman to work as a machine operator in 1975 and accordingly the workman continued to work under the O.P. in that capacity till termination of his service. Describing the O.P. as an well reported mill engaged in jute product manufacturing and processing and earning his profit mainly because of skilful performance and hard labour rendered by the employees and workmen under it and accordingly a profit earner, it is stated that the O.P. is very much unfair and exploitative to its workmen and it has little regards to observe the provisions of industrial laws, specially those as are enacted for the welfare of the workmen. It is next stated that the O.P. rampantly resorts to unfair labour practices, yet the applicant had all along been very much sincere, honest, hardworking and left no stone unturned to satisfy his superior all through his tenure of employment under the O.P. It is next stated that though the applicant was very much diligent in his service, the management of the O.P. took a hostile attitude towards him and he was periodically denied to join his duty illegally and unjustifiably by the management of the O.P. and also deprived the applicant from getting salaries another benefits and as a consequence on 25.01.2006 the applicant wrote a letter to the O.P. and also referred the same matter before the Deputy Labour Commissioner, Government of West Bengal at Howrah by representation dt. 30.01.2006 addressed to the said authority seeking intervention into the said grievances of the applicant and accordingly Mr. N.C. Majhi, Assistant Labour Commissioner initiated a proceeding in this regard and on the persuasion of Mr. Majhi, the O.P. conceded to allow the applicant to resume his duty by virtue of letter dt. 14.06.2006 addressed to the said Assistant Labour Commissioner Mr. Majhi with a request to him to direct the applicant to join his duty under the O.P. and accordingly the O.P. resumed his duty immediately. It is next stated that having been highly vindictive by the aforesaid episode, the management of the O.P. issued a charge-sheet dt. 26.06.2006 signed by Chief manager (O & A) to the applicant levelling some baseless, concocted, manufactured allegations by the stretch of their imagination in a precalculated manner to victimize the applicant and also restricted the applicant from entering in the premises of O.P. with immediate effect as per stipulation as made in the said charge-sheet and thus impliedly suspended the applicant from service illegally without any payment of subsistence allowance. It is next stated that under said circumstances, the applicant replied to the said charge-sheet by letter dt. 10.07.2006 addressing the chief manager (P & A), inter alia claiming his full wages w.e.f. 26.06.2006 and to allow him to resume his normal duty but the management of the O.P. did not pay any wage / any subsistence allowance to the applicant neither started any domestic enquiry against him, nor allowed the applicant to resume his duty, and under this circumstances the applicant moved before the local Deputy Labour Commissioner's office at Howrah for redressal of his grievances mentioned as non-payment of subsistence allowance but the management of the O.P. did not pay any subsistence allowance to the applicant nor did it allow the applicant to join his duty. It is next stated that in this way three years of time was passed and there was no change in the situation



and the applicant became fully out of employment and at that point of time the applicant received a notice dt. 24.11.2009 from Mr. Sk. Hamidul Quader, Advocate mentioning that a domestic enquiry would be held against the applicant on the alleged charges so mentioned in the aforesaid three years back charge-sheet dt. 26.06.2006 issued by the O.P. directing the applicant to appear before Mr. Quader at labour office of the mill premises on 02.12.2009 mentioning that Mr. Quader would conduct an enquiry as enquiry officer against the applicant but the applicant expressed his inability to attend that enquiry on 02.12.2009 due to his physical ailment by writing a letter dt. 01.12.2009 to the enquiry officer Mr. Quader requesting him to defer the date of enquiry by four weeks and after that the applicant further requested the enquiry officer to supply him copy of standing order of the O.P. / Mill, the list of document to be relied upon by the company / O.P., the list of witnesses to be examined by the management of the O.P. in that enquiry and also to allow the applicant to be assisted / represented by a law knowing person on the ground that the applicant is poorly literate and not at all conversant with the law and legal proceedings but the enquiry officer Mr. Quader paid no heed to the aforesaid just requirements of the applicant and held the enquiry on divergent dates which the applicant could not afford to attend due to his physical illness and for other reason of general strike of workers in all jute mills of West Bengal was going on at that time and thus taking such undue advantage of the adverse situation and other bona fide reasons that prevented the applicant from participating in the aforesaid enquiry, the enquiry officer held the said enquiry ex-parte without giving minimum opportunity to defend the applicant violating even the minimum requirement of principles of natural justice and the enquiry officer Mr. Quader also arbitrarily held the applicant guilty by submitting a so called report dt. 02.04.2010 in a biased manner having no value in the eye of law. It is next stated that after that O.P. issued a letter to the applicant dt. 19.04.2010 based on the said enquiry report and other purported documents and tutored evidences of the hired witnesses to which the applicant made a reply by a letter dt. 07.07.2010 explaining in details that the entire matter was based on fabricated charges to victimize applicant and then the O.P. issued another letter dt. 04.08.2010 containing inter alia arbitrarily dismissed the applicant from service not considering his just explanation, and at that point of time the salary of the applicant was Rs. 203.69 per day. It is next stated that the applicant protested against the wrongful dismissal order by the O.P. vide his representation dt. 10.09.2010 addressed to the opposite party demanding inter alia is immediate reinstatement in service but the O.P. did nothing. It is next stated that the applicant then referred the matter before Labour Commissioner, Government of West Bengal vide its representation dt. 21.02.2011 addressed to the said authority seeking intervention to the dispute and the matter was taken up by Howrah office of the authority and Mr. N.C. Majhi the Assistant Labour Commissioner tried to settle the dispute in tripartite level but nothing could be achieved due to non-compromising adamant and unreasonable attitude of the O.P. It is next stated that under said circumstances finding no ray of hope of any settlement before the conciliatory authority, the applicant preferred an application before the conciliation

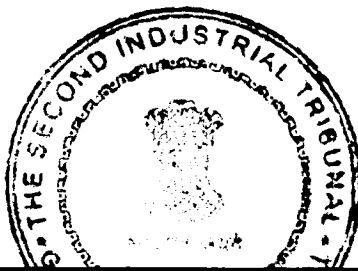


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officer or issuance of a certificate regarding pendency of the conciliation proceedings as mentioned earlier. It is next stated that it is the submission of the applicant that the O.P. has acted in highly illegal manner by holding fully hostile and vindictive attitude against the workman to terminate his service as a measure of victimization by way of levelling some baseless, false, fabricated and unfounded charges against him and holding perfunctory enquiry in violation principles of natural justice. It is further stated that the applicant is fully unemployed w.e.f. 26.06.2006 when he was issued the so called charge-sheet and simultaneously put him on illegal suspension without any payment of subsistence allowance till today i.e. the date of filing of the case and the applicant failed to obtain any job or any other source of earning and he had been passing days in extreme hard condition. It is the prayer to hold the termination of his service of the applicant by the opposite party as void ab-initio and to direct the opposite party to reinstate the applicant in his service while maintaining previous continuity without any break and to pay the applicant his full back wages along with consequential benefits accrued thereto with the cost of litigation or any other relief as may be fit and proper by passing necessary award.

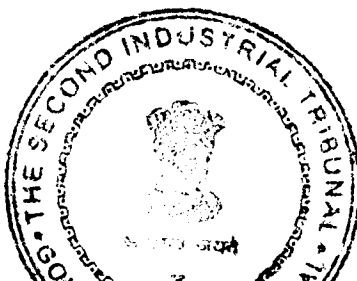
Ld. Lawyer for the management of the company has filed written statement dividing the same in three parts i.e. part-A, Part-B and part-C. It is stated that in part-A of the written statement preliminary objection with regard to the maintainability of the application filed by the applicant has been raised by mentioning that the application of the applicant is misconceived, erroneous and not maintainable either in facts or in law. It is also stated that section 10(1B) was inserted by the legislators in West Bengal in the Industrial Disputes Act, 1947 by way of amendment vide W.B. Act 33 of 1989 giving effect from 08.12.1989 whereby the Industrial disputes relating to an individual workman can be filed directly without reference by the appropriate government to any Industrial Tribunal etc., whereas the Central Government vide another notification dated 18.08.2010 effective from 15.09.2010 had inserted similar provisions which is Section 2A(2) in the Industrial Disputes Act, 1947, and having taken all these, it is mentioned that since the central act received the assent of the President of India later than the State Act, therefore the Central Act will prevail over the State Act and consequently the instant case filed U/s. 10(1B) of the Industrial Disputes Act, 1947 by the applicant is not maintainable and the same is liable to be rejected on this ground itself. It has also been stated that the instant dispute is not an industrial dispute and this Tribunal has no jurisdiction to adjudicate the same and the certificate of pendency issued by the conciliation officer is defective as the conciliation proceeding had not been started by following the due process of law as per standard given by Hon'ble High Court, Calcutta. It is next stated that the conciliation officer was duty bound to record his satisfaction as to existence or any apprehension of industrial dispute before initiating conciliation proceeding which was not done in this case and the certificate of pendency issued in an improper conciliation proceeding is defective certificate and no case can be initiated based on such defective certificate and the cognizance taken in the instant matter is bad. It is also stated that the claim of applicant is stale and the claim cannot be existed. It is also stated that the

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employee was dismissed from service for committing gross mis-conduct i.e. of riotous and disorderly conduct and after conducting a valid enquiry following due process of law, as such resorting to the provision of Section 10(1B) of the Industrial Disputes Act, 1947 is unwanted and the case is liable to be rejected. This part-A of the written statement is concluded by mentioning that all these objections are vital and go to the root of the case touching the jurisdiction of this Tribunal and it has been urged that all these objections are required to be heard and disposed of as a preliminary issue. It is stated that in part-B of the written statement of the O.P. Company the facts of the case had been dealt with mentioning that without prejudice to the preliminary objections and at the same time relying them all, and it is stated that the applicant was enrolled in the employment of O.P. Company from 27.07.1976 as badly commonly known as casual badly and then he was promoted to the list of special badly w.e.f. 12.11.1992 and then he was made permanent on and from 03.08.1995. It is next stated that he was in A-shift duty on 25.06.2006 and at about 5 p.m. Mr. Umesh Nagar, an officer of the O.P. Company questioned him about his continuous low production but the applicant failed to give any proper reply and he left the department immediately but on the subsequent day i.e. on 26.06.2006. the applicant after joining his duty at 6 a.m. left his sack sewing department at about 6.25 a.m. without any permission from superior and came to the labour office of the company where he physically assaulted the officer of the company Mr. Umesh Nagar with fists and blows and at the same time asked him to pay his legal dues immediately, as a result Mr. Nagar sustained badly injury as he was said by office personnel intervening timely and while leaving the labour office of the company, the employee abused Mr. Nagar in most filthy languages and also threatened him with dire consequences, after that the O.P. Company charge-sheeted the employee and asked him to explain his conduct. It is also stated that the employee by his letter dt. 10.07.2007 made reply to the said charge-sheet denying all the charge but the O.P. Company was not satisfied with the explanation submitted by the employee and conducted domestic enquiry into the matter by appointing advocate Mr. Sk. Hamedual Quader as independent inquiry officer. It is also stated that the enquiry had been conducted comprising a time of 7 days after due notice to the employee but the employee remained absent on all days on flimsy grounds and the enquiry was held ex-parte. The enquiry office record the proceeding of the enquiry in his own handwriting observing principles of natural justice and found the applicant guilty of the charges as were levelled against him as per charge-sheet dt. 26.06.2006 on the merit of evidences adduced during the enquiry. It is next stated that after receipt of the report and findings from the enquiry officer Mr. Quader, the O.P. Company forwarded a copy of the same to the employee / applicant under cover of its letter dt. 19.04.2010 and then the applicant by his letter dt. 07.07.2010 made a representation against the finding and report of the enquiry officer which was full of lies and after-thought. It is next stated that the disciplinary authority after considering the entire material relating to the incident and subsequent enquiry, representation of the employee dt. 07.07.2010 as well as his bad past record dismissed the employee / applicant from

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his service by a letter dt. 04.08.2010. it is also stated that the past conduct of the applicant was also very bad and he was given number of chances to mend his conduct but to no effect, mentioning that as per letter of the O.P. Company dt. 11.08.1997 the applicant / employee was warned for committing mis-conduct of the nature of riotous and disorderly behaviour and then by letter dt. 06.02.2001 and also by a further letter dt. 09.04.2003 the applicant bagged apology undertaking to resort to normal production. It is also stated that the proven acts of his conduct on the part of applicant were so serious that a lesser punishment then dismissal from service would have jeopardized the discipline in the mill of the O.P. Company affecting moral and courage of its officers. It is next stated that the conciliation officer was intimated with the entire facts but he lost the sight of the circumstances of the case and erroneously issued the certificate of pendency, urging that if the preliminary objection already raised in part-A of the written statement goes against O.P. Company, then O.P. Company would rely on the domestic enquiry and O.P. Company expressed that the Court should disposed of the matter of validity of domestic enquiry before coming to the merit of the case mentioning further that in case the domestic enquiry is found to be vitiated, the O.P. Company would like to adduce fresh evidence in support of the charges levelled against the applicant by charge-sheet dt. 26.06.2006. It is stated that in part-C of the written statement of the O.P. Company reply has been made to various averments, contentions, statements, submissions and allegations raised by the applicant, and regarding contention of para-1 of written statement filed by applicant it is stated that the applicant joined the company on 27.07.1976 as badly / casual badly and he was promoted to special badly on and from 12.11.1992 and he was made permanent in his service on and from 03.08.1995 and the rest is denied and disputed stating that the same is required to be proved strictly, describing the contention of para-2 of the written statement of the applicant as irrelevant and the O.P. Company refrained from making any comment about it and the contention of para-3 and para-4 of the written statement of applicant are stated to be denied and disputed. Describing the contention of para-5 of the written statement of applicant as irrelevant requiring no comment, it is stated that the allegations of hostile attitude, periodical denial of duty and deprivation of salary and other benefits on the part of O.P. Company are disputed and denied. O.P. Company also disputed and denied the contention of para-6,7 & 8 of the W.S. of the applicant, excepting issuance of charge-sheet for mis-conduct on the part of applicant and the applicant also failed to satisfy the O.P. Company for his non-employment during the period of suspension mentioning that subsistence allowance was given to applicant. O.P. Company also denied and disputed the contention of para-9 to 15 of written statement by applicant excepting what appears in the record of the company urging for strict proof of the same. Regarding para-16 of the written statement of applicant it is stated that the applicant was gainfully employed and details of the same will be disclosed during hearing. O.P. Company also denied and disputed contention of para-17 of the written statement of the applicant and described the prayer of the applicant as frivolous, vexatious, liable to be rejected with cost. It is the prayer of the company

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to dispose of the preliminary objections at the first instance and in case the same fails then to hear the validity of domestic enquiry conducted by O.P. Company against the workman and if the same also held, then to afford to the O.P. Company adduce fresh evidence in support of the charges.

From the case record it is found that after hearing both sides issues were framed on 07.05.2013 and the issues are as under:

- 1) Whether the present case is maintainable,
- 2) Whether after introduction of Section 2A(2) of the Industrial Disputes Act, 1947 the provisions of Section 10(1B) of the Industrial Disputes Act, 1947 (West Bengal Amendment) are operational, whether the claim of the applicant is a stale claim,
- 3) Whether the termination of the service of the applicant Sri Akbar Ali by the O.P. Company is justified, and
- 4) To what relief / relieves, if any, the applicant is entitled?

