

I/60716/2019

Government of West Bengal
Labour Department, I. R. Branch

N.S. Buildings, 12th Floor
1, K.S. Roy Road, Kolkata - 700001

No. Labr/ 831/(LC-IR)/22015(13)/25/2019

Date : 06/09/2019

ORDER

WHEREAS under the Government of West Bengal, Labour Department Order No. 592 – IR dated 21.06.2012 the Industrial Dispute between M/s RDB Textiles Limited, Telinipara, Hooghly and its workman Md. Sajid, S/o. Md. Mustafa, C/o. Md. Hanif, B.G. Lane, P.O. – Telinipara, Hooghly regarding the issue mentioned in the said order, being a matter specified in the Second Schedule to the Industrial Dispute Act, 1947 (14 of 1947), was referred for adjudication to the Judge, Fifth Industrial Tribunal, and then transferred to the Fourth Industrial Tribunal vide G.O. No. 1257 – IR dated 17.12.2015.

AND WHEREAS the Judge of the said Fourth Industrial Tribunal, Kolkata, has submitted to the State Government its award on the said Industrial Dispute.

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

ANNEXURE

(Attached herewith)

By order of the Governor,



Deputy Secretary

to the Government of West Bengal

No. Labr/831/1(5)/(LC-IR)

Date : 06/09/19

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

1. M/s RDB Textiles Limited, Telinipara, Hooghly.
2. Sri Md. Sajid, S/o. Md. Mustafa, C/o. Md. Hanif, B.G. Lane, P.O. – Telinipara, Hooghly.
3. The Assistant Labour Commissioner, W.B. In-Charge, Labour Gazette.
4. The O.S.D. & E.O. Labour Commissioner, W.B. New Secretariat Buildings, 1, K. S. Roy Road, 11th Floor, Kolkata- 700001.
- ✓ 5. The O.S.D., IT Cell, Labour Department, with the request to cast the Award in the Department's website.

Rd 06.9.19

Deputy Secretary

No. Labr/831/2(2)/(LC-IR)

Date : 06/09/19

Copy forwarded for information to :

1. The Judge, Fourth Industrial Tribunal, Kolkata with reference to his Memo No. 984 – L.T. dated 22.07.2019.
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. RDB Textiles Ltd.,
Telinipara, Hooghly and Md. Sajid, S/o. Md. Mustafa, C/o. Md. Hanif,
B.G. Lane, P.O. Telinipara, Hooghly.

(Case No. VIII-28/12)

BEFORE THE FOURTH INDUSTRIAL TRIBUNAL: WEST BENGAL

P R E S E N T

SHRI GOPAL KUMAR DALMIA, JUDGE
FOURTH INDUSTRIAL TRIBUNAL
KOLKATA

A W A R D

In the matter of an Industrial Dispute between M/s. RDB Textiles Ltd.,
Telinipara, Hooghly and Md. Sajid, S/o. Md. Mustafa, C/o. Md. Hanif,
B.G. Lane, P.O. Telinipara, Hooghly, Vide G.O. No. 592-I.R./IR/8L-
02/09 (Pt.) dated 21.06.2012 referred to the Fifth Industrial Tribunal
which has been subsequently transferred to this Tribunal vide G.O. No.
1257-IR/IR/MISC-28/2015 dated 17.12.2015 for adjudication of the
issues. Issue No. 1 has been amended by a corrigendum vide G.O. No.
Labr./816/(LC-IR)/IR/8L-02/09 (Pt.) dated, Kol. the 9th August, 2017.

I S S U E (S)

1. Whether the termination of service of Md. Sajid by way of refusal of
employment by M/s. RDB Textiles Ltd. with effect from 19.11.2010 is
justified?
2. What relief, if any, is he entitled to ?

1. The case of Mr. Md. Sajid (hereinafter referred to as the workman) in short, is that
he is an employee of the Victoria Jute Works, Telinipara, District-Hooghly. He is
having EMP ID No. 2050502988 corresponding to old CB No. 2203/02-SBCD Dept.
05 Spinning. He was working there peacefully without any bad record and also
elected independently as a representative of labourers. Due to physical illness he took

Dictated & Corrected by me.

