

I/80508/2020

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/ 911/(LC-IR)/11L-65/12

Date : 07/02/2020

**ORDER**

WHEREAS, under the Government of West Bengal, Labour Department Order No. 789- IR/11L-65/12 dated 21.08.12 the Industrial Dispute between M/s Debjani Enterprise (Contractor), S.M. Nagar, P.O. – Sarkarpool, Maheshtala, South 24 Parganas, Kolkata – 700143 and their workmen represented by A.R.C.L. Organics Ltd. Contractors Workers Union, 40A, Hide Road, Jain Kunj, Kolkata – 700 088 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, Second Industrial Tribunal, West Bengal.

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

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

**ANNEXURE**

(Attached herewith)

By order of the Governor,

*sd/*

Deputy Secretary

to the Government of West Bengal

Date : 07/02/2020

No. Labr/911(5)/(LC-IR)

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

1. M/s Debjani Enterprise (Contractor), S.M. Nagar, P.O. – Sarkarpool, Maheshtala, South 24 Parganas, Kolkata – 700143.
2. The Secretary, A.R.C.L. Organics Ltd. Contractors Workers Union, 40A, Hide Road, Jain Kunj, Kolkata – 700 088.
3. The Assistant Labour Commissioner, W.B. In-Charge, Labour Gazette.
4. The O.S.D. & E.O. Labour Commissioner, W.B. New Secretariate 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.

*Sd/*

Deputy Secretary

Date : 07/02/2020

No. Labr/911(2)/(LC-IR)

Copy forwarded for information to :

1. The Judge, Second Industrial Tribunal, West Bengal with reference to his Memo No. 39 – L.T. dated 13.01.2020.
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. Debjani Enterprise (Contractor), S.M. Nagar, P.O. – Sarkarpool, Maheshtala, South 24-Parganas, Kolkata – 700143 and their workmen represented by A.R.C.L. Organics Ltd. Contractors Workers Union, 40A Hide Road, Jain Kunj, Kolkata – 700088.

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- (Case No. VIII-44/2012)

BEFORE THE SECOND INDUSTRIAL TRIBUNAL: WEST BENGAL

PRESENT: SHRI SRIBASHJ CHANDRA DAS, JUDGE,

SECOND INDUSTRIAL TRIBUNAL, KOLKATA

Date of passing award – 26.09.2019

A W A R D

This case arose by way of order of reference vide No. 789-I.R./IR/11-65/12 dt. 21.08.2012 by order of the Governor signed by Deputy Secretary to the Government of West Bengal, Labour Department, I.R. Branch, Writers' Buildings, Kolkata – 1 mentioning that an industrial dispute exists between M/s. Debjani Enterprise (Contractor), S.M. Nagar, P.O. – Sarkarpool, Maheshtala, South 24-Parganas, Kolkata – 700143 and their workmen represented by A.R.C.L. Organics Ltd. Contractors Workers Union, 40A Hide Road, Jain Kunj, Kolkata – 700088 relating to the issues as mentioned later being a matter / matters specified in the second schedule to the Industrial Disputes Act, 1947, adding further that it is expedient that the said dispute should be referred to an Industrial Tribunal constituted U/s. 7A of the Industrial Disputes Act, 1947, and then therefore in exercise of power conferred by Section 10 of the Industrial Disputes Act, 1947 the Governor is pleased by this order of reference to refer this dispute to this Tribunal stated to be constituted under Notification No. 808-I.R./IR/3A-2/57 dt. 11.03.1957 for adjudication requiring this Tribunal to submit its award to the State Government within a period of three months from the receipt of this order by this Tribunal in terms of Section 2(A) of Section 10 of the Industrial Disputes Act, 1947 subject to other provision / provisions of the said Act, issues framed in the order of reference being:

- i) Whether the termination of i) Shri Monotosh Datta, ii) Shri Ashok Sardar, iii) Raju Ganguly and iv) Shri Tushar Mandal by way of refusal of employment w.e.f. 21.11.2011 by the management of M/s. Debjani Enterprise (Contractor) is justified?,
- ii) To what relief, if any, the workmen entitled to?

The case record shows that Ld. Lawyer for the union filed one petition on 16.07.2013 with a prayer for addition of M/s. A.R.C.L. Organics Ltd. as a party as per provisions of Rule 20D of the West Bengal Industrial Disputes Rule, 1958, and the case record shows that after



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Camac Street, Kolkata – 700017 entered into appearance engaging Ld. Lawyer and thus it became an added party.