It is also found that by order dt. 07.05.2013 after hearing both sides the case was fixed for evidence by the workman on the matter of validity of domestic enquiry, and this process continued till 03.02.2016, on which a contested order was passed on the validity of domestic enquiry conducted by the management of the company through the enquiry officer Mr. Quader and by that order this Tribunal held that the domestic enquiry held at the behest of the company against the applicant Sri Akbar Ali is not just and proper and the entire proceeding along with the enquiry report was found invalid and was not accepted and the case was fixed for hearing on merit.

During the hearing of the case on merit the applicant Sri Akbar Ali examined himself as P.W.-1 and also adduced documentary evidences, which are as under,

- 1) charge-sheet against the workman / employee Sri Akbar Ali by the management of the company M/s. Howrah Mills Co. Ltd. dt. 26.06.2006 (Ext. 1),
- 2) letter addressed to officer-in-charge of Shibpur Police Station dt. 23.03.2010 with a prayer for lodging diary (Ext. 2),
- 3) reply to charge-sheet by Akbar Ali addressed to chief manager (P & A), Howrah Mills Co. Ltd., Howrah (Ext. 3),
- 4) Memorandum of settlement (Ext. 4),
- 5) Letter addressed to Akbar Ali by president of M/s. Howrah Mills Co. Ltd. dt. 19.04.2010 (Ext. 5),
- 6) Medical prescriptions in name of Akbar Ali (Ext. 6).

The management of the company examined chief personnel cum labour officer Mr. Umesh Nagar as O.P.W.-1, Ex-personnel manager, Sri Mukteswar Singh as O.P.W.-2, Senior Assistant of Finishing and Sack sewing Department as O.P.W.-3, Inspector of Minimum Wages

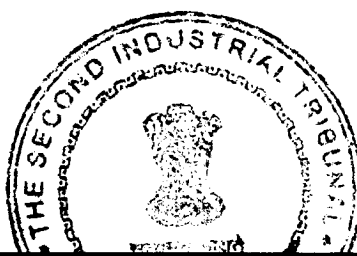


of Government of West Bengal, Sri Dipto Narayan Mukhopadhyay as O.P.W.-4 and also adduced documentary evidences which are,

- 1) charge-sheet dt. 16.06.2006 against Sri Akbar Ali (Ext. A),
- 2) letter addressed to Chief Manager (P & A) of O.P. Company to Akbar Ali (Ext. B),
- 3) copy of page of dispensary register (Ext. C),
- 4) copy of standing order of the company of M/s. Howrah Mills Co. Ltd. (Ext. D),
- 5) a letter dt. 26.06.2006 addressed to the Inspector-in-charge of Shibpur Police Station, Shibpur, Howrah by factory manager of the O.P. Company, D.R. Nagar, (Ext. E),
- 6) letter of the Chief Manager (P & A) of the O.P. Company dt. 26.06.2006 addressed to N.C. Majhi, Assistant Labour Commissioner, Howrah, (Ext. F),
- 7) Copy of letter dt. 04.08.2010 addressed to applicant Sri Akbar Ali by the President of M/s. Howrah Mills Co. Ltd. (Ext. G),
- 8) Letter dt. 11.08.1997 addressed to applicant Sri Akbar Ali by general manager of O.P. Company (Ext. H),
- 9) letter addressed to general manager (Personnel) of O.P. Company by applicant Akbar Ali dt. 06.02.2001 (Ext. I),
- 10) Conciliation file (Ext. J).

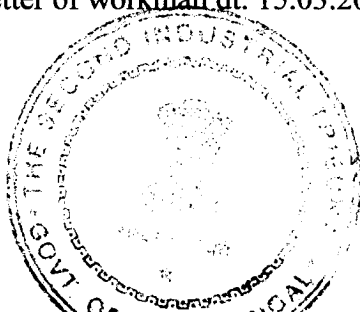
Going through the case record it is found that Ld. Lawyer for the company did not file any separate petition for deciding anything as preliminary issue as has been explained by Ld. Lawyer for the company in the written statement filed by the company stressing to decide them as a preliminary issue. It is also found that the validity of domestic enquiry conducted by the management of the company appointing Ld. Advocate Mr. Quader as mentioned earlier against the applicant Sri Akbar Ali was taken up for contested hearing and after that by order dt. 03.02.2016 it was held that the domestic enquiry at the behest of the company is not just and proper and the entire proceeding along with the enquiry report was held to be invalid and it was not accepted, and going through that order it is found that during hearing on the validity of domestic enquiry, workman Akbar Ali in support of his case examined himself as P.W.-1 deposing that he was employed in the O.P. Company and the O.P. Company issued a charge-sheet dt. 20.06.2006 and the applicant also made a reply against the charge-sheet and then after 4 / 5 years of receiving reply against the charge-sheet the company started domestic enquiry against him and applicant also deposed that he was not present during the time of holding of domestic enquiry due to his sickness as he was ill and also informed the enquiry officer that due to illness he was not in a position to attend the enquiry for his such illness, he also deposed that on 23.03.2010 the enquiry officer called him but he was not allowed to go inside the company premises by the darwan of the company and the applicant also informed the matter to the local police station and during that time he also deposed that strike was going on in the mill of the company during the time of that enquiry proceeding and this strike continued from 14.12.2009 till 12.02.2010. Applicant also deposed that copy of standing order of the company and copies

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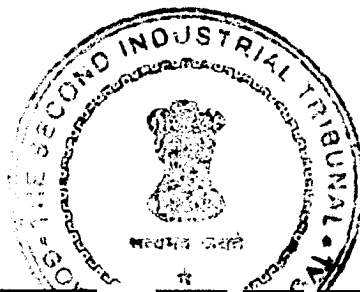
of documents as were laid by the company were also not supplied to him and the allegations raised against him are false, and he was also cross-examined by Ld. Lawyer for the company and Ld. Lawyer for the company wanted to know from him if he i.e. applicant informed the matter to the enquiry officer about non-allowing him in the premises of the company by darwan, he replied in negative and he also deposed that he informed the matter of non-allowing him to go inside the company premises by darwan of the company to the local police station, he also deposed at that time that after that strike was going on in the jute mill during the time of enquiry proceeding and that strike starting from 14.12.2009 continued up to 12.02.2010, he also deposed at that time that copies of standing order of the company and copies of other documents relied by the company in the enquiry proceeding were not supplied to him and the allegations that were levelled against him are false, and in cross-examination of the applicant at that time, Ld. Lawyer for the company further wanted to know from him as to whether he informed all these activities on the part of the company to the enquiry officer and the petitioner then replied that he could not inform all these to the enquiry officer as he was not allowed to go inside the mill where the enquiry proceeding was going on and he also stated in his cross-examination at that time that he gave reply against the letter of enquiry by the enquiry officer, further mentioning that on 22.12.2009 he could not appear before the enquiry officer a strike was going on in the mill. It is also found from the order of validity of domestic enquiry that on behalf of workman documentary evidences were adduced and those were marked Ext. 1 to Ext. 13/1 including copy of charge-sheet which was made Ext. 1, reply to the copy of charge-sheet by the petitioner (Ext. 2), the letter of enquiry officer informing the petitioner about the date of enquiry (Ext. 3), adjournment letter by the petitioner addressing the enquiry officer with a prayer to defer the enquiry (Ext. 4) and other copies of letters on medical reports, copy of Memorandum of settlement etc. were marked Ext. 4/1 to Ext. 13/1. It is also found from the order that the company examined the enquiry officer Sk. Hamidul, Quader as O.P.W-1, who deposed that he conducted the domestic enquiry in Howrah Mills Co. Ltd. against the workman Akbar Ali and Akbar Ali did not participate in the enquiry proceeding and then he proceeded with the enquiry proceeding ex-party, he gave opportunities to the workman to defend himself but on each date he also issued prior notice to the workman and after enquiry he found the charges levelled against the workman proved, and this enquiry officer Mr. Quader (O.P.W.-1) in cross-examination by Ld. Lawyer for the workman admitted that in total there were 7 sittings for enquiry proceeding by him and the workman did not participate on any single day and during enquiry proceeding on 15.09.2010 the workman gave a prayer to him for supplying copies of documents, list of documents, list of witnesses as would be relied by company in that proceeding but the enquiry officer did not supply any of those documents to the workman as the company did not supply any of those documents to the enquiry officer and enquiry officer also admitted that he did not give any reply to the letter of workman dt. 15.03.2010, in cross enquiry officer admitted that he handed over the letter of workman dt. 15.03.2010 to the management of the

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dt. 15.03.2010 to the management of the company and enquiry officer cannot say as to what action the management of the company took regarding supply of documents, list of witnesses etc. to the workman on the basis of his letter dt. 15.03.2010. The enquiry officer also admitted as O.P.W.-1 that the charge-sheet was issued to the workman in the year 2006 but the enquiry proceeding was started in the last part of 2009 and the management of the company did not give any written explanation regarding such delay of the enquiry proceeding by about three years and the enquiry officer Mr. Quader also admitted that he cannot say as to why the enquiry proceeding was started after such a gape of three years from the time of issuing charge-sheet. It is the observation of Ld. Judge as found in the order that immediately after giving the charge-sheet to the workman on 26.06.2006 the workman gave a prompt reply but the workman had fallen sick and strike in the company started and the darwan of the company did not allow the workman to go inside the company premises where the enquiry proceeding were going on to attend the enquiry proceeding and the documents, list of witnesses as were relied by the management of the company as evidence during enquiry were also not supplied to the workman despite his prayer to get supply of all these and the workman was illegally dismissed from service, the further observation of the LD. Judge is that the enquiry officer did not give any opportunity to the workman to defend himself and thereby requirement of principles of natural justice were violated, Ld. judge also observed that from the charge-sheet filed by the petitioner it has found that the allegation against the workman was of low production and also causing grievous hurt to the labour officer of the company and after analysing the adduced evidences it was revealed that prior to holding enquiry, the enquiry officer issued notice to the workman and yet the workman did not turn up and for that reason the enquiry officer proceeded ex-party and the enquiry officer held the charges as proved, at the same time the enquiry officer in his evidences admitted that prior to the commencement of the enquiry proceeding the workman demanded of getting supply of list of documents, copies of documents, list of witnesses by filing written petition and enquiry officer admitted that as the management of the company did not supply anything as per prayer of the workman, the enquiry officer could not supply all these to the workman. It is further found to the order that during hearing of the matter Ld. representative for the workman made submissions that charge-sheet was not proper and in the charge-sheet there was no specific allegation against the workman and for that reason departmental enquiry is liable to be vitiated as per law, with addition that the company was under statutory obligation to supply copy of charge-sheet document and according to the enquiry officer the company did not supply copies of documents, list of witnesses before commencement of enquiry despite prayer for this purpose by the workman before enquiry officer, Ld. representative also argued that the charge-sheet was given to the workman in 2006 and the departmental enquiry was started against him in 2009 i.e. after three years from the time of issuing charge-sheet but there is no explanation as to why the departmental enquiry was started after a gape of three years and on these grounds Ld. representative raised before this Tribunal that the domestic enquiry was liable to be set aside

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and Ld. representative supported his such argument by citing case laws as found. The order shows that Ld. Lawyer for the company argued that the enquiry was held for 7 days and after getting notice the workman did not appear without reasonable cause and for that reason the enquiry officer proceeded ex-parte and on the basis of enquiry report given by enquiry officer, further argued that the workman did not file any medical papers that he was ill and the workman was not prejudiced for non-supply of documents as were relied by the company in the enquiry and there was nothing to show that darwan of the company did not allow the workman to go to the place of enquiry inside the premises of the company and Ld. Lawyer for the company also cited a few case laws. It is found that Ld. Judge discussed the case laws filed by both sides and came to observe that principles of natural justice was flagrantly violated due to non-supply of documents, list of witnesses, copies of documents as were relied by company in enquiry proceeding and wanted by the workman, and it was decided that the domestic enquiry held at the behest of the management of the company is not just and proper and the entire proceeding along with the enquiry report was invalid and was not accepted.

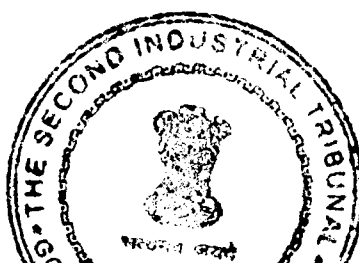
As per law when the domestic enquiry and the action taken on the basis of the enquiry report are found to be invalid after hearing on the point of validity of domestic enquiry, the management of the company has legal right to substantiate the charges levelled against the workman by the management of the company by adducing fresh evidence. Ld. Lawyer for the company has argued that, the management of the company has substantiated the charges levelled against the workman by adducing fresh evidence and raised that as per charge-sheet the workman on 25.06.2006 had been performing A-shift duty commencing from 6 a.m. to 11 a.m. and 2.00 p.m. to 5.00 p.m. but by the end of his duty i.e. at about 5 p.m. when the workman was asked by the chief labour officer of the department of the company about his continuous low production, the workman did not give any suitable reply, but the workman nonetheless sought for different plea to get rid of the awkward situation and left that place on his own but on that day while the workman resumed his duty at 6 a.m. which is the first spell of A-shift duty, the workman left Sack Sewing Department at about 6.15 a.m. as per his own desire and went to the labour office in a rowdy and in arrogant manner and asked the chief labour officer of the company Sri U. Nagar to get his legal dues immediately and when Sri Nagar asked the workman for the reason of his being adamic, the workman became furious and started manhandling Sri U. Nagar with fists and blows but the matter was timely intervened by other officers of labour office including the charge-sheeting person i.e. the Chief Manager (P & A) but lastly the workman pushed the labour officer Mr. Nagar causing bodily injury and Mr. Nagar sustained grievous hurt also, and all concerned were perplexed and puzzled at that time for his unparliamentary activities and then he left the office of after threatening Sri Nagar with dire consequences abusing him with filthy languages. Ld. Lawyer also raised that such acts on the part of the workman amounted to gross misconduct as per provisions laid down in certified standing orders that exists in the company and as per provisions of Section 14C(I) wilful in



subordination or disobedience whether alone or in combination with others to any lawful or reasonable order of superior, riotous for disorderly behaviour during working hours at the establishment or any work subversive to discipline, and with all these the workman was called upon to explain in writing within 48 hours from receipt of that charge-sheet as to why severe disciplinary action including summarily dismissal would not be taken against the workman or to be dealt with otherwise, and should the workman failed to produce the same within the time mentioned in the charge-sheet, it would be presumed that he did not have any explanation to offer and the law would take its own course and restricted the workman from entering the mill.