Contd. Page- 2

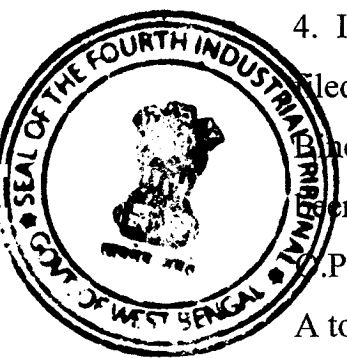


leave. He got a fit certificate from the Employees State Insurance Corporation on 27.12.2010. It also appears to have been claimed by the workman that he received a letter from the Victoria Jute Mill intimating him about the striking off his name from the Register. His entry into the mill was stopped. He has claimed that the allegation made in said letter was vague, concocted and after-thought. He has also urged that the letter intimating termination of his service was given without giving any opportunity of being heard to him by violating the principles of natural justice. Getting no other alternative he sent a letter dated 11.01.2011 to the Assistant Commissioner with a copy to the Assistant Labour Commissioner, Chandernagore, District-Hooghly with all documents. Thereafter he sent an another letter dated 04.07.2011 to the Assistant Labour Commissioner, Palika Bazar, Chandernagore seeking his reinstatement in the service and wages for a period of 7 months with interest. He sent an another letter to the Assistant Labour Commissioner on 29.09.2011. It further appears to have been claimed by him that the Labour Department, Govt. of W.B. sent notices to the RDB Textiles, a licensee of Victoria Jute Works on 14.03.2011, 13.06.2011, 14.07.2011, 21.07.2011, 28.07.2011, 19.09.2011, 08.11.2011 and 17.11.2011 regarding his grievances. It is also urged by him that 4 employees had been victimized arbitrarily by the Company but subsequently the management of the Company recalled notices of termination issued against 3 employees excepting him. It also appears to have been claimed by him that as other employees have been reinstated in their services he is also entitled to be reinstated in his service. He has further claimed that from the date of termination of his service he is unemployed and is passing days with hardship and in acute financial stringencies. He has prayed for his reinstatement in the service with full back wages and other benefits.

2. On the other hand, the RDB Textiles Limited, a licensee of the Victoria Jute Works (hereinafter referred to as the Company) has claimed that the reference is bad and void abinitio as the Govt. of W.B. has referred a dispute which is different from the dispute raised by the workman and that there is no dispute between the workman and the Company. It also appears to have been claimed by the Company that the alleged dispute is between workman and the Victoria Jute Works but the reference order has mentioned the name of RDB Textiles Ltd. It is further claimed by the Company that Md. Sajid was appointed as a casual worker in the Spinning Department on 27.05.2002 and was promoted to the post of Special Badli worker on

01.10.2010. It is also alleged by the Company that on 14.11.2010 at about 9.30 A.M., Md. Sajid forcibly entered into the mill premises along with 4 other Badli workers by pushing the 'Darwan' on duty, went inside the Spinning Department of mill no. 2 and started abusing the 'Mistries' and forced other workers on duty to stop their works. Md. Sajid and said other Badli workers threatened their superior in the department with dire consequences and chased him with an iron rod. Thereafter, the workman and his said associates went to the mill mechanic department with a motive to assault the department in charge. He created panic and disturbances among the workers on duty and hampered the normal production and thereby caused heavy financial loss to the Company. Again on 19.11.2011 at about 9.30 A.M., the workman along with some outsiders forcibly entered into the labour office of the Company and disturbed the meeting which was being held there with all functioning unions. In the above circumstances, the Company was compelled to take action against the workman as per provision of the standing orders and removed his name from the roll of the Company.

3. It is also alleged by the Company that the workman without raising any dispute with it straightway went to the Assistant Labour Commissioner and therefore the reference is bad in law. It is alleged by the Company that the workman was always riotous and rowdy and his past record was also bad. It is further claimed on behalf of the Company that the workman was a Badli/substitute worker and his name was removed from the roll for his riotous and disorderly behavior and he is not entitled to be reinstated. The Company has also urged that Badli / substitute workers are provided with job on leave vacancy of permanent workmen and they do not have basic right of employment. The Company has prayed for deciding the issues in its favour.



4. In order to prove the case, Md. Sajid has been examined as P.W.-1 and documents filed by him have been marked as Exhibits 1 to 15. On the other hand, one Shri Anand Kumar Pandey has been examined as O.P.W.-1, one Shri Gopal Sarkar has been examined as O.P.W.-2 and Shri Gyan Chandra Upadhyay has been examined as O.P.W.-3. Documents filed on behalf of the Company have been marked as Exhibits A to G.

5. It appears that O.P.W.-2 Shri Gopal Sarkar has been examined in chief in part and by the order dated 28.05.2015 his evidence appears to have been closed.

6. It is relevant to mention here that originally the reference was made to the Fifth Industrial Tribunal for adjudication vide G.O. No. 592-I.R./IR/8L-02/09(Pt.) dated 21.06.2012 and subsequently this case has been transferred from the Fifth Industrial Tribunal to this Tribunal for adjudication vide G.O. No. 1257-IR/IR/MISC-28/2015 dated 17.12.2015. A corrigendum to the issue no. 1 was issued vide G.O. No. Labr/816/(LC-IR)/IR/8L-02/09(Pt.) dated 09.08.2017.