After order for filing written statement, the union filed written statement stating that the company M/s. Debjani Enterprise(Contractor) is a proprietorship Firm and Mr. Jagat Mondal is the sole proprietor of this Firm, which is used to engage in the business of supplying his own workmen at the manufacturing department of the principal employer which is stated to be the added party i.e. M/s. A.R.C.L. Organics Ltd.. It is also stated that the principal employer is a company under the Company's Act, 1956 and it has been carrying on business of manufacturing resin chemicals etc. It is also stated that the principal employer i.e. M/s. A.R.C.L. Organics Ltd. used to supervise and control the contractor's workman directly by taking their attendance, maintaining log books, and also by commanding and giving direction through their supervisors, officers including manager and thus the contractor i.e. M/s. Debjani Enterprise(Contractor) has no control upon their workman at all and accordingly M/s. Debjani Enterprise(Contractor) being contractor was / is a mere puppet person. It is next stated that both principal employer and the contractor always contravened the provisions of the Labour Laws / Laws under Industrial Disputes Act, 1947 and also laws arising out of Minimum Wages Act, etc. It is also raised in the written statement of the union that the personnel manager of the principal employer at that material time used to threaten the contractor's workmen stating terminating / dismissing the workman by victimizing them by implicating them in criminal cases on false charges and also by transferring them from one place to another etc. and accordingly such illegal activities as would be done by the management staff of the principal employer amounted to unfair labour practices and also raised that they used to treat the contractor's workmen as if they were slaves and also treated them with step motherly attitude but the workman raised protest against all such illegal activities both verbally and in writing and in spite of having knowledge about such behaviours on the part of the management staff of the principal employer neither the contractor nor the higher management authority of the principal employer did pay any heed and also remained silent over such illegal activities on the workman and the petitioner could not afford to understand the reasons for such illegal behaviour by them on the workman. it is also raised that to get protection from such unpleasant, embarrassing situation the contractor's workmen who used to work for company's production job, maintenance job etc., had no other alternative but to form a trade union under the name and style of A.R.C.L. Organics Ltd. Contractors Workers Union, registered under Trade Union Act, 1926 on 30.08.2011 having registration No. 26176 and also obtained certificate as was issued by the registrar of Trade Unions, West Bengal and the Indian National Trinomool Trade Union Congress i.e. I.N.T.T.U.C. gave affiliation to the petitioner's trade union by issuing a permanent affiliation certificate, vide application No. 869. It is also stated in the written statement filed by union that after the petitioner started trade union activities by raising formal disputes separately for introducing minimum wages as per Minimum Wages Act, 1948 and also for stopping unfair labour practices such as transferring the contractor's workmen from one place to another, and both O.P. Companies i.e. contractor and principal



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employer having come to know resorting to such trade union activity by the petitioners, became furious on the contractor's workmen i.e. Sri Monotosh Datta and others as are mentioned in the order of reference, they being office bearers of the petitioner's union and thus they became eye-shore both before contractor and the management of the principal employer. It is next stated that for interest of the contractor's workmen, they i.e. petitioners as mentioned in the order of reference on behalf of the union raised individual disputes before the office of the Labour Commissioner with a view to enable them to get benefits of Minimum Wages Act and the same was under process then. It is also stated that arising out of personal malice and grudge the contractor in collusion with the principal employer terminated the four workmen from their permanent service w.e.f. 21.11.2011 by way of refusal of employment in the way that when they went to join their duties as usual on that day, they were stated that their service were no longer required, and thus before terminating their service it was necessary on the part of both employers i.e. principal employer and the contractor to take disciplinary action by framing charges against them on the basis of standing order / service rule, if any, but they did not do so and the workman never did anything wrong in performing their duties, they were terminated from service without affording any opportunity of hearing and in violations of mandatory provisions of law. It is next mentioned that workman Monotosh Datta is a resident of S.M. Nagar, under P.S. – Maheshtala in 24-Pargana(S), he joined the service in July 2008 at a salary of Rs.120/- per day including deductions for E.S.I. & P.F., he happened to be the secretary of the union, the workman Ashok Sardar is a resident of Sukdebpure under P.S. – Maheshtala in Dist. 24-Parganas(S), he joined the service in 2006 at a salary of Rs. 120/- per day including deductions for E.S.I. & P.F., and he happened to be the executive member of the union, workman Raju Ganguly is a resident of Gopalpure under P.S. – Maheshtala in Dist. 24-Pargana(S), he joined the service in 2006 at a salary of Rs. 120/- per day including deductions for E.S.I. & P.F. and he happened to be the executive member of the union and Tushar Mandal Resident of S.M. Nagar, under P.S. – Maheshtala in Dist. 24-Parganas(S), he joined the service in 2006 at a salary of Rs. 120/- per day including deductions for E.S.I. & P.F., and he happened to be the assistant secretary of the union. It is also stated that after such illegal termination the workman raised objections and also personally approached both principal employer and contractor for settlement and after that also the union also have approached both employer to settle the matter so that all four of them could be reinstated with full back-wages but to no effect, and then the union in writing requested for intervention in the matter by calling for joint conference after taking resolution by the union in its minutes book. But in the meantime the manager, P & A of the principal employer in collusion with contractor filed an F.I.R. before Taratala Police Station against all the four workmen as mentioned in the order of reference alleging indecent behaviour towards senior management of the principal employer but all these allegations are totally false, baseless, imaginary and concocted and after that they were released on bail and they started contesting that criminal case pending before Ld. Judicial Magistrate of Alipore Police Court. It is also stated that Assistant Labour Commissioner, Kolkata, called for joint conference and both principal employer and the



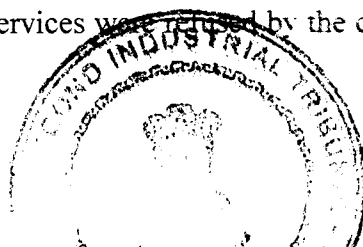
contractor attended the same and submitted their comments and the Assistant Labour Commissioner, Mr. P.P. Das tried his best to settle the matter but due to adamant attitude on the part of both principal employer and contractor nothing could be arrived at and then a failure report was submitted by him U/s. 12(4) of the Industrial Disputes Act, 1947 on the basis of which the present order of reference was made. It is also stated that thus termination of the four workmen from their permanent service by principal employer in collusion with the contractor is illegal, unlawful and all the workmen are entitled to be reinstated in their former service with full back-wages.