Now it is to be seen as to whether there is any fresh evidence on behalf of the management of the company against the workman to substantiate the matter of domestic enquiry and the report of the enquiry officer requiring the management of the company to dismiss the workman from service summarily. In his examination-in-chief the workman Sri Akbar Ali as P.W.-1 deposed that he was the workman engaged by the company to work as a machine operator in 1975 and continued to work under the O.P. Company in the said capacity till his service was terminated by the O.P. company explaining that the O.P. Company is a well-reputed mill engaged in jute product manufacturing and processing earning huge profit mainly because of skilful performance and hard labour rendered by the employees and the workman engaged under it. P.W.-1 also deposed that the O.P. Company is huge profit earner but very much unfair and exploitative to its workman and it has little regards to observe the provisions of industrial laws, specially those which are enacted for the welfare of the workman and though the management of the company rampantly followed unfair labour practices, yet the workman had all along been very much sincere, honest, hardworking and left no stone unturned to satisfy superiors of the company all through his tenure of employment under the O.P. Company. P.W.-1 also deposed that he was very much diligent to his service but the management of the company took a hostile attitude towards him and he used to be periodically denied to join in his duty illegally and unjustifiably by management of the mill and deprived him from getting salaries and other benefits, as a result of which he i.e. P.W.-1 wrote a letter dt. 25.01.2006 to the O.P. Company and then he also preferred the matter before the office of Deputy Labour Commissioner, Government of West Bengal, Howrah, vide his representation dt. 31.01.2006 seeking intervention into his such grievances and the office of Deputy Labour Commissioner, Howrah took up the said matter and Mr. N.C. Majhi, Assistant Labour Commissioner initiated a proceeding in this regard and on his persuasion the management of the company had to concede to allow the workman to resume his duty by virtue of the letter dt. 14.06.2006 addressed to the said Assistant Labour Commissioner Sri Majhi by O.P. Company to direct him i.e. workman to join his duty under the O.P. Company and accordingly P.W.-1 resumed his duty immediately. P.W.-1 next deposed that the O.P. Company having been highly vindictive by the aforesaid order of Assistant Labour Commissioner Sri Majhi directing the company to allow the workman to resume his duties, the management of the company issued the charge-sheet dt.

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26.06.2006 signed by the Chief Manager (P & A) to the P.W.-1 levelling some baseless, concocted and manufactured charges by all stretches of their imagination in a pre-calculated manner to victimize him and he was also restricted from entering inside the premises of the O.P. Company with immediate effect as per that stipulation as were made in the charge-sheet and thus impliedly suspended the workman from his service in an illegal manner without any payment of subsistence allowance. P.W.-1 also deposed that he replied to the said charges in charge-sheet vide his letter dt. 10.07.2006 addressed to the Chief Manager (P & A) inter alia claiming his full wages w.e.f. 26.06.2006 and also to allow him to resume his normal duty but the management of the company did not pay any wages neither any subsistence allowance to him, not proceeded with any domestic enquiry against him nor allowed him to resume his duty, and under such circumstances the P.W.-1 moved the local Deputy Labour Commissioner's office, Howrah for redressal of his grievances for non-payment of subsistence allowance but the management of the opposite party did not pay any subsistence allowance neither did it allow him to join duty. P.W.-1 also deposed that in this way after a long gap of three years, there was no change in the situation and the P.W.-1 became fully out of employment and in such a stage P.W.-1 suddenly received a notice dt. 24.11.2009 from one Mr. Sk. Hamidul Quader, advocate mentioning that a domestic enquiry would be held against him on those charges as were mentioned in the charge-sheet as were given three years back on 26.06.2006 by the O.P. Company and P.W.-1 also deposed that the said enquiry officer Ld. advocate Mr. Quader conducted the said enquiry in arbitrary, illegal and unjustified manner rampantly denying the requirement of principles of natural justice, P.W.-1 further deposed that the said enquiry was already held invalid by this Tribunal in the course of proceeding / hearing of the instant case. P.W.-1 also deposed that the O.P. Company issued a letter to him dt. 19.04.2010 based on the above-mentioned enquiry report and P.W.-1 also replied to the said letter by his letter dt. 07.07.2010 explaining his details regarding the fallacy of the entire matter based on alleged fabricated charges to victimize him. P.W.-1 also deposed that O.P. Company issued a letter dt. 04.08.2010 inter alia arbitrarily dismissing him not considering his just explanation and at that time the salary of the workman per day was Rs. 203.69/-. P.W.-1 further deposed that he protested against that wrongful dismissal order issued by the O.P. Company by making a representation by a letter dt. 10.09.2010 addressed to the management of the company demanding inter alia his immediate re-statement in service but the O.P. Company did not consider anything following its hostile attitude towards him and thereafter he referred the matter before Labour Commissioner, Government of West Bengal by a representation dt. 21.02.2011 seeking intervention in the dispute and it was taken up by Howrah office of that authority and Mr. N.C. Majhi, Assistant Labour Commissioner took up the matter for settlement in tripartite level but nothing could be achieved due to non-compromising adamant and unreasonable attitude of the O.P. Company, and finding no hope of any settlement before conciliation authority P.W.-1 preferred an application before the conciliation officer in prescribed form P-4

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dt. 02.08.2012 praying for issuance of certificate regarding pendency of the conciliation proceeding and Mr. Majhi then issued the same in Form-S U/s. 10(1B)(d) of I.D. Act, 1947. P.W.-1 also deposed that he has remained unemployed from 26.06.2006 when he was issued the charge-sheet in question and was also put into simultaneous illegal suspension without any payment of subsistence allowance and later dismissed from service and failed to obtain any job or any other source of earning as yet and passing extreme hard days. P.W.-1 also deposed that he categorically and emphatically denies that he had given any low production at any time during his tenure of his service as alleged by O.P. Company in the charge-sheet and also denied that he had assaulted Mr. Umesh Nagar on 26.06.2006 at 6 a.m. as alleged by the O.P. Company and also denied that he abused Umesh Nagar at any time as alleged by the O.P. Company. Thus from the examination-in-chief of P.W.-1 Sri Akbar Ali, it is specifically coming out that Akbar Ali as a workman in the company had been performing his duties sincerely and seriously but sometime he used to be given no work by the company and for that reason he raised allegation against the company and ultimately he referred the matter before the Labour Commissioner, Government of West Bengal and the Assistant Labour Commissioner after hearing both sides directed the management of the company to reinstate him in his service and as a result the company became bound to take him back to his service and it is the allegation that due to that order by the Assistant Labour Commissioner directing the company to take back the workman Sri Akbar Ali into the service, the company started maintaining hostile attitude and even though he did not do anything the management of the company issued the charge-sheet against him making some false allegations against him and he denied either making any low production or assaulting Mr. Nagar of the company mentioning that he did nothing to Mr. Nagar, he never assaulted Mr. Nagar and also never abused him using any such language as alleged in the charge-sheet.

From the evidence of P.W.-1 Sri Akbar Ali it is found that Sri Akbar Ali as P.W.-1 proved some documents which are charge-sheet issued against him by management of the company (Ext.1), copy of diary that P.W.-1 filed in the police station (Ext. 2), his reply against the charge-sheet – Ext -1 (Ext. 3), copy of agreement arising out of strike in the O.P. Company (Ext. 4), copy of letter that was sent to P.W.-1 by O.P. Company (Ext. 5), medical prescription of P.W.-1 issued by Howrah Hospital (Ext. 6). Ext. 1 is the charge-sheet issued against the P.W.-1 Akbar Ali by the O.P. Company mentioning that on 25.06.2006 at about 5 p.m. the chief labour officer of the O.P. Company wanted to know from the workman Akbar Ali about his continuous low production but workman Akbar Ali did not give any suitable reply and on that day i.e. 26.06.2006 when workman Akbar Ali resumed his duty at 6 a.m., he left the place of his duty at sack sewing department of the company at 6.15 a.m. and came to Labour Office in rowdy and arrogant manner and wanted to know from chief labour officer Mr. U. Nagar to pay him his legal dues and then Sri Nagar wanted to know about his adamanacy, Akbar Ali became furious and started assaulting Mr. Umesh Nagar with fists and blows which was timely intervened by

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some other officer of the labour office including the Chief Manager (P & A) and then the workman Akbar Ali pushed Mr. Umesh Nagar causing grievous injuries / hurt to Mr. U. Nagar, and all these stated to have amounted to insubordination and subversive to discipline of the O.P. Company and directed the workman Akbar Ali to explain in writing within 48 hours mentioning as to why disciplinary action including summary dismissal would not be taken against him, mentioning further that in case workman Akbar Ali failed to produce the explanation within that prescribed time, it would be presumed by the O.P. Company that Akbar Ali did not have any explanation to offer and the show cause also included that the management of the company decided to restrict Akbar Ali's ingress through company's gate till final disposal of the matter. Ext. 2 is a prayer by Akbar Ali to the officer-in-charge of Shibpur police station mentioning that on 23.03.2010 he went to the mill gate of the company locating at 493/CA, G.T. Road in Howrah-2 as the enquiry officer and the management of the O.P. company called him for enquiry on 23.03.2010 but the gate keeper of that O.P. Company did not allow him to enter inside the mill and describing it to be a conspiracy on the part of management of the company and enquiry officer which is further described as illegal and whimsical, mentioning further that management of the company has not given him any subsistence allowance and with all these he prayed before the officer-in-charge of Shibpur Police Station to advise them for payment of all arrear salary amount immediately and thus to save his poor family and from the stamp affixed on it, it is found that this prayer for lodging diary was received by the Shibpur Police Station on the same day i.e. 23.03.2010. Ext. 3 dt. 10.07.2006 is found to be a reply by workman Akbar Ali addressed to the Chief Manager (P & A), Howrah Mills Co. Ltd., the workman Akbar Ali in this reply (Ext. 3) has raised that the allegations are false and totally denied by him, all allegations are false, fabricated, illegal and unjustified, mentioning further that nothing happened with the chief welfare officer and hence question of disobedience, riotous or disorderly behaviour as per order of the company does not arise, it has been further stated in the reply (Ext. 3) that the management of the company i.e. Chief Manager (P & A) to whom this reply is addressed has restricted the ingress of the workman Akbar Ali through the gate of he mill and also suspended Akbar Ali from 26.06.2006, mentioning further that under the law he i.e. Akbar Ali was entitled to get full wages from the date of forced unemployment and with all these Akbar Ali in his reply requested the Chief Manager (P & A) to look into the matter and also requested him to pass an order so that he i.e. Akbar Ali might be allowed to resume his duty immediately with full wages from the date of 26.06.2006. The Memorandum of settlement (Ext. 4) is found to be a settlement between employers of the Jute mills of West Bengal on the one side and their workmen represented by Bengal Chatkal Majdoor Union and 19 Others on the other side, the recital of the settlement is written as the Central Trade Unions and Federation of Trade Unions operating in the jute mills in West Bengal served a strike notice dt. 26.11.09 along-with copy of charter of demands etc. to go for indefinite strike in the jute mill w.e.f. 14.12.2009 until the demands were fulfilled, on receipt of the notice, the dispute were taken up in

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conciliation and the Labour Commissioner, West Bengal convened conciliation meeting on 27.11.2009, 08.12.2009, 12.12.2009 and 13.12.2009 before Hon'ble Minister-in-charge, Labour Department with a view to averting the strike w.e.f. 14.12.2009, since the dispute was not resolved, the strike could not be averted, the workman resorted to continuous strike w.e.f. 6.00 a.m. of 14.12.2009, the conciliation proceedings were continued and meetings were held on different dates from 19.12.2009 till 11.03.2010 and the dispute was settled amicably before Hon'ble Minister-in-charge, Labour Department on 12.02.2010 with some terms and conditions as mentioned in the settlement (ext. 4). Ext. 5 is a letter addressed to workman Akbar Ali by president of the O.P. Company, it contains that the enquiry officer has submitted his report and findings on 02.04.2010, wherein the workman has been found guilty of the charges, it also contains that before considering the said report and findings the president of the O.P. Company as disciplinary authority would like to serve copy of the same upon the workman giving liberty to the workman to submit his representation against the said finding of the enquiry officer, it also contains that the president of the O.P. Company finds that as workman failed to participate in the enquiry proceeding the enquiry officer concluded the enquiry ex-party, with addition that as a consequence the previous day's enquiry proceedings from page – 14 to page -21 were not sent to the workman and as such a copy of the same was enclosed with the copy of letter (Ext. 5). Ext. 6 is the medical prescriptions in the name of workman Akbar Ali dt. 30.11.2009 of Howrah District Hospital in the O.P.D. department. From the markings of the above-mentioned exhibits, it is coming out that all these i.e. Ext. 1 to Ex. 6 as were proved and relied during the time of evidence on merit were also relied by the workman during the time of considering he validity of domestic enquiry.

From the document (Ext. 5) which is a letter addressed to Akbar Ali, the workman by president of the O.P. Company, it is found admitted on the part of the O.P. Company to the president of the O.P. Company that the domestic enquiry was conducted against the workman Akbar Ali ex-party by the enquiry officer Ld. Advocate Hamidul Quader and it is also admitted on the part of the O.P. Company to the president of the O.P. Company that a portion of the proceedings of the domestic enquiry i.e. page-14 to page-21 was not supplied to the workman immediately but it was, as stated, accompanied with the letter (Ext. 5), and it is found that the workman Akbar Ali has not denied the same but at the same time he has asserted by deposing as P.W.-1 that he used to be periodically denied work by the management of the company illegally, unjustifiedly and thus he company deprived him from getting his salaries and other benefits, P.W.-1 further deposed that against all these, he i.e. P.W.-1 /workman wrote a letter dt. 25.01.2006 to the O.P. Company and then also referred the matter to the office of the Deputy Labour Commissioner, Government of West Bengal at Howrah by writing a letter on 30.01.2006 requesting intervention into his such grievances and the office of the Deputy Labour Commissioner, Howrah through Assistant Labour Commissioner Mr. N.C. Majhi initiated a proceeding in this regard and on persuasion of Mr. Majhi the management of the O.P. company



became bound to concede and accordingly allow him i.e. workman Sri Akbar Ali to resume him in duty by virtue of letter dt. 14.06.2006 which was addressed to that Assistant Labour Commissioner Mr. Majhi requesting him i.e. Mr. Majhi to direct workman Akbar Ali to join his duty under the O.P. Company and accordingly workman Akbar Ali resumed his duties under the O.P. Company, but the O.P. Company, P.W.-1 further deposes, as a result of such action in favour of the workman by Mr. N.C. Majhi, the Assistant Labour Commissioner, management of the O.P. company became highly vindictive on workman Sri Akbar Ali and the management of the O.P. company issued the charge-sheet in question (Ext. 1) on workman Sri Akbar Ali on 26.06.2006, P.W.-1 further deposes that the charges in the charge-sheet were baseless, concocted, manufactured, pre-calculated for the purpose of victimizing the workman, P.W.-1 further deposes that he made reply against the charge-sheet by writing a letter dt. 10.07.2006 inter alia claiming full wages w.e.f. 26.06.2006 and also requested to allow him to resume duties but management of the company did nothing and then P.W.-1 moved the office of Deputy Labour Commissioner, Howrah or redressal of his grievances and also for non-payment of subsistence allowance, P.W.-1 also deposes that after a gap of three years from the date of making the charge-sheet(Ext. 1), P.W.-1 received notice of enquiry on 14.11.2009 from enquiry officer, Ld. Advocate Sri Hamidul Quader mentioning that a domestic enquiry would be held against him by him i.e. enquiry officer in the office of the company. from the record it is coming out that the workman wanted to contest and defend himself during the enquiry proceeding but he was not allowed to enter by the darwan of the gate of the company and general strike in the company also started (Ext. 4), and it is also mentioned in the charge-sheet (Ext. 1) that in the charge-sheet (Ext. 1) the Chief Manager (P & A) of the O.P. Company also restricted the entry of the workman in the company's compound, and Akbar Ali as P.W.- 1 also deposes the enquiry officer conducted the enquiry against him arbitrarily, illegally, in unjustified manner rampantly denying principles of natural justice.