7. Rulings of the Hon'ble Courts referred to by the Ld. Advocate of the Company:—

(1). 2009 (122) FLR, page-171 (Supreme Court), (2). 1986 (53) F.L.R. page-310 (Supreme Court), (3). 2005 (1) S.C. SERVICES LAW JUDGEMENTS, page-441 (Supreme Court), (4). 2007 LLR, page-544 (Bombay High Court), and (5). 1968 (16) FLR, Supreme Court, page-307 (Sindhu Resettlement Corporation Ltd. vs. Industrial Tribunal of Gujarat and others).

8. Ruling of the Hon'ble Calcutta High Court referred to by the Ld. Advocate of the workman:—

(1). 2009 (4) CHN, page-67.

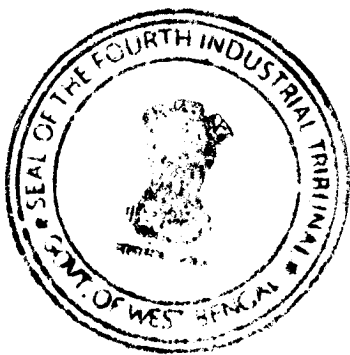
DECISION WITH REASONS

9. Before deciding the other matters, I find it just to deal with the claim of the Company that workman raised dispute against the Victoria Jute Works only and not against the RDB Textiles Limited and as such the present reference is bad in law. During argument, Ld. Advocate of the Company emphatically argued in favour of said claim and drew my attention to the written statement of the workman wherein he has claimed that he is an employee of the Victoria Jute Works.

10. In reply, Ld. Advocate of the workman emphatically submitted that the RDB Textiles Limited is a licensee of the Victoria Jute Works and the workman was employed by the RDB Textiles Limited as a licensee of the Victoria Jute Works and therefore it can be said without any doubt that the RDB Textiles Limited employed the present workman.

11. In respect of the above matter, the workman Md. Sajid (P.W.-1) has stated clearly in his deposition that initially he was appointed as a casual workman by the RDB Textiles Limited on 27.05.2002 and since then he worked there upto 13.11.2010. He has identified a photo copy of a letter / notice dated 19.11.2010 (Exhibit-2) issued by the Personnel Manager of the RDB Textiles Limited, a licensee of the Victoria Jute Works intimating the present workman about the striking off his name from the Badli Register. Copies of said letter have also been produced on behalf of the Company and have been marked as Exhibits A/A and D. From said letter it clearly discerns that RDB Textiles Limited is a licensee of the Victoria Jute Works and name of the present workman has been struck off from Badli Register by the Authority of the RDB Textiles Limited and none else. It further discerns from the Exhibit-A which appears to be a photo copy of the service record sheet of the present workman that the workman Md. Sajid was appointed by the manager (Personnel) of the RDB Textiles Limited and subsequently he was promoted to the post of Special Badli Worker on 01.10.2010 by the same Authority of the Company. It is not disputed by the Company that it is a licensee of Victoria Jute Works. On the top of the said document 'Victoria Jute Works' is mentioned. So, it can be said without any hesitation that the workman might have got an impression that he was working under the Victoria Jute Works. Moreover, it is not disputed by the RDB Textiles Limited that it employed the present workman. On query, Ld. Advocate for the Company fairly submitted that wages to this workman were being paid by the RDB Textiles Limited. Considering the aforesaid facts and circumstances and evidence on record I am of the considered opinion that said matter does not ipso facto create any difference in the status of Md. Sajid in the RDB Textiles Limited and the reference is rightly made by stating the name of RDB Textiles Limited and Md. Sajid.

12. It is claimed by the Company that initially the workman was appointed in its Spinning Department on 27.05.2002 as a casual worker. During argument, Ld. Advocate for the workman emphatically submitted that Special Badli worker and permanent worker are practically same and for that the present workman should be treated as a permanent one. On the