To contest this case the contractor M/s. Debjani Enterprise (Contractor) has also for filed written statement, and Mr. Jagat Mondal in the capacity of its proprietor has mentioned in part-A of the written statement has raised some legal technicalities such as reference is mis-conceived, erroneous and not maintainable with suppression of material facts and the allegations against it in the written statement filed by the union are false, mala fide and concocted and consequently bad in law etc. to bar the case, with the addition that the employer never refused employment to the workman but the workman only did not come to resume duty and the union has filed this case by way of order of reference with a mala fide intention to extract money from the company. It is also raised that the union has no locus standi as it does not exist, it has no certificate of bargaining agent from appropriate authority and it does not have representative character. It has also raised that dispute under order of reference is not an industrial dispute as per Section 2K of the Industrial Disputes Act, 1947 for reasons that at no point of time the workman under order of reference were refused any employment and the case is one of abandonment of employment by the workman. It is also stated that the instant order of reference suffers from total non-application of mind on the part of the appropriate government and on the alleged date of refusal of employment i.e. 21.11.2011 the workman were very much in the employment of the company but they did not report for duty, it is also mentioned that refusal of employment is nothing but a lock out within the meaning of section 2(1) of the I.D. Act, 1947 and it cannot take the shape of industrial dispute as it was not sponsored by sufficient number of workers. It is also stated that during that time all the four workmen as per order of reference were absconding in fear of being arrested by police in the criminal case and subsequently, they got bail from Court and the criminal case is still pending against them and therefore question of loosing of employment did not arise at all. It is also stated that what has been referred to by the order of reference is not an industrial dispute as it has been raised that it was a dispute of alleged illegal and unjustified retrenchment but the order of reference was made was about termination of service by way of refusal of employment which is baseless and in case of refusal of employment jural-relationship between the employer and the workman exists and termination of service and refusal of employment cannot be clubbed together but this has been done in this case. It is also stated that during the time of making the order of reference the grievances of employer were not considered by the appropriate government and accordingly the reference is not maintainable in law. In part-B of the written statement filed by Mr. Jagat Mondal, it has been stated that the company M/s. Debjani Enterprises

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(Contractor) is a proprietorship concern conducting its business for supplying of labourers to various concern, and the workman as mentioned in the order of reference had been working under the company as casual workman. It is also mentioned that it was found from the record that they were very negligent in performing their duties and remained absent without intimation. It is also stated that the company had not terminated them but they were not reporting for duty deliberately with some mala fide intention without any intimation and it has been expressed in the written statement that the company did not / does not have any objection if they resumed / resume duties with immediate effect. It is also stated that the union filed this case suppressing material facts to get an order after satisfying the court for their wrongful gain and to cause the wrongful loss to the company. It is also mentioned in the written statement that it had come to know from the principal employer i.e. M/s. A.R.C.L. Organics Ltd. that they misbehaved with the manager (P& A) of the principal employer and also threatened him dire consequences and on the basis of his complaint in the local police station criminal case was started against them and by letter dt. 02.12.2011 given by principal employer to this contractor, the contractor was asked not to send the workman from 05.12.2011 as they became involved with a criminal case and then the principal employer further filed a complaint against them before O.C. of Taratala P.S. and the principal employer then terminated the business of supplying worker to them by a letter dt. 24.09.2012 asking the contractor to withdraw the employees immediately. Mr. Mondal the proprietor of the company has mentioned in the part-C of the written statement that the contention made in para-1 of the written statement filed by the union is not matter of record and regarding contention of para-2 of the written statement of union, it has stated that he had not supplied any worker to principal employer since 24.09.2012 as the agreement for supplying worker to the principal employer was rescinded. Requiring the contention of para-3 of the written statement filed by the union to be proved strictly, Mr. Mondal denied the contention of para-4 of the written statement filed by the union and has stated that it denies that it had no control on the workman and it was a mere contractor and a puppet person and expressed that it reserved the right to file a defamation case against the workman mentioned in the order of reference. Denying and disputing the contention of para-5, para-6 and para-7 of the written statement filed by the union, Mr. Mondal has further raised that it is denied that he always contravenes the provisions of labour laws on Minimum Wages act and the statement made by the union is its own version and the workman misbehaved with the Manager P&A of the Principal employer and threatened with dire consequences as a result of which F.I.R. was filed against all the four workmen, and the union does not have any locus standi for lack of certificate of bargaining agent from appropriate authority, further denying the contentions of paragraph-8 to paragraph-10 of the written statement filed by the union, the contractor M/s. Debjani Enterprise(Contractor) has raised that the union is required to prove such contentions strictly besides describing the same as false and again denying the contentions of para-11 to para-13 of the written statement filed by the union, the contractor M/s. Debjani Enterprises has raised that the four workmen as mentioned in the order of reference never came to resume their duties and they also falsely alleged that their services were stopped by the company as



