

I/62699/2019

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

No. Labr/ 880/(LC-IR)/22015(15)/47/2018

Date : 20/09/2019

**ORDER**

WHEREAS under the Government of West Bengal, Labour Department Order No. 1517 – IR/10L-18/14 dated 05.12.14, the Industrial Dispute between M/s Madhabi Engineering Works, 1, Kedar Nath Singha Road, P.S. Belgharia (Ariadaha), Kolkata – 700 057 and their workman Sri Barun Chandra Dey, 7/H/6, Dum Dum Road, P.S. Sinthi, Kolkata – 700030 regarding the issues 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, Fourth Industrial Tribunal, Kolkata.


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

Date : 20/09/2019

No. Labr/880/1(5)/(LC-IR)

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

1. M/s Madhabi Engineering Works, 1, Kedar Nath Singha Road, P.S. Belgharia (Ariadaha), Kolkata – 700 057.
2. Sri Barun Chandra Dey, 7/H/6, Dum Dum Road, P.S. Sinthi, Kolkata – 700 030.
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, 11<sup>th</sup> Floor, Kolkata- 700001.
- ✓ 5. The O.S.D., IT Cell, Labour Department, with the request to cast the Award in the Department's website.

 20.9.19

Deputy Secretary

No. Labr/880/2(2)/(LC-IR)

Date : 20/09/2019

Copy forwarded for information to :

1. The Judge, Fourth Industrial Tribunal, Kolkata with reference to his Memo No. 1181 – L.T. dated 30.08.2019.
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. Madhabi Engineering Works, 1, Kedar Nath Singha Road, P.S. Belgharia (Ariadaha), Kolkata-700 057 and Shri Barun Chandra Dey, 7/H/6, Dum Dum Road, P.S. Sinthi, Kolkata – 700 030.

(Case No. VIII-02/15)

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. Madhabi Engineering Works, 1, Kedar Nath Singha Road, P.S. Belgharia (Ariadaha), Kolkata-700 057 and Shri Barun Chandra Dey, 7/H/6, Dum Dum Road, P.S. Sinthi, Kolkata – 700 030 vide G.O. No. 1517-IR/IR/10L-18/2014 dated, 05.12.2014 (Case No. VIII-02/15).

I S S U E (S)

1. Whether the management is justified in terminating the service of Shri Barun Chandra Dey with effect from 09.01.2012 ?

What relief, if any, is the workman entitled to ?

It appears that the workman Shri Barun Chandra Dey filed his written statement on 23.04.2015. Subsequently, said written statement was amended and the workman filed his amended written statement on 18.04.2016. Madhavi Engineering Works filed its written statement on 10.06.2015. A rejoinder to said written statement was filed on 13.07.2016.

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1. The case of Shri Barun Chandra Dey (hereinafter referred to as the workman), in brief, is that he initially joined the Madhavi Engineering Works (hereinafter referred to as the Company) on 10.07.2007 as a Fitter. He is a permanent workman of the Company and had been rendering his services there without any blame. His last drawn wage was Rs. 4,350/- per month. He also used to get over time allowance, tiffin allowance and outside duty allowance. It is also alleged by the workman that on 30.09.2010 the Company without giving any notice to him refused his employment. He tried to convince the management of the Company for allowing him to join his duty but in vain. Thereafter, he made a prayer before the Assistant Labour Commissioner on 10.08.2011 for conciliation. After conciliation, he resumed his duty on 12.10.2011. Thereafter, he became physically ill from 22.12.2011 to 26.12.2011. On 27.12.2011, he informed the Company about his illness. But the management of the Company refused to receive his said letter. Then he intimated said matter to the Beliaghata Police Station and the Assistant Labour Commissioner. It is further claimed by the workman that after recovery of health, he joined his duty on 02.01.2012 but the management of the Company threatened to and misbehaved with him. Then he lodged an FIR bearing no. 152 dated 03.01.2012. Thereafter, on 09.01.2012 the management of the Company illegally terminated his services. He submitted several representations to the management of the Company for allowing him to join his duty but in vain. Then he lodged an another FIR bearing no. 465 dated 10.01.2012 and intimated the matter to the Assistant Labour Commissioner and Joint Labour Commissioner on 11.01.2012. It is also urged by the workman that several joint meetings were held for conciliation but the process of conciliation has failed due to adamant attitude of management of the Company.