other hand, Ld. Advocate for the Company forcefully argued that a Special Badli worker is also a Badli worker and he gets priority only in getting works in the Company as and when temporary leave vacancy arises. He has further submitted that a Special Badli worker is a Casual and Temporary worker like other Badli workers and he does not have any permanent right to get work. In support of his submission he has referred to paragraph Nos. 6 & 7 of the judgement of the Hon'ble Supreme Court reported in 2009 (122) FLR 171. It depicts that in the first line of paragraph 6 of said ruling it has been mentioned that "*Learned Counsel for the appellant submitted that being Badli worker the question of any protection under the Act does not arise.*" In paragraph No. 7 of the said ruling the Hon'ble Apex Court has been pleased to observe that "*Learned Counsel for the appellant is right in his submission that there was no protection available under the Act to the respondent*". Ld. Advocate for the Company has also referred to another judgement of the Hon'ble Apex Court reported in 1986 (53) FLR, page-310 {Prakash Cotton (P) Ltd. vs. Rashtriya Mills Mazdoor Sangh} and submitted that a Badli workman is really a casual employee without any right to be employed. It appears that in said ruling the Hon'ble Supreme Court has been pleased to observe inter alia that "*It is not in dispute that Badli workmen get work only in the absence, temporary or otherwise, of regular employees, and that they do not have any guaranteed right of employment. Their names are not borne on the muster rolls of the establishment concerned. Indeed, a Badli workmen has no right to claim employment in place of any absentee employee. In any particular case if there be some jobs to be performed and the employee concerned is absent, the Company may take in a Badli workman for the purpose. Badli workmen are really casual employees without any right to be employed. It has been rightly submitted by the learned Counsel for the appellant that the Badli employees could not be said to have been deprived of any work to which they had no right and consequently, they are not entitled to any compensation for the closure. Indeed, the Industrial Court has itself observed that to allow the claim of Badli workmen would be tantamount to penalising the appellant. In spite of the said observation, the Industrial Court directed payment of*

compensation to the Badli workmen in place of certain categories of regular employees. We fail to understand how the Industrial Court can direct payment of compensation to the Badli workmen when, admittedly, such Badli workmen, as noticed already, have no right to be employed. It may be that the Company may not have to pay closure compensation to the three categories of employees, as mentioned by the Industrial Court, but that does not mean that the Company has to pay compensation to the Badli workmen in place of these categories of employees. In this connection, we may refer to section 25C of the Industrial Disputes Act, 1947 which excludes a Badli workman or a casual workman from the benefit of compensation in the case of lay-off."

13. *Ld. Advocate for the Company has referred to paragraph Nos. 15 and 18 of an another judgement of the Hon'ble Supreme Court reported in 2005 (1) S.C. Services Law Judgements, page-441 (Karnataka State Road Transport Corporation vs. S.G. Kotturappa). In paragraph No. 15 of the said judgement the Hon'ble Apex Court has been pleased to observe that "It is not a case where the respondent has completed 240 days of service during the period of 12 months preceding such termination as contemplated under Section 25F read with Section 25B of the Industrial Disputes Act, 1947. The Badli workers, thus, did not acquire any legal right to continue in service. They were not even entitled to the protection under the Industrial Disputes Act nor the mandatory requirements of Section 25F of the Industrial Disputes Act were required to be complied with before terminating his services, unless they complete 240 days' service within a period of twelve months preceding the date of termination."*

14. *In paragraph No. 18 of the said judgement it has been observed by the Hon'ble Court that "The terms and conditions of employment of a Badli worker may have a statutory flavor but the same would not mean that it is not otherwise contractual. So long as a worker remains a Badli worker, he does not enjoy a status. His services are not protected by reason of any provisions of the statute. He does not hold a civil post. A dispute as regard purported wrongful termination of services can be raised only if such termination takes place in violation of the mandatory provisions of the*



statute governing the services. Services of a temporary employee or a Badli worker can be terminated upon compliance of the contractual or statutory requirements."

15. The workman Md. Sajid has admitted the claim of the Company by stating in his examination in chief on affidavit that he was appointed as a casual workman on 27.05.2002 at RDB Textiles Limited. He has not pleaded in his written statement that his service was made permanent. Even he remained silent on the said point in his examination in chief. But during cross-examination, he tried to improve his case by stating that initially he was inducted in the Company as a Badli worker about 10 years back from the year 2002 and that he has filed document to show that he was made permanent by the management on 27.05.2002. During his further cross-examination when a question was put to him about the said document he stated that he has filed Exhibit-14 to show that he was made permanent by the management on 27.05.2002. In the same breath he has stated also that he was promoted to the category of Special Badli worker by the Company with effect from 01.10.2010. It is highly relevant to mention here that Exhibit-14 is a photo copy of an Employment Card issued by the Company in favour of Md. Sajid. Nowhere in the said document it is mentioned that his service was made permanent or he is a permanent worker. In this regard, O.P.W-1 Shri Binod Kumar Pandey has clearly stated about Md. Sajid that he was a casual worker in the Spinning Department of the Company's Mill No. 2 and he was promoted to the post of Special Badli worker. O.P.W.-3 Shri Gyan Chandra Upadhyay also has deposed in the same tenor. That apart from the photo copies of service record sheet of the worker (Exhibits A and B) it appears that Md. Sajid was promoted to the post of Special Badli worker on and from 01.10.2010. On the top of the said document the words 'CASUAL & TEMPORARY' are written which necessarily suggest that service of Md. Sajid was temporary especially when nowhere in the said document it is mentioned that Md. Sajid was a permanent worker or his service was made permanent. I find it apposite to mention here that the workman nowhere pleaded and proved that he actually worked under the Company for 240 days or more during a period of 12 calendar months preceding the date of