being no longer required as stated by them, mentioning further that on 21.11.2011 these workmen never came to resume duties raising a specific plea that during that period, these four workmen were absconding in fear of being arrested by police in a criminal case and later they had to obtain bail from Court and that criminal case has been still pending and their prime accused in that case and thus refusal of employment is false, baseless, concocted and imaginary, mentioning further that the company would produce document in support of the same during hearing and thus the four workmen are not entitled to get any benefit and question of paying due wages from July, 2011 does not arise. Further denying and disputing the contention of para-14 of the written statement filed by the union the contractor M/s. Debjani Enterprise(Contractor) has raised that it is false that workman Monotosh Datta and workman Ashok Sardar are fully unemployed asserting that they are gainfully employed and denying the contention of para-15 and 16 of the written statement filed by the union, the contractor has asserted that the services of these workmen have not been terminated by the company and denying the contention of para-17 &18, the contractor has asserted that in the letter of union dt. 12.01.2012 addressed to the Assistant Labour Commissioner raising allegation against the company / contractor are false and denying contentions of para-19 & 20 of the written statement filed by the union, the contractor has raised that the allegation of termination of the service of the four workmen is false adding that the appropriate government did not consider the principal employer M/s. A.R.C.L. Organics Ltd. as a necessary party during making the order of reference, then this Tribunal has no jurisdiction to add it as an added party in this proceeding and the contractor MR. Jagat Mondal in the capacity of proprietor of M/s. Debjani Enterprises has concluded the written statement mentioning that the prayer made by the workman / union should not be allowed and it is the main intention of the four workmen to abstract money from him.

The added party i.e. principal employer M/s. A.R.C.L. Organics Ltd. also contested this case by filing written statement raising that the contentions of allegations made out by union against it are denied and disputed and mentioned that the four workmen as are in the order of reference were contracted workers under the contractor Mr. Jagat Mondal, proprietor of M/s. Debjani Enterprises and they were never ever under the direct pay roll of the company, adding that there was an agreement /contract between the company i.e. principal employer and the contractor i.e. M/s. Debjani Enterprise in respect of supply of workers to the company i.e. principal employer and that agreement / contract expired since long without them i.e. principal employer and contractor renewed / entering into a fresh contract / agreement and added that the factory of the principal employer locating at P-47, Hyde Road Extension, Kolkata-700088 since been closed down. It is also stated that the situation leading to the company advising the contractor to not to send the concerned four workmen to the factory was not only due to their persistent disrupted activities but they also intimidated and threatened the manager of the company Mr. Gulrez Alam with dire consequences and as a result FIR No. 160 dt. 24.11.2011 U/s. 341/506/114 of Indian Penal Code. 1860 was lodged and even though all of them got bail from Court, that criminal case had been pending. The principal employer has also raised that if these four workmen has any grievance. then it

should be only against the contractor Mr. Mondal i.e. M/d. Debjani Enterprise(Contractor) and the principal employer cannot be held liable and the principal employer took step in the way that it advised the contractor for not sending the workmen to the principal employer due to their illegal acts and also to ensure healthy working atmosphere in its factory. It is also mentioned in the written statement that this principal employer has been wrongly added as an added party in this case as it was bound by the agreement / contract with the contractor and again asserted that its addition as an added party in this case is a misjoinder of party as the matter of dispute if any is exclusively between the four workmen / union and the contractor and presence of this principal employer is not required and against this added party i.e. principal employer no relief is available for the four workmen.

The case record shows that on 01.03.2013 Ld. Lawyer for the union filed one petition U/s.15(2)(b) of the Industrial Disputes Act, 1947 as amended by State of West Bengal praying for grant of interim relief and against the same the contractor i.e. M/s. Debjani Enterprise also filed written objection and at that stage Ld. Lawyer for the union also filed a petition for addition of the principal employer i.e. M/s. A.R.C.L. Organics Ltd. as added party as per provision of Rule 20D of the West Bengal Industrial Disputes Rule, 1958, which was allowed after a contested hearing, and case record further shows that after that Ld. Lawyer for the union did not take up the matter of interim relief U/s. 15(2)(b) of the Industrial Disputes Act, 1947 as amended by State of West Bengal for hearing and the case record further shows that after the added party entered into appearance and filed written statement and documents, the case was fixed for hearing on merit and thus the interim matter as mentioned above was not disposed of.