2. It is also claimed by the workman that the Company did not issue any notice to show cause upon him. No charge-sheet was submitted against him. Even no domestic enquiry was held before termination of his services. He was not given any opportunity of hearing before termination of his services. It is further alleged by the workman that his services were terminated in violation of Section 25F of the Industrial Disputes Act, 1947

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and that no compensation was paid to him. He has also claimed that he tried his level best to get a job but in vain and he is still unemployed. He has prayed for an award declaring the termination of his services on 09.01.2012 as illegal and unjustified. He has further prayed for his reinstatement into the service with full back wages and consequential benefits.

3. On the other hand, the Company has denied the material allegations put by the workman against it and claimed inter alia that the workman joined the Company as a "Drill Operator cum Marker" in the month of July, 2007 and worked there till September, 2010 and that he used to get Rs. 4,350/- per month. At the end of September, 2010 the workman left his service on his own accord and approached the management of the Company to issue an employment certificate for getting a better employment elsewhere. Accordingly, an employment certificate was issued on 01.11.2010 in favour of the workman which was received by him without any objection. It is also urged on behalf of the Company that due to voluntary abandonment of services by the workman in the month of September, 2010 the employer-employee relationship between him and Company was ceased. It is also claimed on behalf of the Company that subsequently in the month of August, 2011 the workman made a complaint to the office of the Labour Commissioner that his service was illegally terminated on 30.09.2010. But before approaching to the Labour Commissioner he never raised any dispute with the management of the Company. A conciliation proceeding was initiated by the Assistant Labour Commissioner. During said conciliation proceedings as per request of the Conciliation Officer the management of the Company by a letter dated 19.09.2011 offered an employment to the workman for the post of a 'Drill Man' and accordingly the workman accepted his said fresh appointment in the Company and joined said post on 12.10.2011. It is further claimed by the Company that the workman did not raise any objection in respect of his fresh employment in the Company. He started discharging his duty as a fresh employee since 12.10.2011 but he again started absenteeism without any information. Due to his absence the works of the Company



was being hampered seriously and finding no other alternative his service was dispensed with on 01.11.2011.

4. The Company has also alleged that it lodged a complaint vide G.D. entry No. 1098 dated 02.01.2012 with the officer in charge of the Belghoria Police Station claiming that Shri Dey who, two years ago, worked on contractual basis and left the Company at his own will started visiting the Company frequently and that the workman had some ill motive. It is further urged on behalf of the Company that the Conciliation Officer after receiving the complaint from the workman on 11.01.2012 called a conciliation meeting on 09.02.2012 and issued notice thereof after noting the subject of conciliation as "Alleged illegal termination of service of Shri Barun Chandra Dey w.e.f. 30.09.2010". The Company has further claimed that after getting fresh employment as per letter dated 19.09.2011 the workman was in employment from 12.10.2011 to 01.11.2011 and he is not entitled to get any benefit under the Industrial Disputes Act. It is also alleged that there is no conciliation on the issue of termination of services of the workman w.e.f. 09.01.2012 and therefore the reference as made by the Government is not maintainable. It has also been claimed on behalf of the Company that the workman is gainfully employed. It appears to have been admitted on behalf of the Company that it did not issue any stigmatic letter to the workman who had been simply released from the service as he was found not fit to render his services sincerely and regularly.

5. The workman Shri Barun Chandra Dey has deposed as P.W.-1 and documents filed by him have been marked as Exhibits 1 to 5. On the other hand, one G. Ahmed has deposed as M.W.-1 and one Shri Haradhan Sarkar has deposed as M.W.-2. Documents filed on behalf of the Company have been marked as Exhibits A to C. It is pertinent to mention here that as the Company failed to bring M.W.-2 Shri Haradhan Sarkar for his further examination, his evidence was closed as per submission of the Ld. Advocate of the Company vide order No. 67 dated 12.03.2019. The workman did not find any opportunity to cross-examine the said witness Shri Haradhan Sarkar.