P.W.-1 Akbar Ali was cross-examined by Ld. Lawyer for the O.P. Company at length, I find that Ld. Lawyer for the company wanted to know from P.W.-1 as to on whose instruction the affidavit-in-chief of P.W.-1 was prepared and P.W.-1 replied that he did not know the person who typed his affidavit-in-chief and added that after it was prepared, it was read over and explained to him by his representative and then he signed it in a Court nearby to this Tribunal, here it may be mentioned that the P.W.-1 is found to have affirmed his affidavit-in-chief before notary public Mr. Samir Bhattacharjee at City Civil Court, Calcutta which is near to this Court. It is also found in the cross of P.W.-1 that Ld. Lawyer for the company wanted to know as to in which year the workman started working in the company and P.W.-1 replied that he had been working in the company since 1975, he was issued E.S.I. Card but it was not filed in this Tribunal and Ld. Lawyer made a suggestion to the P.W.-1 that P.W.-1 had not been working in the company since 1975 and P.W.-1 denied it. It is also found that Ld. Lawyer for the company made a suggestion to the P.W.-1 mentioning that para-1 to para-5 of the affidavit-in-chief of

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P.W.-1 raising allegation against the company were not correct but P.W.-1 denied this suggestion. Ld. Lawyer for the company also wanted to know from the P.W.-1 as to whether the P.W.-1 had any paper to show that the company had been earning huge profit and the P.W.-1 replied in negative. Here it is to be mentioned that in the affidavit-in-chief it was mentioned that company is a profit earning concern and on behalf of company no document was filed about the economic condition of the company and this suggestion regarding economic condition of the company to the P.W.-1 appears to be of no evidentiary use, so far nothing has also been shown or raised by Ld. Lawyer for the company in this regard. Ld. Lawyer for the company wanted to know if P.W.-1 filed the copy of the letter dt. 25.01.2006 addressed to the O.P. Company and P.W.-1 replied that he did not do so and also denied a suggestion by Ld. Lawyer for the company that P.W.-1 had not written any such letter to the company, and also denied a suggestion that contention of para-5 of affidavit-in-chief of P.W.-1 is not correct. Ld. Lawyer for the company wanted to know from the P.W.-1 that in the charge-sheet there have been allegations of assault against the workman in the way that workman assaulted Mr. Umesh Nagar of the company and then Ld. Lawyer for the company put a suggestion to the P.W.-1 that all such allegations of assault by P.W.-1 on Mr. Umesh Nagar of the company is correct but P.W.-1 denied, P.W.-1 also denied further suggestion by Ld. Lawyer for the company that contention of P.W.-1 in para-6 and para-7 of his affidavit-in-chief are false and also denied a suggestion that the contention of letter (Ext. 2) is false, Ext. 2 being a letter addressed to officer-in-charge of Shibpur Police Station by P.W.-1 mentioning that the enquiry officer and the management of the O.P. company called P.W.-1 for the purpose of enquiry on 23.03.2010 but the gate-keeper of the company stated to the P.W.-1 that P.W.-1 would not be allowed to enter inside the mill and describing this as a conspiracy on the part of the management of the company, it was termed by P.W.-1 as illegal, whimsical on the part of the management of the company and requested the O.C. of the P.S. to do something to save the poor family of the P.W.-1. P.W.-1 also denied suggestion by the Ld. Lawyer for the company that contentions of para-8 to para-12 of affidavit-in-chief of P.W.-1 are false. Further in the cross-examination of P.W.-1, Ld. Lawyer for the company wanted to know from P.W.-1 as to in which department of the company the workman had been working during filing of charge-sheet against him and P.W.-1 replied that at that time he was working in sack sewing department of the company and P.W.-1 also denied a further suggestion by Ld. Lawyer for the company that all the charges against him as per charge-sheet (Ext. 1) are correct. Ld. Lawyer for the company also wanted to know from P.W.-1 as to how P.W.-1 has been maintaining himself and P.W.-1 explained that he has 3 sons, one is engineer, one is working in navy and another one is working in Baro Bazar in Calcutta and he has been getting some money from them and denied a suggestion by Ld. Lawyer for the company that P.W.-1 had been earning a huge money by which he made his sons educated, P.W.-1 also denied suggestion by Ld. Lawyer for the company that the contention of affidavit-in-chief in para-15 to 18 are false and also denied a further suggestion that the contention of his written statement

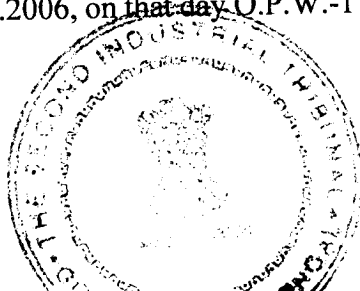


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are false. These are the entire cross-examination by Ld. Lawyer for the company on P.W.-1, and conspicuously it is coming out that Ld. Lawyer for the company has not raised any question against some specific matters in the affidavit-in-chief of P.W.-1 that the P.W.-1 earlier used to be not given work on most occasion for which P.W.-1 raised allegation against the company and also raised the same before the Deputy Labour Commissioner, Howrah and then as per order of the Deputy Labour Commissioner, Howrah the management of the company became bound to reinstate him in his service by giving him duty, as a result of which the management of the company started maintaining vindictive attitude against this workman and illegally issued the charge-sheet containing false charges but did not start any domestic enquiry then but only after a gap of 3 years and the charge-sheet contains an injunction against the workman i.e. P.W.-1 that workman P.W.-1 would not be allowed to enter inside the company premises and in response to a notice of enquiry from enquiry officer Ld. Advocate Hamidul Quader, when he went to the gate of the company the darwan of the gate did not allow him to enter inside to attend the enquiry proceeding and after that general strike had been continuing in the company (Ext. 4) and thus the workman was compelled not to participate in the enquiry proceedings about which P.W.-1 wrote letters to the enquiry officer and also to the management of the company but without any result and the enquiry officer conducted the enquiry proceeding against the workman in absentia and recommended dismissal of P.W.-1 from service, which was followed by the management of the company most religiously, actions of which have been described by P.W.-1 as illegal and in violation of requirements principles of natural justice and all others and as I find Ld. Lawyer for the company left all these by merely putting a formal suggestion that all these are not correct and all such suggestions were denied by the P.W.-1 most emphatically and it is found that such suggestions by Ld. Lawyer for the company to P.W.-1 are only evasive and do not carry any evidentiary value, as Ld. Lawyer for the company after the denial of the suggestion put to P.W.-1, did not put any other question either directly or by way of suggestion to substantiate anything.

Ld. Lawyer for the company examined Sri Umesh Nagar as O.P.W.-1 and he says that his designation in the company was chief personnel-cum-labour officer, as per charge-sheet that was issued to the workman Akbar Ali (Ext. 1), on 25.06.2006 at about 6.15 a.m. the workman Akbar Ali came to the labour office in rowdy and arrogant manner and asked the chief labour officer who is stated to be this P.W.-1 to pay him his legal dues and at that time this O.P.W.-1 Mr. Nagar wanted to know from the workman as to why the workman was adamant, then workman became furious and assaulted Mr. Nagar with fists and blows causing injury to his body including grievous hurt and at that time the other officers from the labour office including the maker of the charge-sheet (Ext. 1) who is stated to be Chief Manager (P & A) saved him i.e. Umesh Nagar from the workman, this is what exactly mentioned in the charge-sheet (Ext. 1). In examination-in-chief this witness Mr. Nagar deposed that he knows the workman Akbar Ali and the incident took place on 25.06.2006, on that day O.P.W.-1 went to sack sewing department of

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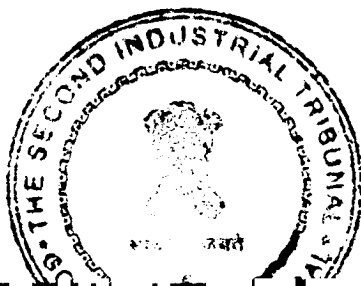
the company and wanted to know from the workman the reason for his low production and the workman failed to give any satisfactory reply and immediately the workman started abusing him in filthy language and left that place, O.P.W.-1 Mr. Nagar further deposed that on the following day i.e. on 26.06.2016 at about 6 a.m., the workman joined duty at 6.15 / 6.20 a.m. and came to the Labour Department and at that time this O.P.W.-1 was sitting in his chamber and immediately started abusing O.P.W.-1 and also assaulted him by fists and blows, O.P.W.-1 also deposed that then those staff of labour office who were present at that time saved him and as a result of assault, he sustained injuries and got medical treatment. This Mr. Nagar i.e. O.P.W.-1 as per his evidence is the victim, and as found from his deposition the incident took place twice, first on 25.06.2006 at about 5 p.m. in the sack sewing department of the company and again on 26.06.2016 at about 6 a.m. inside his chamber of the labour department of the company, but as per charge-sheet the incident took place on 25.06.2006 at about 5 p.m. when the workman left the place of duty after O.P.W.-1 asked him about low production by the workman, in the charge-sheet there is no mentioning of abusing O.P.W.-1 in filthy language by the workman, thus major contradiction has come into existence between what the O.P.W.-1 deposed and the matter of charge in the charge-sheet (Ext. 1) which says that on being questioned by O.P.W.-1 in the sack sewing department of the company on the matter of low production, the workman left the place of work and there is no mention of any use of abusive languages by the workman. Further as per charge-sheet on 26.06.2016 at about 6 a.m. at the place of occurrence which is stated to be the chamber of O.P.W.-1 in the company the workman came to O.P.W.-1 in rowdy and arrogant manner and demanded his legal dues and then O.P.W.-1 wanted to know the reason about his adamic-manner and the workman assaulted with fists and blows causing injuries and also causing grievous hurt to the O.P.W.-1 but during the time of deposition as O.P.W.-1 Mr. Nagar is totally silent of any injury of the nature of grievous hurt, I also find contradiction in the charge-sheet which mention the nature of injury as grievous heart but not grievous hurt.

The injury grievous hurt is a matter of medical jurisprudence and it is also mentioned in the Indian Penal Code in the chapter regarding causing bodily injury, it has been defined as emasculation, permanent privation of the sight of either eye, permanent privation of hearing of either ear, privation of any member or joint, destruction or permanent impairing of the powers of any member or joint, permanent disfiguration of the head or face, fracture or dislocation of a bone or tooth or any hurt which endangers life or which causes the sufferer to be during the space of 20 days in severe bodily pain or unable to follow his ordinarily pursuits but from the evidences of the O.P.W.-1 nothing of the nature of grievous hurt as mentioned above has come into existence, O.P.W.-1 stated that he got medical treatment from the company dispensary and going through the medical paper – copy, nothing is coming to support any matter of grievous injury, further the charge-sheet is also unclear as to whether it is grievous hurt or grievous heart which is meaningless. This O.P.W.-1 was cross-examined by Ld. Lawyer for the workman and



in cross O.P.W.-1 admitted that he cannot recollect anything about lodging any complaint on 25.06.2006 and Ld. Lawyer for the workman put suggestion to this O.P.W.-1 that the question of low production by the workman is not correct, that no incident took place on 25.06.2006 that Akbar Ali never assaulted him on 26.06.2006 in his chamber, that O.P.W.-1 is a tutored witness, that O.P.W.-1 was deposing falsely, but O.P.W.-1 denied all these suggestions without mentioning anything further. O.P.W.-2 Mukteswar Singh is another witness on behalf of the company, he deposed that in 2006 he would work in Howrah Jute Mill as personnel officer and the workman Akbar Ali is known to him, he also deposed that in June, 2006 Mr. Umesh Nagar was the personnel officer of Howrah Jute Mill and suddenly Akbar Ali entered in the chamber of Umesh Nagar and scolded him and also assaulted him and there were cries, at that time this O.P.W.-2 Mr. Singh was near that place and the nearby staff also came and they all saved Umesh Nagar from the attack of Akbar Ali and then one letter was sent to Police station and on the basis of evidence of the O.P.W.-2 it is marked as Ext. E and it was also given to Assistant Labour Commissioner, Howrah by chief manager of the company Mr. A. Chakraborty and on the basis of evidence of O.P.W.-2 it is marked ext. F and it was also given to Akbar Ali by Mr. N. Das who was the president of works and on the basis of evidence of O.P.W.-2 it is marked Ext. G, a letter was given to Akbar Ali by general manager of the company and on the basis of evidence of O.P.W.-2 it is marked Ext. H and Akbar Ali also gave a letter to general manager (Personnel), which he identified Ext. 1 collectively. Thus, as per oral evidence of O.P.W.-2, workman Akbar Ali assaulted O.P.W.-1 Mr. Umesh Nagar and the O.P.W.-2 and other office staff who were nearby at that time saved Mr. Umesh Nagar from the attack of Akbar Ali. Ext. E is found to be a letter addressed to Inspector-in-Charge, Shibpur Police Station, Howrah, it is found to be written by Factory manager D.R. Nagar, the contention of this letter (Ext. E) is that it was informed to the inspector-in-charge of Shibpur Police Station that on that day i.e. 26.06.2006 at about 6.10 a.m. while the chief labour officer Sri U. Nagar was in his chamber, all on a sudden workman Sri Akbar Ali, son of late Md. Hanna residing at 139 G.T. Road, Shibpur – South under P.S. – Shibpur within district Howrah-711102 describing him to be one of the workman of sack sewing department of the company rushed to the labour office with an ill motive and threatened chief labour officer with dire consequences, the reason being best known to him and after-ward he tried to manhandle that officer with fists and blows and pushed him but other officers at labour office controlled that matter, otherwise the matter would have taken a bad shape. The further contention in his letter i.e. Ext. E is that the writer of the letter i.e. factory manager D.R. Nagar apprehended a serious breach of peace and tranquillity in and around the Mill premises and for this reason the inspector-in-charge of the police station was requested for co-operation by keeping a strict vigil so that no untoward happenings can take place and also requested to treat this letter (Ext. E) as FIR against the delinquent workman, from the endorsement on this letter purported to be made by Shibpur Police Station, it is found that it was treated by mentioning a G.D. entry No. 2303/06 dt. 26.06.2006. As already seen in the evidences