During hearing of the case on merit union examined one of its workmen Sri Monotosh Datta as P.W.-1, he was also fully cross-examined and union also adduced documentary evidences which are,

- 1) Registration certificate of trade union (Ext. 1),
- 2) Copies of maintenance of log book (Ext. 2 series),
- 3) Copies of attendance daily card (Ext. 3 series),
- 4) Copies of employees' card (Ext. 4 series),
- 5) Copies of employees' card through employer for Employees' Provident Fund Scheme, 1952 (Ext. 5 series),
- 6) Copy of letter dt. 08.12.2011 addressed to the Labour Commissioner to the Government of West Bengal, Charch Lane, Kolkata – 1 by president Sri Meghnad Podder of A.R.C.L. Organics Ltd. Contractors Workers' Union (Ext. 6) along with copy of letter dt. 07.12.2011 addressed to the Labour Commissioner to the Government of West Bengal, N.S. Building, Kolkata – 1 by president, Tapas Tarafdar of A.R.C.L. Organics Ltd. Contractors Workers Union (Ext. 6/1), with letter dt. 13.12.2011 addressed to Sri Jagat Mondal, Debjani Enterprises, S.M. Nagar, Maheshtala, South 24-Parganas by Tapas Tarafdar of A.R.C.L. Organics Ltd. Contractors Workers Union (Ext. 7),



- 7) copy of letter dt. 13.12.2011 as mentioned in serial No. 6 above (Ext. 7),
- 8) copy of letter dt. 09.01.2012 addressed to Mr. P.P. Das, Assistant Labour Commissioner, N.S. Buildings, Kolkata – 1 by Mr. Gulrez Alam, HR & Administration of M/s. A.R.C.L. Organics Ltd. (Ext. 8), with enclosure thereto, a copy of letter dt. 12.01.2012 addressed to Mr. P.P. Das, Assistant Labour Commissioner, N.S. Buildings, Kolkata – 1 by proprietor of contractor company M/s. Debjani Enterprise(Contractor) (Ext. 8/1), with copy of letter dt. 02.12.2011 addressed to Jagat Mondal of M/s. Debjani Enterprises by manager (P & A) of M/s. A.R.C.L. Organics Ltd. (Ext. 8/2), with copy of letter dt. 16.12.2011 addressed to Labour Commissioner to the Government of West Bengal, N.S. Building, Kolkata - 1 by Tapas Tarafder as president of A.R.C.L. Organics Ltd. Contractors Workers Union (Ext. 8/3), with a memo dt. 30.12.2011 by Mr. P.P. Das, Assistant Labour Commissioner addressed to Jagat Mondal of Debjani Enterprise and M/s. A.R.C.L. Organics Ltd.,
- 9) copy of letter dt. 07.01.2012 by Mr. P.P. Das, Assistant Labour Commissioner, Government of West Bengal addressed to Sri Jagat Mondal of M/s. Debjani Enterprises and also M/s. A.R.C.L. Organics Ltd. (Ext. 9), with copy of letter by Mr. P.P. Das dt. 31.01.2012 addressed to Mr. Jagat Mondal of Debjani Enterprise(Contractor) and also to M/s. A.R.C.L. Organics Ltd. (Ext. 9/1),
- 10) copy of letter dt. 30.12.2011 by Mr. Bitan Dey, Assistant Labour Commissioner addressed to Meghnad Podder, president of A.R.C.L. Organics Ltd. Contractors Workers Union (Ext. 10), and copy of letter dt. 07.05.2011 by manager P & A of M/s. A.R.C.L. Organics Ltd. addressed to Sri Jagat Mondal of Debjani Enterprises.

The proprietor of contractor company i.e. M/s. Debjani Enterprises Sri Jagat Mondal also adduced both oral and documentary evidences, and he examined himself as O.P.W.-1, he was fully cross-examined by Ld. Lawyer for the union but his cross-examination by Ld. Lawyer for the added party i.e. M/s. A.R.C.L. Organics Ltd. declined to cross-examine him and MR. Jagat Mondal also adduced documentary evidences which are,

- A) Copy of the F.I.R. having No. 160 dt. 24.11.2011 certified copy of order-sheet in G.R. case NO. 4369/11 U/s. 341/506/114 I.P.C. corresponding to T.R. No. 985A/12 of the Court of 7<sup>th</sup> Judicial Majistrate, Alipore, South 24-Parganas, State Vs. Monotosh Datta and others along with a copy of Judgement and order of this case by Monikuntala Roy, J.M., 7<sup>th</sup> Court, Alipore, South 24-Paraganas dt. 03.09.2016 (Ext. B),
- B) Copy of letter dt. 24.09.2012 addressed to M/s. Debjani Enterprise by C.E.O. Mr. R.K. Bijoy of A.R.C.L. Organics Ltd. (Ext. C),
- C) Copy of formal F.I.R. of the case as mentioned in Ext. B above against four workmen as mentioned in the order of reference (Ext. D),





- D) Copy of letter dt. 12.01.2012 addressed to Mr. P.P. Das, Assistant Labour Commissioner, N.S. Building, Kolkata - 1 by proprietor of M/s. Debjani Enterprise(Contractor) (Ext. E),
- E) Copy of letter dt. 02.12.2011 addressed to Mr. Jagat Mondal of Debjani Enterprises by manager P & A of M/s. A.R.C.L. Organics Ltd. (Ext. F),
- F) Copy of letter dt. 01.10.2010 addressed to M/s. Debjani Enterprise by R.K. Bijoy, Director - Finance of M/s. Allied Resins & Chemicals Ltd. (Ext. G), and
- G) Copy of letter dt. 17.01.2012 addressed to Sri Jagat Mondal of Debjani Enterpris and also to M/s. A.R.C.L. Organics Ltd. by Mr. P.P. Das, Assistant Labour Commissioner, Government of West Bengal (Ext. H), and
- H) Copy of letter dt. 17.01.2012 addressed to the Mr. Jagat Mondal (contractor) and M/s. A.R.C.L. Organics Ltd. i.e. principal employer by Mr. P.P. Das, Assistant Labour Commissioner, Government of West Bengal.