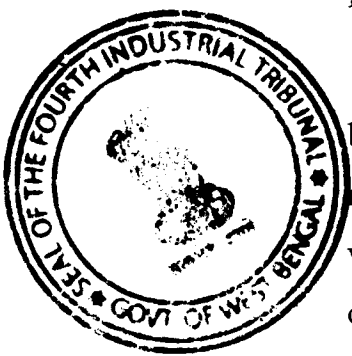
6. Rulings of the Hon'ble Supreme Court referred to by the Ld. Advocate of the Company:— (1). 1968 Lab. I. C., Supreme Court, page-526 (Sindhu Resettlement Corporation Ltd. vs. Industrial Tribunal of Gujarat and others), (2). (2005) 12 Supreme Court Cases, page 738, (3). (2009) 5 Supreme Court Cases, page 705, (4). 2006 1 CLR, page 39 and (5). 1967 (1) LLJ Supreme Court, page 423 (Delhi Cloth and General Mills Company Ltd. Vs Their workmen and others).

7. 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**

8. Before deciding the other matters, I find it just to deal with the claim of the Company that there is no conciliation on the issue of termination of services of the workman w.e.f. 09.01.2012 and therefore the reference as made by the Government is not maintainable in law. During argument, Ld. Advocate of the Company has emphatically argued in favour of the said claim. He has submitted that from the Reconciliation File which is lying with the record of this case it can be seen that Conciliation Officer after receiving complaint from the workman on 11.01.2012 called meetings for conciliation and issued notices mentioning the subject of conciliation as "Alleged illegal termination of service of Shri Barun Chandra Dey w.e.f. 30.09.2010". Therefore, it can be inferred that there was no conciliation regarding the alleged termination of service of the present workman on 09.01.2012.

9. In reply, Ld. Advocate for the workman submitted that said matter may be a clerical mistake on the part of the Conciliation Officer but the management of the Company was fully aware of the allegation of the workman and accordingly it submitted its written reply on the allegation of the workman to the Conciliation Officer. She has drawn my attention to a photo copy of a letter dated 15.02.2012 issued from the Madhavi Engineering Works addressed to the Assistant Labour Commissioner. It appears that said original letter is lying with the Conciliation File and the Madhavi Engineering Works has claimed therein that at the request of



Barun Chandra Dey, a letter dated 19.09.2011 was issued and thereby offered him the post of a Drill Man with effect from 12.10.2011 and that the terms of service i.e. the salary and working hours were mentioned in the said letter and this workman duly accepted said terms of his service. It also appears to have been claimed in the said letter that the workman joined his said service on 12.10.2011. As he frequently remained absent his services have been terminated with effect from 01.11.2011. That apart from the report dated 29.10.2014 of the Conciliation Officer which is lying with the Conciliation File it discerns that in the course of discussion, the management of the Company stated to the Conciliation Officer that the services of the workman were terminated with effect from 09.01.2012 on the ground of his frequent absence. In view of the above factual aspect it cannot be said that there was no conciliation regarding the alleged termination of service of the present workman on 09.01.2012. In my humble opinion, mere mistake in mentioning the date of termination of service in the notices issued by the Conciliation Officer would not make the conciliation proceedings bad especially when parties were aware of the real dispute, took part in the conciliation proceedings and made their respective submissions before the Conciliation Officer regarding their real dispute. Considering facts, circumstances of the case and in the light of my aforesaid observations I do not find any substance in the argument of the Ld. Advocate of the Company that there was no conciliation regarding the alleged termination of service of the present workman on 09.01.2012.



10. It is claimed on behalf of the Company that during conciliation proceedings regarding alleged termination of service of the workman on 30.09.2010, as per request of the Conciliation Officer, the management of the Company by a letter dated 19.09.2011 offered an employment to the workman for the post of a 'Drill Man' and accordingly he accepted said fresh appointment in the Company and joined said post on 12.10.2011. It is further claimed by the Company that the workman did not raise any objection in respect of his fresh employment in the Company. He started discharging his duty as a fresh employee since 12.10.2011.

11. In respect of the said matter it is alleged by the workman that on 30.09.2010 the Company without giving any notice to him refused his

employment. He tried to convince the management of the Company for allowing him to join his duty but in vain. Thereafter, he made a prayer before the Assistant Labour Commissioner on 10.08.2011 for conciliation. After conciliation, he resumed his duty on 12.10.2011.