his alleged termination. As regards the burden of proving the completion of 240 days of work, Ld. Advocate for the Company has drawn my attention to paragraph No. 8 of a judgement of the Hon'ble Bombay High Court reported in 2007 LLR, page-544. It appears to have been observed inter alia by the Hon'ble Court in paragraph 8 of the said judgement that *"The burden to establish completion of 240 days clearly lies on the workman"*. It is highly relevant to mention here that the Exhibit-G is a copy of the attendance summary of Md. Sajid for the period from 03.01.2008 to 04.11.2010. It appears from the said document that during the period from 03.01.2008 to 04.12.2008 he worked for 1167 hours corresponding to 145.88 days only, during the period from 01.01.2009 to 19.11.2009 he worked for 804 hours corresponding to 100.50 days and during the period from 01.07.2010 to 04.11.2010 he worked for 416.5 hours corresponding to 52.06 days only. Exhibit-12 is a copy of the wage slip of Md. Sajid. It also shows the payment of wages for the work of 52 days to him. During argument, Ld. Advocate for the workman did not dispute the correctness of said documents. Exhibit-C is a copy of the Standings Orders of the Company and Clause (d)(i) of Order No. 2 of said Standing Orders defines the term "Special Badli" as a workman who is ordinarily appointed in a vacant post, if the situation so warrants he may also be appointed in the post of permanent workman or a probationer who is temporarily absent. This definition of a "Special Badli" also shows that a Special Badli workman works as a substitute of a regular workman who is temporarily absent. Cumulative affect of aforesaid facts, circumstances, evidences and materials on record crystalizes that the workman Md. Sajid lastly worked as a Special Badli worker and his service in the Company was temporary and not a permanent one. In the light of the aforesaid discussion and observations, facts and circumstances of the case and regard being had to the principles propounded by the Hon'ble Courts, I do not find any substance in the argument of Ld. Advocate of the workman that Special Badli worker and permanent worker are same.

16. In this case, it is not disputed that Md. Sajid approached the Conciliation Officer for his reinstatement in the service and management of the Company appeared before the Conciliation Officer and contested

and refused the claim of Md. Sajid. As the conciliation proceedings was failed the reference was made by the Government to the Tribunal. In this regard, the O.P.W.-1 Shri Binod Kumar Pandey has clearly claimed in his deposition that the Company participated in the proceedings before the Conciliation Officer and submitted its written comments there to contest the claim of Md. Sajid. He has identified a copy of a letter dated 11.01.2011 of Md. Sajid addressed to the Assistant Commissioner, C.O. to A.L.C. Chandan nagore, Pallika Bazar, Dist. Hooghly (Exhibit-E). Said document also shows that Md. Sajid raised demand for his reinstatement in the service. O.P.W-3, Shri Gyan Chandra Upadhyay has stated in his evidence that the Company attended the said conciliation proceedings. It has become clear that though Md. Sajid pressed his claim for his reinstatement in the service through the Conciliation Officer but the management of the Company refused to reinstate him in the service. Therefore, it discerns that there was an industrial dispute on the date when reference was made.

17. Ld. Advocate for the Company submitted that the workman Md. Sajid before approaching to the Conciliation Officer did not raise demand with the Company and as such the reference should be held to be bad in law. In support of his submission he has drawn my attention to a portion of a judgement of the Hon'ble Supreme Court reported in 1968 (16) FLR, Supreme Court, page-307 (Sindhu Resettlement Corporation Ltd. vs. Industrial Tribunal of Gujarat and others), wherein the Hon'ble Court has been pleased to observe inter alia that *"If no dispute at all was raised by the respondents with the management, any request sent by them to the Government would only be a demand by them and not an industrial dispute between them and their employer. An industrial dispute, as defined, must be a dispute between employers and employees, employers and workmen, and workmen and workmen. A mere demand to a Government, without a dispute being raised by the workmen with their employer, cannot become an industrial dispute."*

18. On the other hand, Ld. Advocate for the workman placed reliance upon a ruling of the Hon'ble Calcutta High Court, reported in 2009 (4) CHN page-67 and submitted that after considering the matter of said ruling of

the Hon'ble Apex Court and in the facts of the case reported in 2009 (4) CHN page-67 which is similar to that of this case, the Hon'ble Calcutta High Court has been pleased to hold that on the date reference was made an industrial dispute did exist between the employer and the workman and also answered the question that "assuming that the workman did not raise any dispute with the employer, was the Government justified in making the reference?" in affirmative.