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The principal employer i.e. the added added-party M/s. A.R.C.L. Organics Ltd. has contested the case by filing elaborated written statement signed by its authorised signatory Mr. Gulrez Alam and this principal employer was given opportunity repeatedly to adduce evidence in support of its contention in written statement filed by it but the case record shows that this principal employer did not adduce any evidence either oral or documentary and Ld. Lawyer for this principal employer also did not say anything during the stage of argument of the case though opportunity was given to him repeatedly and also did not file any written notes of argument as have been filed by the Ld. Lawyer for the contractor i.e. M/s. Debjani Enterprise(Contractor) and also by Ld. Lawyer for the union.

As per order of reference as already mentioned the first issue is if the termination of services of workman Sri Monotosh Datta and three others w.e.f. 21.11.2011 by the management of the companies is justified or not and the next one is about what relief, if any, the workmen are entitled. Ld. Lawyer for the union in his written argument has raised that the workman named in the order of reference namely Monotosh Datta and three other were engaged in the manufacturing department of the principal employer / added party i.e. M/s. A.R.C.L. Organics Ltd. through the contractor company M/s. Debjani Enterprise(Contractor) under proprietorship of Mr. Jagat Mondal and the principal employer used to supervise and control the workman engaged to the contractor and due to personal malice and grudge the principal employer directed the contractor company to take immediate step so that the workman Monotosh Datta and three others did not become able to enter inside the factory of the principal employer and the principal employer lodged an FIR i.e. First Information Report against all the above-mentioned workmen i.e. Monotosh Datta and three others and then all of them i.e. Monotosh Datta and three others were terminated from service by way of refusal of employment w.e.f. 21.11.2011 and for such illegal and unlawful termination both principal employer and the contractor Mr. Jagat Mondal are involved, It is also stated that no disciplinary action were taken against any of the four workmen by holding any domestic enquiry and no retrenchment compensation and notice-pay were also given to them during



the time of such termination as required by law. It is also mentioned in his argument that on the basis of petition, the principal employer i.e. A.R.C.L. Organics Ltd. was made added party after a contested hearing over the matter and this added party i.e. principal employer has also filed a written statement. Ld. Lawyer for the union has also stated in his argument that the union has adduced both oral and documentary evidences in support of his case and the proprietor of the contractor company i.e. M/s. Debjani Enterprises namely Mr. Jagat Mondal examined himself as O.P.W.-1 and as O.P.W.-1 he also adduced documentary evidences which were marked Ext. A to Ext. H and Mr. Jagat Mondal(O.P.W.-1) was cross-examined by him. Ld. Lawyer for the union has also orally stated that it is in the written statement filed by the union that the principal employer used to supervise and control the contractor's workmen directly by taking their attendance, maintaining log books in all the shifts their duties, by issuing commends, by issuing direction through its supervisors, officers including manager of the principal and the contractor MR. Jagat Mondal had no control on them and he was a mere contractor and a puppet, Ld. Lawyer also raised that the personnel manager of the principal employer threatened the workmen stating that they would be terminated / dismissed from service by implicating them in false criminal cases and also by stating that they would also be transferred to another places and all these threatening amounted to unfair labour practices, it is also raised that the management of the principal used to treat them as if they were slaves, and for all such reasons the workmen as in the order of reference namely Monotosh Dutta and three others verbally raised protest against the management of the principal employer and also in writing and the contractor Mr. Jagat Mondal having knowledge of all such unfair labour practices by the management of the principal employer did not pay any heed and remained silent altogether. Ld. Lawyer has also raised that it is also mentioned in the written statement filed by the union that when the workmen did not find any protection from such unfair labour practices by the management of the principal employer to the knowledge of the contractor MR. Mondal, a trade union under name and style of A.R.C.L. Organics Ltd. was formed, it was registered under trade union Act, 1926 on 30.08.2011 having registration No. of 26176 and also obtained certificate from the Registrar Of Trade Unions, West Bengal, it is affiliated to the Indian National Trinamool Trade Union Congress (INTTUC) and then they started union activities and raised demands before the management of the principal employer / contractor for introduction of Minimum Wages act, 1948, for stopping the unfair labour practices such transferring contractors workmen from one place to another and as a result both contractor MR. Jagat Mondal and management of the principal employer became furious on all of them i.e. Monotosh Dutta and three others who happened to be the member / secretary of the union. Ashok Sardar who happened to be the executive member of the union. Raju Ganguly who happened to be the executive member of the union and Tushar Mandal who happened to be the Assistant Secretary of the union, and for interest of the contractor's workmen these workmen on behalf of the union raised industrial dispute before the office of Labour Commissioner so that the workmen could get benefits of Minimum Wages act and accordingly personal malice and grudge on the part of the management of the principal