12. According to the Company, the workman Shri Barun Chandra Dey joined the Company as a Drill Man on 12.10.2011 as a fresh employee. But the workman claims that he resumed his duty on 12.10.2011 which is in continuation of his services rendered to the Company previously. In this regard, M.W.-1 Mr. G. Ahmed has deposed in the tenor of the case of the Company. He has clearly claimed in his deposition that during conciliation proceedings, at the request of the Conciliation Officer, the management of the Company by a letter dated 19.09.2011 offered the workman an employment to the post of a 'Drill Man' and accordingly the workman Shri Barun Chandra Dey accepted said fresh employment and joined the Company on 12.10.2011 and that the workman did not raise any objection in respect of his fresh employment in the Company. On the other hand, the workman Shri Barun Chandra Dey (P.W.-1) has not denied the said claim of the Company in his deposition. In addition to above, I find it appropriate to mention here that the workman has filed a photo copy of a certificate dated 01.11.2010 issued by the Company in his favour showing that he worked in the Company as a 'Drill Operator cum Marker' for the period from July, 2007 to September, 2010. In this regard the Company has specifically pleaded that at the end of September, 2010 the workman left his service on his own accord and approached the management of the Company to issue an employment certificate in his favour for getting a better employment elsewhere. Accordingly, an employment certificate was issued on 01.11.2010 in favour of the workman which was received by him without any objection. It is also urged on behalf of the Company that due to voluntary abandonment of service by the workman in the month of September, 2010 the employer-employee relationship between him and Company was ceased. The M.W.-1 Mr. G. Ahmed has deposed in support of said claim of the Company. But the P.W.-1, Shri Barun





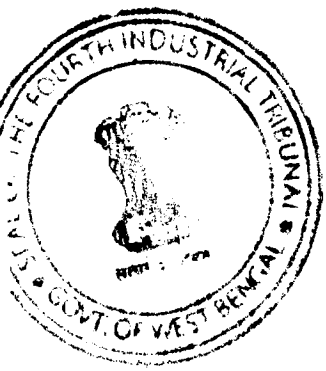
Chandra Dey, the workman has not disputed or denied the said claim of the Company in his deposition.

13. During argument, Ld. Advocate for the workman submitted that Shri Barun Chandra Dey obtained said certificate for admission of his child in a school. But said matter appears to have not been pleaded in the W.S. of the workman. Even the workman is silent on the said point in his evidence. In respect of the above matter, it is pertinent to mention here that said certificate was issued on 01.11.2010 and it is claimed by the Company that the workman voluntarily abandoned his service at the end of September, 2010 and he obtained said certificate for getting a better employment elsewhere. The workman for the first time made his allegations about the alleged termination of service on 30.09.2010 before the Deputy Labour Commissioner on 10.08.2011 i.e. about ten months after the alleged termination of his service. For the sake of discussion, even if it is believed that the Company terminated the services of the workman against his will on 30.09.2010 then it can be said without any hesitation that their relation was not good at that time. Had there been a bitter relation between the management of the Company and the workman such a certificate would not have been issued by the Company. The cumulative effect of the aforesaid facts and circumstances are giving rise to an inference that on 30.09.2010 the workman voluntarily abandoned his service. Exhibit A /1 is a copy of the letter dated 19.09.2011 by which the Company offered an employment to the workman who accepted the same by putting his signature thereon. Nowhere of the said letter it is mentioned that said appointment would be treated in continuation of the services rendered by the workman to the Company earlier. It is not disputed that pursuant to said letter the workman joined the Company on 12.10.2011 and started discharging his duties there. Considering the aforesaid facts and circumstances of case and evidences on record it has become clear that said second appointment of the workman was a fresh one.

14. As regards the nature of said appointment given to the workman by an offer letter dated 19.09.2011 (Exhibit-A/1) which was

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accepted by him it is argued on behalf of the Company that on the strength of said appointment the workman joined the service as a new employee on 12.10.2011 and his said service was purely temporary one. But nowhere of the said letter it is mentioned that the service of Shri Barun Chandra Dey will be a temporary one. That apart said matter appears to have not been pleaded or proved by the Company. The workman claims that his service is permanent one. It is not less significant to mention here that in Exhibit-A/1 the Company has put a condition that the workman has to inform it two months before leaving the service as otherwise ~~the~~ it will charge his one month's salary as compensation. Said matter also suggests clearly that said appointment of the workman in the service was permanent and not a temporary one. Under the circumstances, I am to hold that nature of said service of the workman was permanent one.