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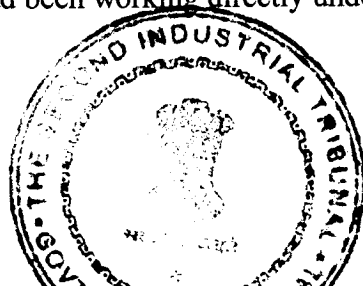
of O.P.W.-1 Sri Umesh Nagar, it was found that workman Akbar Ali assaulted him with fists and blows causing injury to him and this O.P.W.-1 is silent over the matter as mentioned in the charge-sheet that workman assaulted O.P.W.-1 Mr. Nagar with fists and blows and also by pushing causing grievous hurt, and it is the evidence of O.P.W.-2 Mukteswar Singh over this matter that workman Akbar Ali assaulted Mr. Nagar (O.P.W.-1) and the staff then nearby saved O.P.W.-1 from the attack of Akbar Ali. It is the argument on the part of Ld. Lawyer for the company that on the date and time of occurrence, Sri Akbar Ali entered in the chamber of the victim (O.P.W.-1) and assaulted him causing grievous hurt to his person and he had to undergo medical treatment and the version of O.P.W.-1 over the same has also been corroborated by the O.P.W.-2 who was then near to the place of occurrence with other office staff, all of whom saved the victim Mr. Nagar (O.P.W.-1) from the clutch of the workman Sri Akbar Ali and Ld. Lawyer for the company emphasised that the nature of injury is nothing but a grievous hurt. I have already mentioned the contention of the letter addressed to the inspector-in-charge of Shibpur Police Station by factory manager Mr. D.R. Nagar, it appears from this letter (Ext. E) that it was made promptly after the alleged occurrence, and as per this letter, it was stated by Mr. D.R. Nagar the factory manager that the workman Sri Akbar Ali only threatened to assault after scolding him, and inspector-in-charge of the Shibpur Police Station did not start any specific case but only mentioned the matter in the GDE which is stated to be 2303/06 dt. 26.06.2006. It is the argument by the Ld. Lawyer for the workman that the workman did nothing to the victim Mr. Nagar (O.P.W.-1) and the O.P.W.s have all purposely stated lies conjointly only to implicate the workman Sri Akbar Ali so that Akbar Ali could be any how ousted from the company, Ld. Lawyer explained that earlier Akbar Ali used to be not given work time to time by the management of the company and for that reason Akbar Ali raised dispute and the labour officer at Howrah after considering the matters of both sides, directed the management of the company to reinstate Akbar Ali and accordingly the management of the company started becoming hostile towards Akbar Ali and attempted to any how oust Akbar Ali from the company and the alleged letter of F.I.R. (Ext. E) and the charge-sheet (Ext. A) are false and fabricated and the O.P.W.s also stated all lies motivated-ly to describe the workman as bad person and nothing-else. It is already found that the letter to the inspector-in-charge of Shibpur Police Station (Ext. E) only mentioned that Akbar Ali attempted to assault and nothing more. O.P.W.-2 Mr. Singh admitted in cross-examination that the victim Mr. Umesh Nagar did not file any complaint and police also did not make any investigation and O.P.W.-2 also admitted that victim Mr. Nagar was not medically examined by any other doctor, and also admitted that no any specific case was started in any criminal court against Akbar Ali. As per O.P.W.-2, this O.P.W.-2 and others saved the victim Mr. Nagar from the attack by Akbar Ali but no other person was examined over this matter of attempt to assault Mr. Nagar by Akbar Ali and the company also did not bring any witness to really show that the G.D. entry was made with the alleged letter (Ext. E). Admittedly no medical officer / doctor was also examined by the company but in case

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of any matter of grievous hurt, medical evidence is compulsory. There is also allegation against the workman that he scolded the victim Mr. Nagar but neither Mr. Nagar as O.P.W.-1 nor O.P.W.-2 Mr. Singh gave out any word alleged to have been uttered by the workman to show its nature whether it was of any form of abusive nature or not. Comparing the evidence given by O.P.W.-1 and O.P.W.-2 that workman Sri Akbar Ali caused grievous hurt to O.P.W.-1 by assaulting him with fists and blows with a document which was promptly written to police station (Ext. E) mentioning that Akbar Ali only attempted to assault, it is coming out that the facts and circumstances show that Akbar Ali who as P.W.-1 deposed that he did nothing but the management of the company manufactured the matter of assault out of grudge arising out of the matter that the management of the company previously would not give any work to Akbar Ali from time to time and on the basis of his dispute before the labour officer at Howrah, he got a direction from the labour officer to reinstate him, did nothing and the matter in the charge describing that Akbar Ali inflicted grievous hurt to the person of O.P.W.-1 and scolded him are found to be nothing but simply baseless altogether.

As mentioned earlier by order No. 51 dt. 03.02.2016 the domestic enquiry as was conducted against the workman Sri Akbar Ali was held to be not just and proper and the entire proceeding along with the enquiry report was found to be invalid and was not accepted and therefore this provided as per law scope to the management of the company to adduce further evidence to substantiate the charge as per as alleged assaulting by Akbar Ali on the victim (O.P.W.-1), but I find that there is nothing by the management of the company in any way, rather the O.P.W.-1 and O.P.W.-2 tried to establish that Akbar Ali assaulted O.P.W.-1 causing grievous hurt but the contention of the alleged letter (Ext. E) as was written to Police officer of Shibpur Police Station and at the same time the evidences in cross-examination of O.p.W.-1 and O.P.W.-2 have clearly proved that the matter of scolding, using abusive language and causing grievous hurt to the victim (O.P.W.-1) by Akbar Ali are found to be simply baseless and unnecessarily exaggerating but false. The management of the company also examined one Mr. Sandip Mondal as O.P.W.-3, he deposed that he is a service-man in the company and has been working in the capacity of senior assistant in finishing and sack sewing department, he also deposed that he knows the workman of this case Sri Akbar Ali as Akbar Ali used to work under this O.P.W.-3, he also deposed that this Akbar Ali was dismissed from service in June, 2010, he also deposed that O.P.W.-1 Mr. Umesh Nagar of the company tried to make Sri Akbar Ali understand the matter of production but Akbar Ali did not try to listen to him and Akbar Ali was dismissed from service on the immediate next day. During cross-examination of this O.P.W.-3, O.P.W.-3 admitted that he never saw the charge-sheet that was filed against Sri Akbar Ali and O.P.W.-3 also denied a suggestion that the charge-sheet against Akbar Ali was false and baseless and also admitted that he came to depose before this Court without receiving any summon and he deposed on being asked by labour office of the company. From the deposition of this O.P.W.-3 it is coming out that Akbar Ali had been working directly under the control of this O.P.W.-3

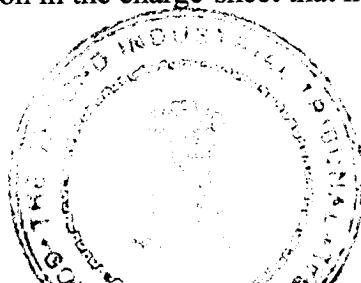


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and this O.P.W.-3 is found to be conspicuously silent over the matter in the charge-sheet as also deposed by O.P.W.-1 and O.P.W.-2 that Akbar Ali assaulted O.P.W.-1 inside the chamber of O.P.W.-1 causing grievous hurt to O.P.W.-1, further from the admission by this O.P.W.-3 during cross-examination it is coming out that this O.P.W.-3 came to depose before this Court without receiving any summon but on being asked by labour office of the company and the Ld. Lawyer for the workman suggested to O.P.W.-3 that whatever he deposed, deposed on being tutted by the management of the company. There is a further witness on behalf of the company, he is O.P.W.-4 Mr. Dipto Narayan Mukhopadhyaya, he deposed that he is the inspector of Minimum Wages presently posted at the office of Deputy Labour Commissioner, Howrah, he is thus an official witness and produced the reconciliation file that was marked Ext. J, in cross-examination this O.P.W.-4 admitted that he does not do any conciliation matter and also does not have any knowledge about the matter of conciliation as in the conciliation file.

Ld. representative for the workman has argued that the workman Sri Akbar Ali never assaulted anyone of the company including the officer of the company Mr. Nagar (O.P.W.-3), Ld. Representative explained that the workman Sri Akbar Ali started working in the company from 1975 and continued to work in the company in the capacity of machine operator till he was terminated from service by the management of the company, he also explained that though the company is a profit earner company but it is very much unfair and exploitative to its workman and the company has little regards to observe the requirement of industrial laws, specially those that are enacted for welfare of the workman and the company rampantly followed unfair labour practices even though the workman Akbar Ali had been very much sincere, honest, hardworking and left no stone unturned to satisfy his superiors. Ld. representative also argued that the management of the company took a hostile attitude towards the workman, the workman used to be periodically denied duty by the management of the company in illegal and unjustified manner and also deprived him from getting salaries and other benefits, against which the workman wrote a letter on 25.01.2006 the management of the company also referred this matter to the office of the Deputy Labour Commissioner, Government of West Bengal, Howrah by making a representation dt. 30.01.2006 to the Deputy Labour Commissioner, Howrah requesting intervention into his such grievances and the said labour office through its Assistant Labour Commissioner Mr. N.C. Majhi initiated a proceeding over that matter of grievances and on persuasions of Mr. Majhi of that labour office management of the company became bound to take back workman Akbar Ali to his duty in the way that the management of the company by letter dt. 14.06.2006 addressed to Mr. Majhi requesting him to direct workman Akbar Ali to join his duty and accordingly Akbar Ali then joined his duty. Ld. representative further raised that thus the management of the company became highly vindictive and on 26.06.2006 issued the charge-sheet in question levelling some baseless concocted, manufactured charges and subjected the workman to domestic enquiry but the workman could not afford to attend the domestic enquiry due to stipulation in the charge-sheet that he must not enter in the company

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premises and when the enquiry officer asked him to appear to face the enquiry as was held inside the premises of the company the gate-keeper of the company did not allow him to enter inside and immediately thereafter general strike in the company started and all these were within the knowledge of enquiry officer, yet the enquiry officer continued with the enquiry ex-party and submitted a report making him guilty. Ld. representative further raised that this Tribunal after taking evidences and after hearing both sides found the domestic enquiry totally invalid and inoperative. Ld. representative also raised that during the time of hearing of the case on merit, the company also adduced evidences and tried to justify the matter of assault causing grievous hurt on O.P.W.-1 by workman, but from the evidences from O.P.W.-1 there is at all nothing that the workman assaulted O.P.W.-1 causing grievous hurt to his person. Ld. representative also raised that the management of the company also examined O.P.W.-2, O.P.W.-3 and also O.P.W.-4 to corroborate the version of the management of the company that the workman assaulted O.P.W.-1 causing grievous hurt to the person O.P.W.-1, there is no medical evidence by the O.P.W.-1 or by management of the company to show sustaining of any grievous hurt by O.P.W.-1. Ld. representative also raised that as per deposition of O.P.W.-3, the workman Akbar Ali used to work directly under the control of O.P.W.-3 and O.P.W.-3 is conspicuously silent on the matter of any assault by workman Akbar Ali on O.P.W.-1. It is the further argument by Ld. representative that workman Akbar Ali did not do anything on Mr. O.P.W.-1 but the management of the company had been maintaining vindictive attitude on Akbar Ali due to initiative of Mr. N.C. Majhi of labour office, Howrah as a result of which the management of the company became bound to reinstate in his service earlier and out of that vindication the management of the company anyhow wanted to get out Akbar Ali from the company and falsely created the charge-sheet mentioning that Akbar Ali assaulted O.P.W.-1 causing grievous hurt to his person but O.P.W.-1 himself is silent on causing grievous hurt by Akbar Ali and there is also no medical evidence to sustain the assertion of causing grievous hurt to O.P.W.-1, O.P.W.-2 also conspicuously silent causing any grievous hurt to the person of O.P.W.-1 and O.P.W.-3 under whose direct control the workman Akbar Ali used to work is also totally silent about causing any sort of assault by Akbar Ali on O.P.W.-1. O.P.W.-4 is found to be an official witness producing conciliation file (Ext. J). Ld. representative argued that this witnesses i.e. O.P.W.-1, O.P.W.-2 and O.P.W.-3 are working in the company and they are not independent person, yet none of them deposed that workman assaulted O.P.W.-1 causing grievous hurt to his persona and they tried to satisfy the management of the company for their interest in service and there is no independent witness and O.P.W.-3 is nothing but a hear-say witness as revealed from his cross-examination where O.P.W.-3 admitted that he did not receive any summon from this Court but he came to Court to depose on being asked and instructed by the labour office of the company. Ld. representative also argue that in the charge-sheet Ext. 1, it is written that workman assaulted O.P.W.-1 causing grievous hurt to his person but O.P.W.s are totally silent, further referring Ext. 2 which is a letter addressed to the officer-in-charge of Shibpur Police Station,

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Howrah by factory manager Mr. D.R. Nagar which is found to be written immediately after alleged occurrence, it is only mentioned that Akbar Ali only attempted to manhandle O.P.W.-1, further referring another document i.e. ext. F which is a letter by chief manager of the company to Mr. N.C. Majhi, Assistant Labour Commissioner, Howrah, it is found that it was also written promptly after alleged incident mentioning that Akbar Ali only threatened O.P.W.-1, and with all these Ld. representative of workman raised that the documents Ext. 1 is contradictory to contention of documents Ext. F, Ext. E whereas O.P.W.-1 and O.P.W.-2 deposed contradictory to the contention of charge-sheet(Ext. 1) and all these have created some sort of circumstances which go to show that the entire matter of assault has been manufactured by the management of the company with sheer vindictiveness on the part of the management of the company arising in the way that earlier due to intervention by the office of Deputy Labour Commissioner, Howrah the management of the company became bound to take back Akbar Ali into his service which is the admitted position in this case.

Ld. Lawyer for the company has argued that the O.P.W.-1 Mr. Nagar who happened to be the labour officer of the company was severely assaulted by the workman Sri Akbar Ali causing grievous injuries to his person and then Mr. Nagar (O.P.W.-1) got medical treatment from the dispensary of the company and medical papers of that medical treatment has been admitted into evidence on behalf of the company. By citing one ruling in 1982 (1) LLJ page-54 Ld. Lawyer for the company has submitted that the management of the company has examined the victim officer Mr. Nagar as O.P.W.-1 and both O.P.W.-2 and O.P.W.-3 have corroborated the version of O.P.W.-1, Ld. Lawyer has explained that the nature of injury caused to the person of O.P.W.-1 is grievous hurt and the same is dangerous and for that reason the workman is liable, and basing the above-mentioned ruling Ld. Lawyer further submitted that O.P.W.-2 and O.P.W.-3 cannot be called hearsay-witness as they witness the occurrence that took place inside the premises of the company and at the same time the same has also been mentioned in the charge-sheet filed against the workman Sri Akbar Ali. Citing another ruling in 2010 1 CLR 470, Ld. Lawyer for the company has submitted that the Tribunal cannot act as a criminal court and accordingly the management of the company is not required to prove the charges beyond reasonable doubt, Ld. Lawyer explained that it is the observation of Hon'ble Court in that case that in such a situation the Tribunal is required to apply the test of preponderance of probability and not the one of proof beyond reasonable doubt, which principle is applicable only to criminal cases tried by criminal courts. Ld. representative of the workman in his reply against the applicability of above cited case laws by Ld. Lawyer for the management of the company has raised that the cited case laws cannot be applied in this case because no incident at all has taken place in this case and question of application of preponderance of probability does not arise and Ld. representative reiterated that in the charge-sheet (Ext. 1) the nature of injury has been described as grievous hurt, but in the letter addressed to inspector-in-charge of Shibpur Police Station by factory manager (Ext. E) that was promptly written by the management of the

company after the alleged incident / occurrence it is mentioned that the workman Akbar Ali tried to manhandle the O.P.W.-1 and further in the letter addressed to Assistant Labour Commissioner, Howrah Mr. N.C. Majhi dt. 26.06.2006 by Chief Manager (P & A) of the company (Ext. F) which is found to have been written promptly after the alleged occurrence it has been mentioned that the workman Akbar Ali tried to manhandle only and nothing more and question of inflicting any assault causing grievous injury is conspicuously absent and Ld. representative raised that this alleged occurrence of assaulting O.P.W.-1 by workman Akbar Ali is totally false and manufactured because earlier also the management of the company stopped giving any work to the workman Akbar Ali and Akbar Ali raised the matter before the Labour Commissioner at Howrah and at the intervention of the labour Commissioner at Howrah the management of the company became bound to take him back to his service but started showing vindictive attitude toward workman Akbar Ali and the alleged matter of occurrence of assault causing grievous hurt is baseless and manufactured one as revealed from the circumstantial evidences appearing through the documents which are charge-sheet (Ext. 1) contradicted by other documents which is letter to inspector-in-charge by management of the company (Ext. E) and letter to Assistant Labour Commissioner by management of the company (Ext. F). Ld. representative also raised that in case of grievous injury, medical evidence is must, Ld. representative of the workman that a writing of the dispensary of the company has been filed and it was marked Ext. C but the company did not bring any medical officer to show and support causing of grievous hurt to the person of O.P.W.-1.