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employer in collusion with the contractor came into existence and the workmen were terminated from the service w.e.f. 21.11.2011 illegally and unlawfully by way of refusal of employment and then the four workmen raised objections against such illegal termination of them and approached both principal employer and contractor and the union also approached them to settle the matter by way of negotiation demanding reinstatement in his service of all of them with full back-wages and accordingly a date was fixed for this purpose, on which they i.e. all the four workmen and their representative of the union attended in anticipation of a settlement but they were driven out by the manager (P & A) to the principal employ by abusing them filthy etc. languages and finding no alternative, the union had to raise industrial dispute in writing before Labour Commissioner with a request to intervene into the matter by calling for a joint conference by adopting a resolution in the minutes book of the union but in the meantime the manager (P & A) of the principal employer in collusion with the contractor Mr. Mondal filed an FIR against all four of them before Taratala Police Station alleging misbehaviour by them on senior management officials of the principal employer but the allegations in the FIR were false, baseless and Ld. Lawyer also submitted that all of them got bail from the Court and this case came up for trial before Ld. Court of Judicial Magistrate at Alipore, Kolkata and the Ld. Magistrate acquitted them from the case by writing one judgement that has been filed in this case and Ld. Lawyer also mentioned that Assistant Labour Commissioner Mr. P.P. Das called for a joint conference during the conciliation proceeding but nothing could be arrived at due to adamant attitude on the part of the management of the principal employer and the contractor. Ld. Lawyer for the union in his argument has raised that the management of the principal employer filed the FIR in question totally falsely with an intention to anyhow subject the workmen to harassment so that on that plea they could be taken out of their service and indeed they were terminated from service by way of refusal of employment, Ld. Lawyer for the union mentioned that on the basis of that false FIR the management of the principal employer instructed the contractor MR. Mondal not to send the workman to work under the principal employer on the ground that they committed illegalities as were first mentioned in the FIR which is explained by Ld. Lawyer for the union in the way that the FIR was false and it was created in collusion with the contractor Mr. Mondal and accordingly the contractor company refused the workman and thus the workmen were terminated from service without complying by way of refusal of employment and thus the workman were terminated from service without complain with the compulsory provisions of law. Ld. Lawyer for the union also raised that virtually it is the stance of both principal employer and the contractor that the workmen were not terminated from service but they voluntarily did not join duties and thus raised abandonment of service by the workmen themselves but the union has adduced sufficient evidence to prove that the workmen never abandoned their service, in contrast Ld. Lawyer for the union raised that the workmen reported for duty but they were not allowed in any way and they were implicated in false criminal cases but as the case was false, the defacto-complainant did not appear before the trial Court Ld. Judicial Magistrate to say anything and perhaps they refrained from appearing before that Court out of fear that they might get punishment for falsely filing FIR

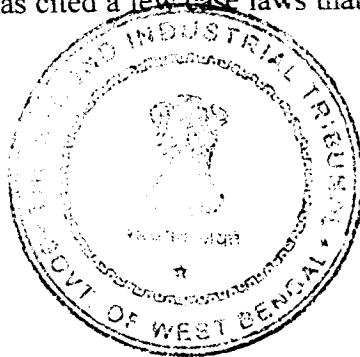
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against the workmen but the workmen facing all hardship contested the criminal case and Ld. Magistrate was pleased to acquit them from the case, and Ld. Lawyer thus pointed out that in all such ways the workmen were subjected to untellable persecution that amounted to unfair labour practices and victimized them by all means and terminated the services without following any requirement of law. Ld. Lawyer for the union has further raised that the management of the principal employer, as it has the knowledge that it filed the FIR against four workmen falsely, did not adduce any evidence and also did not argue the case but the contractor MR. Jagat Mondal examined himself as O.P.W.-1 and as O.P.W.-1 he admitted in cross-examination that he (O.P.W.-1) had contractor labour licence and also admitted that that licence might have expired and also admitted that that contractor labour licence was not renewed by him, and basing such admission of the contractor MR. Jagat Mondal (O.P.W.-1) Ld. Lawyer for the union has further raised that when admittedly the contractor (O.P.W.-1) did not have the contractor labour licence, the workmen legally becomes direct employee of the principal employer / added party Mr. A.R.C.L. Organics Ltd. by way of compulsory requirement of law and to support his such argument, Ld. Lawyer for the union has cited ruling in 1990 ICLR 829, 1988 LIC 730, 2003 II LLJ 335 and 2007 LIC 3705 and Ld. Lawyer explained that in all these cited cases the common observation and holding of Hon'ble Courts is that when the contractor did not have the licence, and where workmen are employed by the principal employer through such a contractor, then two conditions of obtaining registration U/s. 7 by the principal employer and holding licence U/s. 12 are not complied with and the workmen can claim to be direct employees of the principal employer. In the written argument Ld. Lawyer for the union has also explained evidences that shall be taken up later.