15. It is not disputed that the workman Shri Barun Chandra Dey approached the Conciliation Officer for his reinstatement in the service and the management of the Company appeared before the Conciliation Officer and contested and refused the claim of the workman. As the conciliation proceedings was failed the reference was made by the Government to this Tribunal. It has become clear from the materials available in the Conciliation file and the report of the Conciliation Officer that both sides took part in the conciliation proceedings. Though the workman 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.

16. Ld. Advocate for the Company submitted that the workman Shri Barun Chandra Dey 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 Lab. I. C., Supreme Court, page-526 (Sindhu Resettlement Corporation Ltd. vs. Industrial Tribunal of

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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 employers, 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."*

17. On the other hand, Ld. Advocate for the workman has 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.

18. 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?"*

19. 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.*



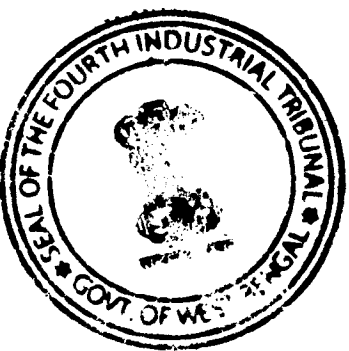
*vs. Industrial Tribunal, reported in 1979 (1) SCC 1, the Apex Court ruled that the decision turns purely on the facts of the case."*

20. 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 award of the Tribunal holding the reference to be incompetent, the Apex 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."*

21. 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.

22. Ld. Advocate for the Company emphatically submitted that the workman after joining the Company on 12.10.2011 again started absenteeism without any information and getting no alternative his service was dispensed with on 01.11.2011 but as per issue No. 1 mentioned in the order of reference this Tribunal is asked to adjudicate the question as to whether the management is justified in terminating the service of Shri Barun Chandra Dey w.e.f. 09.01.2012 or not. It is also argued on behalf of the Company that the date of alleged termination of service of the workman is 01.11.2011 and not 09.01.2012 and as such the present reference should be held to be not maintainable. In support of his submission, he has referred to a portion



of the judgement of the Hon'ble Supreme Court reported in (2005) 12 Supreme Court Cases, page 738 wherein the Hon'ble Court has been pleased to observe inter alia that *"It is true that normally a writ petition under Article 226 of the Constitution should not be entertained against an order of the appropriate Government making a reference under Section 10 of the Act, as the parties would get opportunity to lead evidence before the Labour Court or Industrial Tribunal and to show that the claim made is either unfounded or there was no occasion for making a reference. However, this is not a case where the infirmity in the reference can be shown only after evidence has been adduced. In the present case the futility of the reference made by the Central Government can be demonstrated from a bare reading of the terms of the reference and the admitted facts. In such circumstances, the validity of the reference made by the Central Government can be examined in proceedings under Article 226 of the Constitution as no evidence is required to be considered for examining the issue raised"*.

23. Ld. Advocate for the Company has further argued that this tribunal cannot enlarge the scope of the reference and it should confine its decision to the issues specifically mentioned in the order of reference and anything which is strictly incidental thereto. In support of his submission he has referred to a portion of a ruling of the Hon'ble Apex Court reported in 1967, 1 LLJ Supreme Court, page 423 (Delhi Cloth and General Mills Company Ltd. Vs Their workmen and others) wherein it has been observed inter alia by the Hon'ble Court that *"From the above it therefore appears that while it is open to the appropriate Government to refer the dispute or any matter appearing to be connected therewith for adjudication, the tribunal must confine its adjudication to the points of dispute referred and matters incidental thereto. In other words, the tribunal is not free to enlarge the scope of the dispute referred to it but must confine its attention to the points specifically mentioned and anything which is incidental thereto. The word "incidental" means according to Webster's New World Dictionary:*



*“ happening or likely to happen as a result of or in connexion with something more important; being an incident; casual; hence, secondary or minor, but usually associated.”*