I have already discussed the evidences of P.W.-1 and evidences given by witness of the company i.e. O.P.W.-1, O.P.W.-2, O.P.W.-3 and others. It is one of the dictum that man may lie but the circumstances do not. The documents (Ext. E & Ext. F) which have been found to have been promptly written after the alleged occurrence say that Akbar Ali only made an attempt or tried to do something, but the charge-sheet says that Akbar Ali caused grievous hurt to O.P.W.-1. The nature of grievous hurt has already been explained and no doctor came from the side of the company to say anything about the injury as has been alleged i.e. grievous hurt. It is also the admitted position that earlier the management of the company became bound to restore service of the workman due to intervention of Assistant Labour Commissioner, Howrah and Ld. representative, as seen, raised that all these go to show that the matter of causing grievous hurt as has been alleged by company against workman is nothing but false and manufactured and evidences have proved nothing but revealed that it is false. O.P.W.-3 was admittedly the immediate controlling authority of the workman and he deposed as I mentioned earlier also that Mr. Nagar (O.P.W.-1) tried to make the workman Akbar Ali understand the discipline of the company as a trouble was created by the workman and after that the workman was dismissed, this O.P.W.-3 is found to the eye-witness the occurrence but this O.P.W.-3 never utter anything that workman assaulted O.P.W.-1 causing grievous hurt to his person. In the cited ruling by Ld. Lawyer for the company Hon'ble Court has given the standard of proof in such cases by

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mentioning that test of preponderance of probability used to be applicable without applying the proof beyond reasonable doubt as applicable in criminal courts. Having considered the aspects as discussed above it is coming out that there is at all no prima facie evidence to say even by preponderance of probability that any such incident of causing grievous hurt on O.P.W.-1 by workman Akbar Ali, and the documentary evidences i.e. Ext. E, Ext F have rendered the charge of causing grievous hurt by Akbar Ali to O.P.W.-1 totally baseless and false and facts and circumstances show that the preponderance of probability is nothing excepting that out of vindictive attitude by the management of the company as evidence have proved, the charge of causing grievous hurt was manufactured against the workman as have been proved by the contradictions. Admittedly the domestic enquiry was conducted after three years from charge-sheet (Ext. 1) and the company has not adduced any evidence to explain the delay. During hearing on merit the company has failed to bring any fresh evidence to substantiate the matter of domestic enquiry which was earlier held as not just and proper and the entire proceeding of domestic enquiry along with enquiry report was made invalid and was not accepted and the invalidity of the domestic enquiry is thus found to be absolute.

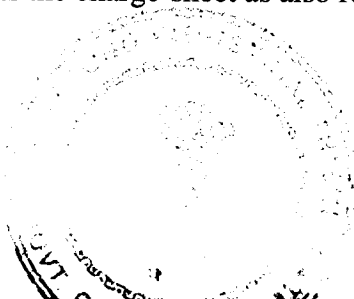
The further charge against the workman that on 26.06.2006 during A-shift duty i.e. 6 a.m. to 11 a.m. and 2p.m. to 5 p.m. the workman was asked by chief labour officer of the company at about 5 p.m. about continuous low production by the workman. Ld. representative of the workman has argued that the workman had been working in the sack sewing department of the company with other workers and it was a team work, Ld. representative has further raised that the workman had been working in the company sincerely honestly and left no stone unturned to satisfy his superior all through his tenure under the company and there was no low production by him in any way and the workman had also no intention to cause the production to become low. Ld. representative also raised that the workman has been singled out making him liable on allegations of low production but as it is a team work causing low production by a single worker is impossible and also raised that the management of the company has not filed any statistics to show performance of the workers in the sack sewing department of the company to show any comparison of performance from one worker to another worker and the performance of the workman has not been filed. Ld. representative also raised that the company has also not adduced any evidence whatsoever to substantiate the charge of low production. Against all these Ld. Lawyer for the company has raised that the workman intentionally resorted to low production and the O.P.W.-3 under whose direct control the workman had been working has deposed that the workman resorted to low production causing loss to the company. Going through the evidences adduced by workman as P.W.-1 I find that the workman has deposed that he had been working in the company sincerely and diligently and he had been working making optimum production to the satisfaction of the office superiors. Ld. Lawyer for the company cross-examined this P.W.-1 by putting one suggestion that the contention of his deposition by affidavit is false and it was denied by P.W.-1 and I find that Ld. Lawyer for the company did

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not raise any matter of production by the workman by putting any specific question in cross-examination. O.P.W.-1 Mr. Nagar deposed that he enquired about low production from the workman but the workman did not give any proper answer, but in cross-examination by Ld. representative of the workman, O.P.W.-1 admitted that he i.e. O.P.W.-1 has not produced any document to show that in the month of June, 2006 there was low production by the workman, the O.P.W.-2 Mr. Mukteshwar Singh who was the personnel manager of the company is totally silent about any matter of low production by the workman, in cross-examination this O.P.W.-2 proved one document to be a document of low production on 09.04.2003 (Ext. A) with admission that there is no other document in the company to support that the workman resorted to low production. The Ext. A is nothing but the charge-sheet filed against the workman and going through this Ext. A there is no reference of any document to show that the workman intentionally resorted to low production to cause damage to the company. Further O.P.W.-3 Mr. Sandip Mondal under whose direct control the workman had been working deposed that the workman could not make any production and the O.P.W.-1 tried to explain the matter of discipline to the workman. Ld. representative of the workman suggested to the O.P.W.-3 that the workman Akbar Ali never resorted to making any attempt to cause low production to cause damage to the economy of the company. Ld. Lawyer for the company during his argument also referred the document i.e. Ext. A to support his assertion that the workman had been resorting to low production intentionally, as I mentioned Ld. representative of the workman has also raised that this Ext. A is nothing but the charge-sheet that was given to the workman mentioning that the workman had been causing low production but with the charge-sheet no document regarding performance by the workman and also performance of other workman in the team of the workman has been attached to make any comparison to show that the workman had been making low production intentionally. As P.W.-1 the workman deposed denying all the allegations that he also resorted to making low production intentionally and from the evidences of O.P.W.s nothing has come to show that the workman really intentionally causing low production. The Ext. A is equal to Ext. 1 being charge-sheet as was issued to the workman. The workman also deposed that he has been performing his duties sincerely, seriously to the satisfaction of his superior. It is also the admitted position that the workman had been working in the sack sewing department of the company in a team comprising a few other workman and it is also the admitted position that the management of the company has not filed any document or statistics or anything-else to show the performance of the team of the workman comprising with the workman himself or showing performance by individual workman. Ld. representative of the workman has raised that under such circumstances singling out the workman with a charge of low production is nothing but baseless. It appears to be that to bring home the charge of low production against the workman both oral evidence and documentary evidence supporting low production are necessary, here from witness of the company i.e. O.P.W.s, only evidence is exhibit – A which is the charge-sheet as also relied by Ld. representative of the

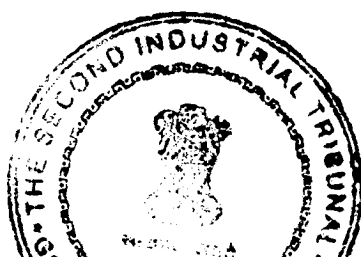
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workman as Ext. 1, and as I mentioned this document does not contain any other document to support about any matter of production either by the workman himself or by the team comprising with the workman. In the written statement filed by the company, no document containing statistics about the performance of the applicant and also about the performance of the team comprising with the workman have been given to compare the performance of the workman with the other workman of the same place, and under such circumstances it has become clear that there is at all no substantive evidence to support the charge of low production against the workman.

As I mentioned earlier also Ld. Lawyer for the company has raised some legal technicalities to bar the proceeding of the case as a whole, these are on the non-maintainability of the instant application filed by the applicant, with further assertion that the application of the applicant is misconceived, erroneous and not maintainable either in facts or in law, the certificate of pendency issued in this case in an improper conciliation proceeding and thus ineffective and no case can be initiated based on such defective certificate and cognizance taken in the instant matter is bad in law and the claim of the applicant is stale, the concerned employee was dismissed for committing gross mis-conduct after conducting a valid enquiry and thus taking resort to provisions of Section 10(1B) of the Industrial Disputes Act, 1947 is unwarranted, and in the written statement filed by the company Ld. Lawyer for the company wanted all these technicalities to be decided first by framing a preliminary issue. Going through the case record it is found that during the hearing of the case before merit, the matter of domestic enquiry was taken up to find its validity / invalidity and it is also found that rest of the matter of legal technicalities as mentioned above were not pressed on behalf of management of the company. Having gone through the evidences adduced by both sides, no support is also coming in respect of such legal technicalities as have been raised by the Ld. Lawyer for the company, and the main legal technicality that is raised by Ld. Lawyer for the company and at the same time vehemently asserted by Ld. Lawyer for the company is that Section 10(1B) of the Industrial Disputes Act, 1947 has been inserted by the legislators of West Bengal in the Industrial Disputes Act, 1947 by way of amendment, by W.B. act 33/ 1989 effective from 8th December, 1989 whereby the Industrial Disputes Act, 1947 relating to an individual workman can be filed directly without reference by the appropriate government to Industrial Tribunal etc. whereas the Central Government vide another notification dt. 8th August, 2010 effective from 15.09.2010 had inserted similar provisions i.e. Section 2A of Industrial Disputes Act, 1947, and Ld. Lawyer has raised that since the central act has received the assent of the Hon'ble President of India later than the stated, the central act would prevail over the state act, therefore the present case filed under Section 10(1B) of the Industrial Disputes Act, 1947 by the applicant is not maintainable. Ld. Lawyer for the company during his argument cited one ruling in 1971- Lab I.C. 769 of Allahabad High Court and submitted that Section 2L of the Industrial Disputes Act, 1947 was found to be repugnant to the provisions of Section 2A of the Industrial Disputes Act, 1947 being

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central act and hence the latter act prevails over the former by virtue of article 254(2) of the Constitution of India and Industrial Disputes Act, 1947, Section 2A and the Constitution of India, Article 254(2) are supposed to prevail, as under the state act the individual dispute becomes an industrial dispute when it is backed by a number of workman in the same industry or by a trade union of that industry while under the central act it is not necessary, the subject being in the concurrent list the central act provisions prevail over the state act provision by virtue of Article 254(2) of Constitution of India, by citing other ruling in (2008) 8 Supreme Court cases 148, Ld. Lawyer has argued that in this case Hon'ble Court was very much pleased to observe that subsequent legislation will have the overriding effect over the earlier act, it may be that cases might arise where both enactments have non-obstante clause, the proper perspective would be that one has to see the subject and the dominant purpose for which the special enactment was made and in case the dominant purpose is covered by the contingencies, then notwithstanding that act might have come at a latter point of time still the intention can be ascertain by looking to the objects and reasons and Ld. Lawyer explained that this observation is also applicable in this case, further by citing other case law in (2003) 12 Supreme Court cases 274 of Hon'ble Supreme Court of India, Ld. Lawyer for the company has raised that presumption against repeal strengthens when the new act contains a repealing provision mentioning the acts it expressly repeals and thus Ld. Lawyer asserted that the doctrine of implied repeal also applicable in this case, further citing another case law in AIR 1954 SC 752 Ld. Lawyer for the company has raised that Article 254(2) of the Constitution of India vis a vis Section 107(2) of the Government of India Act, 1935 empowered central legislature or parliament to repeal directly provincial or state legislation enacted with respect to the same matter, and with all these Ld. Lawyer for the company has explained that thus the workman could not file the application as he has filed in this case and it suffers from illegality arising out of constitutional repugnancy. Ld. representative of the workman has argued that there is at all no repugnancy between the law enacted by the Central Government and that of the State Government and Ld. representative explained that the purpose of the law enacted by Central Government and that of the State Government over the matter is same excepting some procedural matters, in the law enacted by the State Government, the procedure has been given and the workman in filing his application for redressal against the company has followed the procedure as has been prescribed in the act and the question of repugnancy has not come into existence and Ld. Lawyer for the company has not become able to bring any evidence to substantiate his submission that there is repugnancy between the two acts. Ld. representative also argued that the case law cited by Ld. Lawyer for the company in 1971 Lab I.C. 769 cannot be applied in this case and as a reason he has stated that this matter arose in that case out of U.P. Industrial Disputes Act where Section 2L was added by that state by which contradiction arose between that law enacted by state of U.P. and the Central act which is not the case in the present matter and thus this case law cannot be applied in this case. Ld. representative for the workman has also argued that the case law in (2008) 8 Supreme Court

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148 as has been cited by Ld. Lawyer for the company is also not applicable in this case. In that case the matter of jurisdiction of Debts Recovery Tribunal (DRT) was involved in matter relating to recovery of dues from the notified party by virtue of induction of Section 9A in the act 1992 mentioning non-obstante clause occurring in the special act as well as in the subsequent act within the scope of trial of offences relating to Transactions in Securities Act, 1992, the scope of which is totally different from the present one and it cannot be applicable in this case. Ld. representative for the workman has also raised that the case law in (2003) 12 Supreme Court Cases 274 as has been cited by Ld. Lawyer for the company also cannot be applied in this case as it involves observation of Hon'ble Court regarding presumption against implied repeal when the new act contains a repealing provision mentioning that the act is expressly repeals on the doctrine of the Maxine that *expressio unius personae vel rei est exclusio alterius* and Ld. Lawyer explained that Ld. Lawyer for the company has not become able to bring any such evidence for application of this observation in the present case, and Ld. representative also raised that the observation in AIR 1954 S.C. 752 as has been cited by Ld. Lawyer for the company also cannot be applicable in this case because that matter relates to a matter of repeal rising out between Government of India Act, 1935 containing in Section 107(2) and the Constitution of India and it does not have any bearing in the present case.

Now the entire matter of doctrine of repugnancy as has been raised by Ld. Lawyer for the company and countered by Ld. representative for the workman is required to be seen in details from the law point of view vis a vis the materials in the case record. Section 10(1B) was inserted by West Bengal 33 of 1989 w.e.f. 08.12.1989, it says – (1B)(a) Notwithstanding anything contain elsewhere in this act, where in a conciliation proceeding of an industrial dispute relating to an individual workman, no settlement is arrived at within a period of 60 days from the date of raising of the dispute, the party raising the dispute may apply to the conciliation officer in such manner and in such form as may be prescribed, for a certificate about the pendency of the conciliation proceedings.

(b) The conciliation officer shall, on receipt of the application under clause (a) issue a certificate within 17 days from the date of receipt in such manner in such form and containing such particulars as may be prescribed. A copy of the certificate shall also be sent to appropriate government for information.

© The party may, within a period of 60 days from the receipt of such certificate or, where such certificate has not been issued within a period of 60 days from the receipt of such certificate or, where such certificate has not been issued within 7 days as aforesaid, within a period of 60 days commencing from the date immediate after the expiry of 7 days as aforesaid, filed an application in such form and in such manner and with such particulars of demands as may be prescribed, to such Labour Court or Tribunal as may be specified by the appropriate government

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by notification. Different Labour Courts or Tribunal may be specified for different areas or different classes of industries.