19. In paragraph No. 5 of the said ruling, the Hon'ble Calcutta High Court has been pleased to formulate two questions by stating that "*Two questions fall for a decision of this Court, viz.*

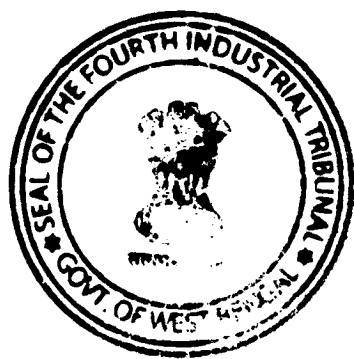
(i) *assuming that the workman did not raise any dispute with the employer, was the Government justified in making the reference?*

(ii) *whether the order of reference is bad in law and hence liable to be set aside?"*

20. In paragraph No. 8 of the said ruling the Hon'ble Calcutta High Court has been pleased to state that "*The decision in Sindhu Resettlement (supra) apparently supports the contention raised by Mr. Bhanja Chowdhury but in Avon Services Production Agencies (P) Ltd. vs. Industrial Tribunal, reported in 1979 (1) SCC 1, the Apex Court ruled that the decision turns purely on the facts of the case.*"

21. In paragraph Nos. 9 and 10 of the said ruling, the Hon'ble Calcutta High Court has been pleased to observe that "*9. In Shambhu Nath Goyal vs. Bank of Baroda, Jullundur, reported in 1978 (1) LLJ 484, the Apex Court after considering Sindhu Resettlement (supra) ruled that the question whether an industrial dispute exists at the date of reference is a question of fact to be determined on the material placed before the Tribunal with the cautions enunciated in State of Madras vs. C.P. Sarathy, reported in AIR 1953 SC 53. While interfering with the Court noticed the further fact that when the union had approached the Conciliation Officer, the management had appeared before him and contested the claim for reinstatement.*

10. In view of the aforesaid decisions and the finding of fact reached by this Court that on the date reference was made an industrial



dispute did exist between the employer and the workman, the first question is answered in the affirmative.”

22. In view of the principles enunciated by the Hon'ble Courts in the aforesaid rulings and the finding of facts arrived at that there was an industrial dispute on the date when reference was made, the order of reference cannot be said to be bad.

23. As regard the alleged misconduct of Md. Sajid, the Company has claimed that on 14.11.2010 at about 9.30 A.M., Md. Sajid forcibly entered into the mill premises along with 4 other Badli workers by pushing the 'Darwan' on duty, went inside the Spinning Department of mill no. 2 and started abusing the 'Mistries' and forced other workers on duty to stop their works. Md. Sajid and said other Badli workers threatened their superior in the department with dire consequences and chased him with an iron rod. Thereafter, the workman and his said associates went to the mill mechanic department with a motive to assault the department in charge. He created panic and disturbances among the workers on duty and hampered the normal production and thereby caused heavy financial loss to the Company. Again on 19.11.2011 at about 9.30 A.M. the workman along with some outsiders forcibly entered into the labour office of the Company and disturbed the meeting which was being held there with the all functioning unions.

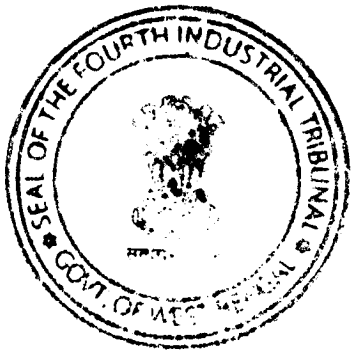
24. In respect of the aforesaid allegation, O.P.W.-1, Shri Binod Kumar Pandey in his examination in chief has deposed in the line of the averments made in the written statement of the Company. But during cross-examination he has clearly stated that on 14.11.2010 the workman was not on duty and that said incident did not take place in his presence. He did not see Md. Sajid inside the mill on 14.11.2010. Even he could not say whether any eye witness to the incident of said day filed any complaint before him or not. From his cross-examination it also discerns that at the time of said incident he was not present there. It is stated by him that the departmental in charge lodged a written complaint stating the misconduct of the worker and said written complaint is lying in the office.