*“Something incidental to a dispute” must therefore mean something happening as a result of or in connexion with the dispute or associated with the dispute. The dispute is the fundamental thing while something incidental thereto is an adjunct to it. Something incidental, therefore, cannot cut at the root of the main thing to which it is an adjunct”.*

24. In an another portion of the said judgement the Hon'ble Apex Court has been pleased to observe inter alia that *“The parties would be allowed by their respective statement of cases to place before the tribunal such facts and contentions as would explain their conduct or their stand, but they could not be allowed to argue that the order of reference was wrongly worded and that the very basis of the order of reference was open to challenge. The cases discussed go to show that it is open to the parties to show that the dispute referred was not an industrial dispute at all and it is certainly open to them to bring out before the tribunal the ramifications of the dispute. But they cannot be allowed to challenge the very basis of the issue set forth in the order of reference.*

*On behalf of the respondents, Sri Chari put before us four propositions which according to him the tribunal had to consider before coming to a decision on these two issues. They were:*

- (i) *The fact that there was a recital of dispute in the order of reference did not show that the Government had come to a decision on the dispute;*
- (ii) *The order of reference only limited the tribunal's jurisdiction in that it was not competent to go beyond the heads or points of dispute;*
- (iii) *Not every recital of fact mentioned in the order of Government was irrebutable; and*
- (iv) *In order to fix the ambit of the dispute it was necessary to refer to the pleadings of the parties. No exception can be taken to the first*

*Dictated & Corrected by me.*

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two points. The correctness of the third proposition would depend on the language of the recital.

So far as proposition (iv) is concerned; Sri Chari argued that the tribunal had to examine the pleadings of the parties to see whether there was a strike at all. In our opinion, the tribunal must, in any event, look to the pleadings of the parties to find out the exact nature of the dispute, because in most cases the order of reference is so cryptic that it is impossible to cull out therefrom the various points about which the parties were at variance leading to the trouble. In this case, the order of reference was based on the report of the conciliation officer and it was certainly open to the management to show that the dispute which had been referred was not an industrial dispute at all so as to attract jurisdiction under the Industrial Disputes Act. But the parties cannot be allowed to go a stage further and contend that the foundation of the dispute mentioned in the order of reference was non-existent and that the true dispute was something else. Under S. 10 (4) of the Act it is not competent to the tribunal to entertain such a question".

25. In view of the aforesaid solemn principles of law enunciated by the Hon'ble Court, it is clear that the tribunal must confine its adjudication to the points of dispute referred and matters incidental thereto and that it is open to the parties to bring out before the tribunal the ramifications of the dispute and it is open to the management to show that the dispute which had been referred is not an industrial dispute at all. But the parties cannot be allowed to contend that the foundation of the dispute mentioned in the order of reference was non-existent or that the true dispute was something else.

26. The Company did not bring any ramification of the issues referred to this Tribunal. Considering the facts and circumstances of the case, evidence and materials available on record and in view of the principles of law propounded by the Hon'ble Court it cannot be said that the present order of reference is not maintainable.



27. During argument, Ld. Advocate for the workman emphatically argued that in this case the management of the Company whimsically terminated the services of the the workman without giving any opportunity of being heard to him and thereby violated the principles of natural justice and as such the termination of services of the workman Shri Barun Chandra Dey should be held to be bad in law.

28. Admittedly, no opportunity for explaining the matter was given by the management of the Company to the workman Shri Barun Chandra Dey before termination of his services. 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 terminating the services of the workman. It is well settled that before the services of an employee are terminated an opportunity of giving explanation must be afforded to him.

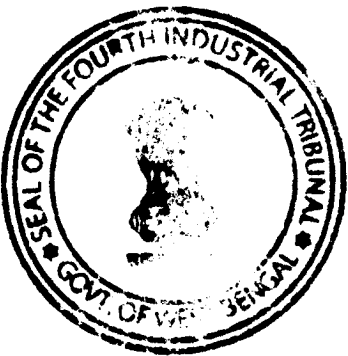
29. It is submitted on behalf of the Company that the services of the workman were dispensed with and not terminated. In my considered opinion by using the words "dispensed with" the affect of termination of service will not be changed. In fact the services of the workman were terminated by the management of the Company without giving any opportunity to him for explaining the matter. It is apposite to mention here that in the offer letter (Exhibit-A/1) it is clearly stipulated that the workman has to inform the Company two months before leaving the service as otherwise the Company will charge his one month's salary as compensation. There is no stipulation for giving notice or payment of any compensation to the workman if the Company desires to terminate his service. In my