(d) The Labour Court or Tribunal specified under clause © shall, within a period of 30 days from the date of receipt of an application under clause ©, give a hearing to the parties and frame the specific issues in dispute, and shall thereafter proceed to adjudicate on the issues so framed as if it were an industrial dispute referred to in Sub-section (1).

Section 2A(2) in chapter II of the Industrial Disputes Act, 1947 came into existence by act 24 of 2010 w.e.f. 15.09.2010, it says as under,

(2) notwithstanding anything contained in Section 10, any such workman as is specified in sub-section (1) may, make an application direct to the labour court or Tribunal for adjudication of the dispute referred to therein after expiry of 45 days from the date of he has made the application to the conciliation officer of the appropriate government for conciliation of the dispute, and on receipt of such application Labour Court or Tribunal shall have powers and jurisdiction to adjudication upon the dispute, as if it were a dispute referred to it by the appropriate government in accordance with the provisions of this act and all the provisions of this act shall apply in relation to such adjudication as they apply in relation to an industrial dispute referred to it by the appropriate government. This section 2A of the Industrial Disputes Act, 1947 has also West Bengal Amendment by act 33 of 1989, Section 3 w.e.f. 08.12.1999, it says in Section 2A – (a) after the words “dismisses, retrenches”, insert the words “refuses employment”, (b) after the words “dismissal, retrenchment”, insert the words “refusal of employment”.

Article 254 of the Constitution of India provides for inconsistency between laws made by parliament and laws made by legislatures of states – (1) If any provision of a law made by legislature of a state is repugnant to any provision of a law made by parliament which parliament is competent to enact, or to any provision or any existing law with respect to one of the matters enumerated in the concurrent list, then, subject to provision of clause (2), the law made by parliament, whether passed before or after the law made by the legislature of such state, or as the case may be, the existing law shall prevail and the law made by the legislature of the state shall, to the extent of the repugnancy, be void.

(2) Where a law made by legislature of a state with respect to one of the matters enumerated in the concurrent list contains any provision repugnant to the provisions or an earlier law made by parliament or an existing law with respect to that matter, then, the law so made by the legislature of such state shall, if it has been reserved for the consideration of the president and has received his assent, prevail in that state,

Provided that nothing in this clause shall prevent parliament from enacting at any time

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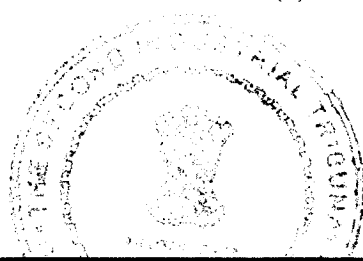


any law with respect to the same matter including a law adding to, amending varying or repealing the law so made by legislature of the state.

I have already mentioned the submissions made by Ld. Lawyers of both sides in forwarding their argument over the matter of repugnancy as mentioned earlier. Ld. representative for the workman as has already been seen raised that on behalf of the company no evidence has been brought in support of the question raised by Ld. Lawyer for the company that the law under which the workman has filed his application being repugnant to the law enacted by the Central Government over the matter, and from the argument made by Ld. Lawyer for the company and the pleading over the matter in the written statement filed by the company, it appears that Ld. Lawyer for the company has asserted that the state law is repugnant as a whole. I have already mentioned the law enacted by the Central Government and also enacted by the State Government.

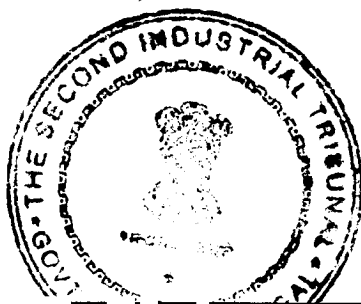
In the leading case in State of West Bengal Vs. Jute & Jute Goods Buffer Stock Association, (1973) 44 FJR 100, 1973 (2) LLJ 480, P. Janardan Shetty Vs. Union of India, 1970 (2) LLJ 738, Constitutional validity of Section 2A read with Section 10 of the Industrial Disputes Act, 1947 came up for discussion and it is the observation of Hon'ble Court that neither Section 2A of the Industrial Disputes Act, 1947 nor when it is read with Section 10 of the Act i.e. Industrial Disputes Act, 1947 offends Article 14 of the Constitution of India and therefore it is not void and illegal. Further Hon'ble Court in the K.C.P. Ltd. Vs. Government of A.P., 1975 LIC 50 was very much pleased to observed that a plain reading of Sub-section (2) of Section 2A of the Industrial Disputes Act, 1947 makes it clear that the right conferred by the said sub-section to move the Industrial Court directly is independent of and not distinct from the discretion vested in the government to refer an industrial dispute for adjudication u/s. 10 of the Industrial Disputes Act, 1947, sub-section (2) of Section 2A of the Industrial Disputes Act, 1947 starts with a non-obstante clause that notwithstanding anything in Section 10 of the Industrial Disputes Act, 1947, it is open to the workman to make an application and the application being made, the Industrial Court is bound to entertain the same and adjudicate the dispute, Hon'ble Court further observed that the very object of introducing the Section is to avoid delays involved in making a reference U/s. 10 of the Act and to enable the workman directly approach the Labour Court for adjudication as it is mentioned that on receipt of such application the Industrial Court shall have jurisdiction to adjudicate upon any matter in dispute as if it were a dispute referred to or pending before it in accordance with the provisions of the Act. Hon'ble Court further observed that an application under sub-section (2) of Section 2A can be filed in respect of a dispute which has been already referred to an pending in the industrial court adding that the scope an ambit of this provision as was considered in (1993) 1 Andh W.R. 219 is that the sub-section confers a right on the workman to approach directly Industrial Court for adjudication of the dispute referred to therein without recourse to the conciliation officer/ government as was obligatory prior to coming into force of sub-section (2) of section 2A of the Act, and these rights

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have been given to the workman notwithstanding anything contained in Section 10 of the Industrial Disputes Act, 1947, it was also observed that application under sub-section (2) of Section 2A of the Act is maintainable so long as the dispute might have arisen due to dismissal, removal, discharged and retrenchment of the workman earlier to the introduction of the said sub-section and the question of retrospectivity does not arise, and it is the further observation of Hon'ble Court in *Sanghvi & Co. V. Bipin Chandra Vhallal Doshi*, 1989 (59) FLR 29, 1989 (2) LLN 916 that in view of the introduction of Section 2A(2) on the statute book, the procedure U/s. 10 (2) of the Industrial Disputes Act, 1947 will have to be read harmoniously with Section 2A of the Industrial Disputes Act, 1947 if an individual workman whose services are terminated raises industrial dispute, it will be treated as an industrial dispute which can be referred for adjudication U/s. 10 (1) of the Industrial Disputes Act, 1947 by the appropriate government. Further Article 254(2) of the Constitution of India contemplates reservation for consideration of the president and also assent, it is not an empty formality, pointed attention of the president is required on all matters and assent mean expressed agreement of mind to what is proposed by state. From the record it is found that to show the completion of the procedure as required by law, Ld. representative of the workman has mentioned that the applicant raised an Industrial Disputes vide its representation dt. 20.02.2011 addressed to the Labour Commissioner, Government of West Bengal in the matter of termination of service of the applicant by the management of the company and the said dispute was not settled within the 60 days from the aforesaid date of raising the said dispute and was pending before the conciliatory authority and that under the said circumstances the applicant preferred the an application in the prescribed form T-4 dt. 02.08.2012 praying for issuance of certificate regarding pendency of conciliation proceedings and the said authority issued the said certificate in prescribed form 'S' U/s. 10(1B) of the Industrial Disputes Act, 1947 and it is also filed in the Tribunal. Ld. Lawyer for the management of the company cross-examined the applicant (P.W.-1) and it is coming out that there is no question touching the same to the P.W.-1 and I also find that Ld. Lawyer for the company has also not brought any evidence to show in any way that the company has been treated unequally. I find that the case laws cited by Ld. Lawyer for the company are on different perspective as in 1971 Lab. I.C. 769, it is also the observation of Hon'ble Court that if the president assent to a state law which has been reserved for the consideration under Article 200 of the Constitution of India it will prevail independent of question of any repugnancy, and as has been seen, the evidences have not shown any such repugnancy as asserted by Ld. Lawyer for the company, further observation of Hon'ble Court in (2008) 8 SCC 148 relates to some matters relating to transactions in Securities Act 1992 from the judgement of Debt Recovery Tribunal, the purpose of such laws relates to economic matters arising through matters of securities, markets and exchange, the scope of which is totally different from the present one, further in (2003) 12 SCC 274, the observation of Hon'ble Court relates to the doctrine of implied repeal interpreted through General Clauses Act, 1897 in case of laws where legislative intention

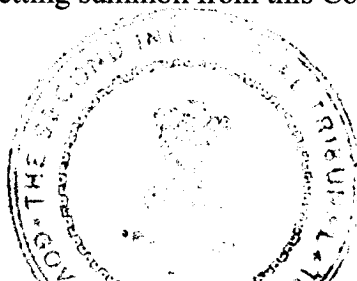
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is to lay down an exhausted code which is different from Industrial Disputes Act, 1947 in case of which legislature never intended to make it exhaustive in all respects, again as observed in AIR 1954 SC 752, Hon'ble Court was pleased to interpret the power of central legislature on the basis of Government of India Act, 1935 but after coming into operation of the Constitution of India, each and every test is to be applied on the basis of the Constitution of India and application of Government of India Act, 1935 has become remote, and after above discussions it is coming out that the case laws cited by Ld. Lawyer for the company cannot be applied in the present case and the application of the applicant is found to have not been suffering from any kind of repugnancy in any way.

Ld. Lawyer for the company has also raised that the conciliation proceeding between the parties had been going on and conciliation officer did not find any material to come to any satisfaction as to whether any industrial dispute between the parties came into existence or not and under such circumstances the issuance of the certificate as per prayer of the applicant is illegal but Ld. representative for the workman has raised that from the evidences, there is nothing to say that there was no proper material before the conciliation officer so as to refuse issuance of the certificate. To support his argument Ld. Lawyer for the company cited one ruling in 2008(3) CHN page-329, CESC Ltd. Vs. State of West Bengal. From the evidences of applicant (P.W.-1), I find that he deposed that he protested against the wrongful dismissal order issued by the O.P. Company by making a representation dt. 10.09.2010 addressed to the O.P. Company demanding inter alia his immediate reinstatement in his service but the O.P. Company did not consider his such just demands following their hostile attitude towards him, about which P.W.-1 also deposed that he was very much diligent in his service but the management of the company took a hostile attitude towards him and he would be periodically denied in joining his duty illegally unjustifiably by the management of the company and also deprived him from getting salaries and other benefits against which he wrote a letter dt. 25.01.2006 to the O.P. Company and then referred the matter before Deputy Labour Commissioner, Government of West Bengal at Howrah by his representation dt. 31.01.2006 addressed to that authority seeking intervention and accordingly that authority took up the matter and Mr. N.C. Majhi, Assistant Labour Commissioner, initiated a proceeding in this regard and on persuasion of Mr. N.C. Majhi the O.P. Company conceded to allow him to resume his duty by virtue of letter dt. 14.06.2006 addressed to that Assistant Labour Commissioner, Mr. N.C. Majhi requesting him to direct this P.W.-1 in joining his duty under O.P. Company and accordingly he joined the duty but the management of the company from that time only started showing hostile attitude towards him. It has already been found that there is nothing in the cross-examination of the P.W.-1 to distort any of these evidences. Ld. Lawyer for the O.P. Company brought Mr. Dipto Narayan Mukhopadhyay from the office of the Deputy Labour Commissioner, Howrah and as P.W.-4 he deposed that he has produced the conciliation file obtaining the same from office of Deputy Labour Commissioner, Howrah after getting summon from this Court and the conciliation file

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was marked Ext. J as a whole, this O.P.W.-4 was cross-examined by Ld. representative for the workman and the O.P.W.-4 in cross-examination admitted that during 2011 when the conciliation was started, O.P.W.-4 was not in the office of Deputy Labour Commissioner, Howrah and the designation of O.P.W.-4 is Inspector of Minimum Wages and he does not do conciliation matters and he does not have any personal knowledge about the contention in the conciliation file (Ext. J). From the conciliation file (Ext. J) it is found that the conciliation file was initiated on the basis of application / representation filed by workman Sri Akbar Ali and the matter was informed to the management of the company and date was fixed for joint conference and accordingly notice was issued to both parties, the file further shows that on the date fixed for joint conference, workman Sri Akbar Ali was present alone and further date was fixed for joint conference but the management of the company remained absent and a further date was fixed for joint conference and on subsequent date for joint conference also the management of the company remained absent and did not file any comment as was required by Assistant Labour Commissioner, the file (Ext. J) also shows that notice was issued to the management of the company and the management of the company also received the same, the file also shows that workman Sri Akbar Ali made a lengthy written presentation before the management of the company dt. 10.09.2010 as he also disclosed in his deposition as P.W.-1, the file (Ext. J) shows that factory manager of the O.P. Company sent letter dt. 02.08.2011 addressing Assistant Labour Commissioner, Mr. A. Biswas at Howrah, mentioning that the factory manager received the notice from Assistant Labour Commissioner, dt. 21.07.2011 requiring for joint conference and by that letter factory manager requested for a copy of written representation filed by workman Sri Akbar Ali, it is also mentioned in that letter by factory manager that workman Sri Akbar Ali was dismissed from service by the company on ground of misconduct arising out of rioting by workman Sri Akbar Ali over which domestic enquiry was conducted and charges against Akbar Ali were proved. It has already been found that domestic enquiry conducted against Akbar Ali was not valid and was declared illegal along with the enquiry report and as found from the evidences the illegality of conducting domestic enquiry against workman Sri Akbar Ali has become absolute. Thus, it is coming out that before issuing the certificate to the workman Sri Akbar Ali for filing the case as per procedure mentioned in the law, there were sufficient materials before the Assistant Labour Commissioner for doing so and there is no evidence on the part of the O.P. Company to distort any such evidences. Further admittedly the conciliation proceeding was started by the Assistant Labour Commissioner but Ld. Lawyer for the management of the company did not try to bring him as witness. Thus, all these unchallenged evidences established that before issuing the certificate in question to the applicant to file the case, there were sufficient materials before him and under such circumstances the ruling as has been cited by Ld. Lawyer for the company as mentioned above cannot be applied in this case. Further Ld. Lawyer for the company has raised that the applicant filed the case after a long gap of more than three years and no explanation has been offered by the applicant to justify such a

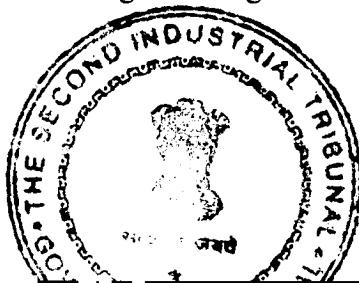


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delay. Against all these, Ld. representative for the workman has raised that charge-sheet against the workman Sri Akbar Ali was filed on 26.06.2006 but no domestic enquiry was conducted immediately but only after three years without providing any scope to the applicant to appear before the enquiry officer in the way that in the charge-sheet it is mentioned that management of the company restricted his entry in the premises of the company and as a result when the enquiry officer started conducting the enquiry proceeding, the applicant reported to participate but he was stopped at the gate of the company by the Darwan / gate-keeper and the applicant informed the matter in writing to the enquiry officer / the management of the company and after that general strike in the company started immediately which prevented him from going inside the premises of the company where the domestic enquiry proceeding against him was going on and workman informed all these in writing to the enquiry officer but the enquiry officer did not do anything and did not take any step to enable the workman to appear before him and conducted the domestic enquiry ex-parte and the domestic enquiry and with the report of the enquiry officer have already been declared invalid and illegal by the Tribunal along with the enquiry report thereto and immediately after receipt of the dismissal order, the workman made representation to the management of the company and also raised the dispute before the labour commissioner at Howrah. Ld. representative explained that thus the entire delay has been caused by the management of the company and the applicant did not have any control over the same and there is at all no laches / unreasonable delay in asserting his claim with addition that the company due to its vindictive attitude towards the applicant caused delay by about more than 3 years in starting the domestic enquiry proceeding against him that has already been declared by this Tribunal. Thus, from the evidences there is nothing at all to show that there is any fault on the part of the applicant and the question of describing the claim of the applicant as stale does not arise.