25. As regards the incident dated 19.11.2010, the O.P.W.-2, Shri Gopal Sarkar has stated that on 19.11.2010, in the Labour Department, a

conciliation meeting was being held between the Union and management and he was present in said meeting. It is also claimed by him that on that day at 9.30 A.M. Md. Sajid and his associates came to the Labour office and created disturbances and consequently the meeting which was being held in the Labour Department was disturbed and stopped. It is further stated by him that the management took decision after going through the reports of the incidents held on 14.11.2010 and 19.11.2010 and ultimately the name of Md. Sajid was struck off from the roll of Special Badli workers.

26. O.P.W.-1 Shri Binod Kumar Pandey has stated that departmental in charge lodged a written complaint with the management stating the misconduct of the present workman. Although it is claimed that said written complaint is lying in the office of the Company but for the reasons best known to the management of the Company it has opted not to file any copy of said complaint before this Tribunal. As regards the evidence of O.P.W.-2, Shri Gopal Sarkar it is pertinent to mention here that the workman did not get any opportunity to cross-examine him. It is claimed by him that the management of the Company took decision of striking out the name of Md. Sajid from the Badli Register after going through the reports of incidents dated 14.11.2010 and 19.11.2010. But no copy of such reports is filed on behalf of the Company. If it is believed that the management of the Company took decision of striking out the name of Md. Sajid from the Badli Register after going through the reports of incidents dated 14.11.2010 and 19.11.2010 then it can be said without any hesitation that said reports formed the sheet anchor of the decision of striking off the name of Md. Sajid from the Badli Register. But I do not find any explanation from the Company as to why copies of said reports are not filed in the Tribunal. Said matter is highly suggestive of impropriety in taking the decision of striking out the name of Md. Sajid from the Register.

27. In addition to above facts, it depicts from the cross-examination of O.P.W.-1, Shri Binod Kumar Pandey that on 14.11.2010 Md. Sajid was not on duty as he was on medical leave and no complaint was lodged with the police over the incident of that day. According to the Company incidents



caused by Md. Sajid were very serious. I find it very difficult to believe that in spite of seriousness of the incidents alleged to have been caused by Md. Sajid, the management of the Company did not find it fit to lodge complaint about the same with the police. In this case, Darwan or any co-worker of Md. Sajid in whose presence the alleged incidents took place has not been examined. In absence of cogent evidences about the alleged incidents it cannot be believed that a workman who was on medical leave entered into the premises of the mill and did the aforesaid misconduct.

28. O.P.W-3, Shri Gyan Chandra Upadhyay has deposed in support of the allegations levelled upon Md. Sajid by the Company. He has stated inter alia about Md. Sajid that he did not allow to deliver finished goods to buyers / customers causing heavy financial loss to the Company and that Md. Sajid did similar misconduct in the past. He was warned and provided with the job on leave vacancy as and when required. The Company and its witnesses though have claimed that Md. Sajid caused huge financial loss to the Company but nowhere in the written statement or evidence of the witnesses the quantum of said loss is mentioned. In written statement it is claimed by the Company that Md. Sajid was always riotous, rowdy and his past record was also bad. But nowhere in the written statement, the Company has stated the details of any past incident to justify its said claim. As regards the evidence of O.P.W-3, Shri Gyan Chandra Upadhyay regarding previous misconduct of Md. Sajid it is highly significant to mention here that no previous misconduct is specifically pleaded or proved by the Company and on the basis of said evidence which is vague one it cannot be said that Md. Sajid did any misconduct in any previous occasion.

29. Considering the evidences both oral and documentary (exhibited documents) on record, facts and circumstances of the case and in the light of my foregoing discussion and observations, it cannot be believed that Md. Sajid committed the alleged misconduct and therefore, I do not find any justification for removing the name of Md. Sajid from the Badli Register. Accordingly, I am to hold that termination of service of Md. Sajid w.e.f. 19.11.2010 is not justified.

30. During argument, Ld. Advocate for the workman emphatically argued that in this case the management of the Company whimsically struck off

the name of Md. Sajid from the Badli Register without giving any opportunity of being heard to him and thereby violated the principles of natural justice and as such the striking off the name of Md. Sajid should be held to be bad in law. My attention is drawn to paragraph Nos. 19 and 21 of the ruling of the Hon'ble Apex Court reported in 2005 (1) S.C. Services Law Judgements, page-441 (Karnataka State Road Transport Corporation vs. S.G. Kotturappa). On the other hand, Ld. Advocate for the Company forcefully argued that as Md. Sajid was a temporary and Special Badli worker no opportunity of hearing was required to be given to him. He also has relied upon the said judgement of the Hon'ble Apex Court.