considered opinion the conditions stipulated in Exhibit-A/1 should be a two-way traffic and the management of the Company should have given two months' notice or an appropriate compensation to the workman before terminating his service. But no such notice or compensation appears to have been given to the workman. In view of the aforesaid observations, facts and circumstances of this case, evidences and materials on record and in the light of the settled principles of law, I am to hold that the management is not justified in terminating the service of the workman Shri Barun Chandra Dey w.e.f. 09.01.2012.

30. In respect of the prayer of the workman for his reinstatement in the service with full back wages Ld. Advocate of the Company submitted that on a declaration that the order of termination was invalid the reinstatement of a workman in the service with full back wages would not be automatic. In support of his submission he has referred to the paragraph No. 18 of a ruling of the Hon'ble Supreme Court reported in (2009) 5 Supreme Court cases, page 705 wherein the Hon'ble Court has been pleased to observe that *"Although direction to pay full back wages on a declaration that the order of termination was invalid used to be the usual result but now, with the passage of time, a pragmatic view of the matter is being taken by the Court realizing that an industry may not be compelled to pay to the workman for the period during which he apparently contributed little or nothing at all to it and / or for a period that was spent unproductively as a result whereof the employer would be compelled to go back to a situation which prevailed many years ago, namely, when the workman was retrenched."*



31. Ld. Advocate for the Company has also referred to the paragraph No. 22 of another ruling of the Hon'ble Apex Court reported in 2006 1 CLR, page 39 wherein it has been observed by the Hon'ble Court that *"No precise formula can be laid down as to*

*under what circumstances payment of entire back wages should be allowed. Indisputably, it depends upon the facts and circumstances of each case. It would, however, not be correct to contend that it is automatic. It should not be granted mechanically only because on technical grounds or otherwise an order of termination is found to be in contravention of the provisions of Section 6-N of the U.P. Industrial Disputes Act."*

32. From the solemn principles propounded by the Hon'ble Apex Court it discerns that granting of full back wages is not automatic and it depends upon the facts and circumstances of each case.

33. In this case, the workman has claimed in his Written Statement that he is unemployed. But I do not find any iota of evidence in support of his said claim. Even said matter is not stated by him during his evidence. On the other hand, the Company has simply claimed that the workman is gainfully employed. It has not stated as to when and where the workman Shri Barun Chandra Dey got employment after 09.01.2012. In fact, I do not find any acceptable or believable evidence on record to decide the question as to whether the workman Shri Barun Chandra Dey is gainfully employed or not. Normally, in present days no person can survive without any income. Said income may or may not be adequate for him.



34. In the light of the facts, circumstances of the case, evidence on record, foregoing observations and the principles of law, I am of the view that the workman Shri Barun Chandra Dey is entitled to be reinstated in his service with a portion of back-wages. It is clear that after getting fresh appointment the workman Shri Barun Chandra Dey had worked under the Company for a very small period. Considering the quantum of wages, period for which the workman had worked under the Company and all other aspects of the matter and keeping in mind

the principles of law enunciated by the Hon'ble Court, I am of the view that 25% of the back-wages should be awarded to the workman Shri Barun Chandra Dey. Hence, it is

**ordered**

that the workman Shri Barun Chandra Dey be reinstated in his service under M/s. Madhabi Engineering Works within 60 days of this day. He will also get 25% of back-wages till reinstatement of the service.

M/s. Madhabi Engineering Works is directed to reinstate the workman Shri Barun Chandra Dey in the service and pay 25% of the back-wages to him within 60 days of this day.

This is my Award.

Sd/- G. K. Dalma

Judge

Dictated & Corrected by me,

Fourth Industrial Tribunal

Kolkata

29.08.2019

**Judge**

**Fourth Industrial Tribunal, W.B**

Judge

Judge

Fourth Industrial Tribunal, W.B



Copy forwarded to  
The Additional Chief Secretary  
Government of West Bengal  
Labour Department.

30-08-2019

**Judge**

**Fourth Industrial Tribunal, W.B**