Thus the evidences have clearly established that the applicant Sri Akbar Ali was appointed to the company as machine operator in 1975 and he started continuing work in that capacity under the company till he was terminated from service, the O.P. Company is a reputed mill engaged in jute product manufacturing and the applicant had all along been very much sincere, honest, hard-working all through his tenure of employment under the company but the management of the company periodically denied to join his duty illegally and unjustifiably and deprived him from getting salaries and other benefits as a result of which the applicant wrote a letter dt. 21.01.2006 to the management of the company and also raised the same before Deputy Labour Commissioner, Howrah by written representation dt. 30.01.2006 praying for redressal of his grievances and on being intervened by Assistant Labour Commissioner, Howrah, Mr. N.C. Majhi, the management of the company became bound to allow the applicant to resume his duty by virtue of letter of management of the company dt. 14.06.2006 as a result of which, as have revealed from the evidences, the management of the company became highly vindictive against the applicant and issued the charge-sheet against him (Ext. 1) containing charges that on

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26.06.2006 at about 6 a.m. / 6.15 a.m. the applicant assaulted labour officer Mr. Nagar causing grievous hurt to his person and also used filthy languages against him and thus applicant committed gross mis-conduct as per provision laid down in the certified standing order by wilful insubordination / disobedience or in-combination with others to any lawful / reasonable order of superior and also committed riotous and disorderly behaviour, and all these charges in the charge-sheet (Ext. 1) have been, as discussed earlier, found to be totally baseless, contradictory and manufactured arising out of facts and circumstances as found to have been proved by evidences clearly earlier that earlier also the applicant used to be periodically denied to join his duty illegally and unjustifiably by the management of the company as a result of which the applicant wrote a letter on 25.01.2006 to the management of the O.P. company and at the same time referred the matter to the Deputy Labour Commissioner, Howrah and due to intervention of Assistant Labour Commissioner, Mr. N.C. Majhi, the company became bound to take the petitioner on duty on the strength of a letter dt. 14.06.2006 by management of the company to that Assistant Labour Commissioner, Mr. N.C. Majhi requesting Mr. Majhi to direct the applicant to join his duty, and as Ld. representative for the workman has raised that for that reason the management of the company started maintaining vindictive attitude against the workman and as discussed earlier in the evidences, it is coming out that there is nothing excepting the most strong possibility that the management of the company dismissed him from service on allegations that have been found baseless on being highly vindictive against the workman.

With all these it is to say that the issues come to be decided in favour of the applicant and the termination of the service of the applicant Sri Akbar Ali by the management of the company is not justified and it is totally void ab initio.

In respect of the issue regarding any other relief, the workman / applicant Sri Akbar Ali has prayed for re-instatement with all back-wages with all consequential benefits. The applicant in his application has stated that with effect from 26.06.2006 on which he was issued the so called charge-sheet and simultaneously putting him on illegal suspension and subsequent dismissal from service, he failed to obtain any other job or any other source of earning as yet and he has been passing extreme hard days, and against all these the management of the company in its written statement has stated that the applicant is gainfully employed elsewhere and the details of his gainful employment would be disclosed during the time of hearing of the case. Ld. representative for the workman has raised in his argument that the workman happened to be the permanent employee of the company having joined the company in 1975 starting work as a machine operator under the company and he had been continuing working in that capacity till he was illegally terminated from his service by the management of the company. Ld. representative added that the O.P. Company is a good profit earner but it is very much unfair and exploitative to its workmen having little regards to observe provisions of industrial laws specially those that have been enacted for the welfare of the workman and resorts to unfair



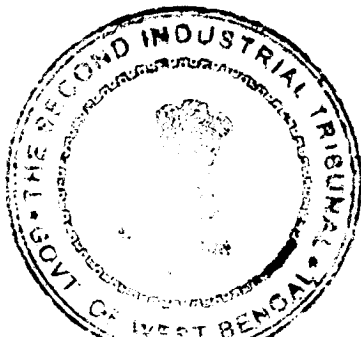
labour practices rampantly, even then the applicant had been very much sincere, honest, hardworking and left no stone unturned to satisfy his superiors all through his tenure under the O.P. Company but the applicant used to be periodically denied to join in his duty illegally and unjustifiably and deprived him from getting salaries and other benefits by the management of the company, as a result of which applicant wrote a letter dt. 25.01.2006 to the O.P. Company and also referred this matter before the office of Deputy Labour Commissioner, Government of West Bengal at Howrah by written representation dt. 30.01.2006 seeking intervention into his such grievances and then Assistant Labour Commissioner, Howrah Mr. N. C. Majhi took up the entire matter with the management of the company, as a result of which the management of the company wrote a letter dt. 14.06.2006 addressing Assistant Labour Commissioner, Mr. N.C. Majhi with a request to direct the applicant to join his duty and though the applicant accordingly joined his duty, the management of the company remained highly vindictive on him and raising false charges including that the applicant assaulted labour officer of the company Mr. Nagar causing grievous hurt to his person, the management of the company suspended him from service only to victimize applicant and also restricted his entry in the premises of the company. Ld. representative for the workman has further raised in his argument that though domestic enquiry was started in the premises of the company against the applicant but he was not allowed to enter to defend the charges by the management of the company that ordered the gate-man of the company not to allow the applicant to come inside the premises and thereafter general strike started and even though the workman informed all these to the enquiry officer and management of the company, the enquiry officer proceeded with the domestic enquiry ex-party without allowing him to defend and on the basis of report of enquiry officer, the applicant was dismissed from service by a letter dt. 04.08.2010 by the management of the company. Ld. representative for the workman has further raised that all these against the applicant as are in the charge-sheet are false and the management of the company intentionally victimized the workman as the workman earlier was required to be further taken into service by management of the company after being compelled by Assistant Labour Commissioner, Mr. N.C. Majhi. Ld. representative for the workman referring one ruling in 2013 (139) FLR 541 has argued that it is the observation of Hon'ble Court that if the employer acted in gross violation of statutory provisions or principles of natural justice or is guilty of victimizing the employee, then full back-wages is required to be given to the employee and has explained that in this case the O.P. Company earlier periodically stopped providing employment to the applicant and the management of the O.P. Company became bound to take him back to his service on being intervened by the then Assistant Labour Commissioner, Howrah Mr. N.C. Majhi and as a result of which the O.P. Company started showing vindictive attitude to the applicant and suspended him on false charges including causing grievous hurt to labour officer of the company by assaulting him and thus subjected him to harassment and the O.P. Company started conducting domestic enquiry against him after a period of three years without any reason but the O.P. Company did not allow

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him to defend himself during conducting of domestic enquiry and last of dismissed him from service and raised that all these are false and amounted to unfair labour practices on the part of the management of the company. Ld. representative for the workman also raised that the above cited ruling is applicable in this case and the applicant is entitled to get back-wages with other consequential benefits. Against all these Ld. Lawyer for the O.P. Company has raised that the applicant is not entitled to get any back-wages in any way and as a reason Ld. Lawyer has raised that the applicant had the capacity to get his few sons highly educated and therefore it is to be supposed that the applicant has good earning not only to bear expenses for higher education of his sons and also for his own maintenance. Ld. Lawyer for the company has further raised that as P.W.-1 the applicant Sri Akbar Ali has admitted in his cross-examination that he has three sons, one is a student of engineering, one is working in navy and the rest one is working in Baro Bazar, Calcutta and therefore the applicant is supposed to have more than sufficient income. Ld. Lawyer for the company has also raised that in the mean time the applicant during the proceeding of this case has already attained the age of superannuation and he cannot be given any re-instatement in his service. Ld. Lawyer for the company referring one case law in 2006 1 CLR 39 argued that it is the observation of Hon'ble Court in that case that there cannot be any precise formula as to under what circumstances payment of full back-wages should be allowed and in that case Hon'ble Court allowed back-wages to the extent of 25% only and submitted that this observation of Hon'ble Court is also applicable in the present case, further referring another case law in 2009 III CLR 1, Ld. Lawyer for the management of the company has argued that in that case back-wages to the extent of Rs. 6,54,766/- was allowed and it was challenged before Hon'ble Court by writ petition but Hon'ble High Court was pleased to reject the writ petition and directed Labour Department to take step for recovery of the amount but the matter came before Hon'ble Supreme Court of India by appeal by special leave and Hon'ble Court was pleased to observe that the respondent by that time had enrolled himself as an advocate in 2000 and eventually resigned the service and on that ground Hon'ble Supreme Court of India reduced the amount of back-wages from Rs. 6,54,766/- as was granted by Tribunal to Rs. 4 lakhs and Ld. Lawyer for the company asserted that thus the observation of Hon'ble Court in that case law is also applicable in the present case and the workman cannot get full back-wages. Ld. representative for the workman has raised that the case law in 2009 III CLR 1 as has been cited by Ld. Lawyer for the company cannot be applied in this case as the workman in that case resigned from the service and became a lawyer after enrolment and as the factual position in the present case is totally different and the workman has remained unemployed and did not get any service despite making effort for this purpose and thus there is no change in service by the workman. Ld. representative for the workman also submitted that the observation of Hon'ble Court in 2006 1 CLR is nothing but a guideline in the way that there cannot be any precise formula but in the present case the workman was subjected to harassment illegally for no reason

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repeatedly as the management of the company had to take back the workman to his service by strong step taken by the then Assistant Labour Commissioner, Mr. N.C. Majhi and as a result the company started showing vindictive attitude towards him and issued the charge-sheet with charges that are totally false.

From the written statement filed by the company it is found that the management of the company has asserted therein that workman / applicant Sri Akbar Ali has been in gainful employment elsewhere and also mentioned that the company would bring necessary evidence in support of the same. As has already been seen the management of the company has examined as many as 4 O.P.W.s and none of them has stated anything in support of such assertion by the company in its written statement that the applicant has been in gainful employment. As P.W.-1 the applicant has stated that after he was illegally dismissed from service, he tried to get any other service or earning source but could not get anything. In the case law cited by Ld. representative for the workman i.e. 2013 (139) FLR 541, it is the observation of Hon'ble Supreme Court of India that if the action taken against the employee by the employer is found to be ultra vires the relevant statutory provisions or principles of natural justice then competent judicial authority or quasi-judicial body is required to re-instate the workman restoring him to the position he held before dismissal or removal or termination, it implies that he will be put in the same position he would have been but for illegal action taken by the employer and entitled to claim full back-wages, it is also the observation of Hon'ble Apex Court that employer denying back-wages has to specifically plead and prove that during intervening period employee was gainfully employed and also was getting some emoluments. It is further observation of Hon'ble Court in that case that reinstatement with continuity of service and back-wages is normal rule, mentioning further that adjudicating authority / court may take into consideration the length of service etc., with further observation that the workman claiming back-wages is required to plead or at least make a statement before the adjudicating authority or court of first instance that he was not gainfully employed and then employer is required to prove that he was gainfully employed and getting amount equal to wage drawn by him, it is also observed by Hon'ble Court that if employer acted in gross violation of statutory provisions of principles of natural justice or guilty of victimizing the employee, full back-wages is required to be ordered, Hon'ble Court also observed while an employee cannot be asked to prove the negative, he has to at least assert an oath that he was neither employed nor engaged in any gainful business / venture and that he did not have any income and then the burden will shift to the employer. As already seen the employee has as P.W.-1 deposed that after he was illegally terminated from service he tried to get another service or to find any other source of income but failed, this P.W.-1 was cross-examined at length by Ld. Lawyer for the company but nothing at all came to distort his such evidences. As I also mentioned earlier the management of the company examined as many as 4 O.P.W.s in an attempt to prove a contention in the written statement of the company that after applicant was dismissed from service, he got gainful employment and it would prove the same

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by bringing sufficient evidence but there is at all no evidence by the management of the company in support of its such contention and it is coming out that that contention regarding income of the applicant in capacity to be in another service is nothing but a lie. The applicant as P.W.-1 has admitted that his son is educated and pursuing an engineering course and as I mentioned earlier that on the basis of this evidence P.W.-1 Ld. Lawyer for the company raised that it is to be supposed that the workman has sufficient income for his own maintenance and also for education of his son but Ld. representative for the workman has raised that there cannot be any such supposition by the court and the court cannot go anywhere without any basis of any evidence and Ld. representative for the workman has raised that after illegally dismissed from service, the applicant did not find any source of income despite effort by him and he has been passing his days on the charity of others such as his sons and relatives. Ld. representative for the workman also raised that the management of the company has falsely mentioned in the written statement that after dismissal from service the applicant got another service and also asserted in the written statement by company that it would prove the same but the company did nothing. Going through the observation of Hon'ble Court in 2013 (139) FLR 541 as has been cited by Ld. representative for the workman the matter of evidence that the son of the workman has been pursuing studies in engineering and as argued by Ld. Lawyer for the company that therefore it is to be supposed that workman has sufficient income is nothing but simply extraneous and cannot be considered as any relevant evidence and nothing can also be supposed from all these by the court as the applicant as P.W.-1 has deposed mentioning that despite his efforts to get another service / source of income, he failed and has been living on the charity of others and this evidence has remained totally unchallenged.

It is the admitted position that the applicant used to be periodically denied duty illegally and unjustifiably by the management of the company and also deprived him from getting other salaries and allowances / benefits, as a result of which on 25.01.2006 the applicant wrote a letter to the management of the company and also by a letter dt. 30.01.2006 he raised that matter before Deputy Labour Commissioner, Government of West Bengal, Howrah and then Assistant Labour Commissioner, Howrah, Mr. N.C. Majhi intervened in the matter and the management of the company became bound to take him back to his service by issuing a letter to Assistant Labour Commissioner dt. 14.06.2006 requesting Assistant Labour Commissioner, Mr. N.C. Majhi to direct the applicant to join his duty. In the charge-sheet (Ext. 1) the management of the company raised allegation namely that workman assaulted labour officer of the company Mr. Nagar (O.P.W.-1) causing grievous injury to his person with further that the applicant intentionally made low production and as discussed earlier, all these allegations have been found to be baseless altogether. Further it has also clearly come in the evidences that charge-sheet against the workman was issued on 26.06.2006 but the management of the company did not start any domestic enquiry against the workman until a lapse of three years of time, even the management of the company initiated domestic enquiry after a lapse of three years, the workman

payment of the entire amount as mentioned above to the workman / applicant Sri Akbar Ali immediately, and there is no order as to cost, and this order and direction is to be treated as an award of this Tribunal arising out of this case, and it is directed that necessary number of copies of this award be prepared and sent to the Ld. 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.

Judge



sdr

(S.C. Das)
Judge
Second Industrial Tribunal
Kolkata
29.05.2019