31. Admittedly, no opportunity was given by the management of the Company to Md. Sajid for giving an explanation about the alleged incidents dated 14.11.2010 and 19.11.2010 before striking out his name from the Badli Register. In paragraph No. 19 of the aforesaid ruling, the Hon'ble Apex Court has referred to a judgement of the case-S. **Govindaraju v. Karnataka S.R.T.C. and Another [(1986) 3 SC 273]** and observed that "*In Govindaraju (supra), the concerned workmen had worked for more than 240 days, his retrenchment came within the purview of Section 2(oo) (bb) of the Industrial Disputes Act. Despite the fact that provisions contained in Section 25F of the Industrial Disputes Act had not been complied with, this Court held that as in terms of Sub-Regulation 5 of Regulation 10 his name should have been removed from the select list, serious consequences entail as he forfeited his right to employment in future and, thus, the principles of natural justice were required to be complied with though no elaborate enquiry would be necessary, holding:*

"Giving an opportunity of explanation would meet the bare minimal requirement of natural justice. Before the services of an employee are terminated, resulting in forfeiture of his right to be considered for employment, opportunity of explanation must be afforded to the employee concerned. The appellant was not afforded any opportunity of explanation before the issue of the impugned order; consequently the order is rendered null and void being inconsistent with the principles of natural justice."

32. In paragraph No. 21 of the said judgement the Hon'ble Apex Court has been pleased to observe that "**Govindaraju (supra)** has been



distinguished by this Court in Dr. J. Shashidhara Prasad v. Governor of Karnataka and Another. (1999) 1 SCC 422. The observation as regard the right of a person to remain in the select list was doubted in view of the subsequent decision on the point. This Court categorically held that a person does not have a right to appointment only because his name had appeared in the select list. In a case of Badli worker, his name appears not in the select list but in the wait list. Even in a case where the order of termination is found to be bad in law, his name can only be considered to continue in the wait list and, thus, he could not have been automatically absorbed in the service."

33. From the aforesaid observations of the Hon'ble Apex Court it has become clear that before the services of an employee are terminated, resulting in forfeiture of his right to be considered for employment, opportunity of explanation must be afforded to the employee concerned. It also discerns from the solemn observations of the Hon'ble Court that in a case of Badli worker, his name appears in the wait list. Even in a case where the order of termination is found to be bad in law, his name can only be considered to continue in the wait list and he could not have been automatically absorbed in the service.

34. It is not disputed that before striking out the name of Md. Sajid from the Badli Register no opportunity was given to him for explaining the matter. The aim of the principles of natural justice is to prevent miscarriage of justice. An administrative order involving civil consequences should be made after following the rules of natural justice. In my humble view, the management has a duty to proceed against its employee in a way which is free from arbitrariness, unfairness or unreasonableness. The action taken by the management must be just, fair and reasonable. But unfortunately in this case, the rules of natural justice were violated by the management in striking out the name of Md. Sajid from the Badli Register. It has already been held after discussing the factual matrix of this case that there is no justification for removing the name of Md. Sajid from the Badli Register. In view of the principles of law enunciated by the Hon'ble Court and in the light of the facts and circumstances of this case though Md. Sajid could not have been



automatically absorbed in the service but his name should be continued in the Badli Register.

35. It has already been observed that Md. Sajid lastly worked as a Special Badli worker and his service in the Company was temporary and not a permanent one. A Badli or temporary worker does not have any permanent or guaranteed right to get work. Considering the facts and circumstances, evidences and materials on record and in view of the principles of law, I am of the view that no order for payment of back wages to Md. Sajid should be passed in this case.

Hence, it is

ordered

that termination of service of Md. Sajid by M/s. RDB Textiles Limited w.e.f. 19.11.2010 is not justified. RDB Textiles Limited is directed to restore the name of Md. Sajid in the concerned Badli Register at once.

This is my Award.

Sd/- G. K. Dalmia
Judge

Dictated & Corrected by me,

Fourth Industrial Tribunal

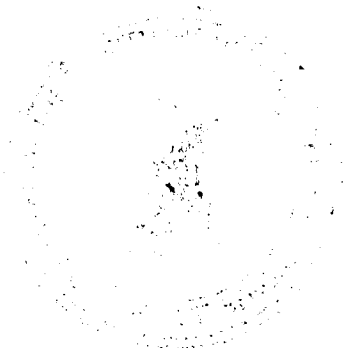
Kolkata

Sd/- G. K. Dalmia

19.07.2019

Judge

Sd/-
Fourth Industrial Tribunal, W.B.



Copy forwarded to:—

The Additional Chief Secretary,
Labour Department
Government of West Bengal
New Secretariat Buildings, 12th Floor,
A Block
1, Kiran Sankar Roy Road
Kolkata - 700 001.

A
19-07-2019.
Judge
Fourth Industrial Tribunal, W.B.