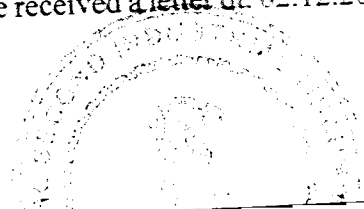
Ld. Lawyer for the contractor Mr. Jagat Mondal has also filed written argument supported by case laws and the main matter in the written argument by Ld. Lawyer for the contractor i.e. M/s. Debjani Enterprise(Contractor) is that it was reported to the contractor that the workmen misbehaved and also threatened the manager of the principal employer M/s. A.R.C.L. Organics Ltd. on 17.11.2011 and also instigated other workers to stop production of the principal employer and a criminal case was lodged against the four workmen on the basis of complaint by principal employer and by letter dt. 02.12.2011 addressed to the contractor Mr. Jagat Mondal who is the proprietor of M/s. Debjani Enterprise(Contractor) by the principal employer i.e. M/s. A.R.C.L. Organics Ltd., the principal employer asked the contractor not to send the workmen mentioning a ground that criminal case was filed against them by the principal employer and the police was investigating the case and accordingly the principal employer did not want the workmen, it is also raised that both principal employer and the contractor never terminated the service of the workmen and the workmen abandoned their service by themselves. I also find that Ld. Lawyer for the contractor in support of his argument has cited a few case laws that shall be mentioned later.





Thus in short it is coming out that the workmen raised allegation against the companies both principal employer and contractor that they subjected the workmen to different types of ill treatment including non-payment of minimum wages as per Minimum Wages Act etc. that came within the purview of unfair labour practices and the union of the workmen in which the present workmen are portfolio-holder made demands for making payment as per Minimum Wages Act and also raised other demands and for that reason the management of the principal employer in collusion with the contractor Mr. Mondal became furious on them and terminated the service by way of refusal of employment and also filed criminal cases against them by filing one written complaint before the concerned Police Station mentioning false allegations against the workman and then the workmen had to obtain bail in that case and thereafter the workmen also contest that criminal case and Ld. Judge of the Criminal Court acquitted them from the case and thus all the workmen were illegally terminated from their service by way of refusal of employment without complying with the compulsory requirement of law as provided in Industrial Disputes Act, 1947, on the other hand the contractor and at the same time the principal employer took a different stance and raised that all the four workmen abused the manager of the principal employer and also threatened him with dire consequences and as a result the principal employer filed complaint before the Police Station after which all the four workmen absconded to avoid arrest and thus they did not attend for duty and accordingly they all abandoned their services and neither principal employer nor contractor terminated them from service by way of refusal of employment. Now this is to be examined by analysing the evidences to find out if the four workmen resorted to any criminal act by abusing and threatening with dire consequences the manager of the principal employer as have been asserted by Ld. Lawyer for the contractor and at the same time by the principal employer as found in their respective written statements.

As already seen the principal employer M/s. A.R.C.L. Organics Ltd. has specifically mentioned in its written statement that the management of the employer company advised the contractor Mr. Jagat Mondal of M/s. Debjani Enterprise(Contractor) not to send the four workmen as mentioned in the order of reference mentioning as ground that the four workmen resorted to persistent disruptive activities and intimidated and threatened the manager of the principal employer namely Mr. Golrez Alam with dire consequences and then the principal employer filed FIR vide No. 160 dt. 24.11.2011 U/s. 341/506/114 of the Indian Penal Code, 1860 and then all the four workmen got bail from the concerned criminal court and that case has been still pending. The contractor Mr. Jagat Mondal who is the proprietor of the contractor company i.e. M/s. Debjani Enterprises in its written statement has also specifically mentioned that on 21.11.2011 the concerned workmen never reported for duty as being claimed by the workmen / union adding that all the four workmen during that time had been absconding to avoid arrest by police arising out of a criminal case and subsequently all the four workmen got bail and that criminal case against them has been still pending and all the four workmen are prime accused persons in that case and in para-33 of the written statement filed by the contractor Mr. Jagat Mondal of M/s. Debjani Enterprise(Contractor), the contractor Mr. Jagat Mondal has specifically stated that he received a letter dt. 02.12.2011





from the principal employer M/s. A.R.C.L. Organics Ltd. by which the principal employer directed the contractor to not to send the four workmen as mentioned in the order of reference to work in the company of the principal employer on and from 05.12.2011 mentioning a ground that the four workmen were involved in a criminal case and the local police started investigation in that case on the basis of complaint filed by the principal employer. Thus both management of the principal employer and contractor Mr. Jagat Mondal have uniformly asserted that all the four workmen resorted to criminal activities in the way that all the four workmen threatened the manager of the principal employer MR. Gulrez Alam with dire consequences and also abused him and the principal employer filed the criminal case through the Police Station against all the four workmen, and therefore it is the duty on both of them i.e. principal employer and contractor to prima facie prove that all the four workmen resorted criminal activities on the manager of the principal employer Mr. Gulrez Alam. During argument Ld. Lawyer for the union employer Mr. Jagat Mondal has raised that all the four workmen were never terminated from their service either by the principal employer or by him in any way but what happened is that all the four workmen threatened Mr. Gulrez Alam with dire consequences and also abused him in the office premises of the principal employer and as a result the principal employer had no other alternative but to resort to take shelter under the law and filed a written complaint before the local Police Station and thus FIR was filed against all the four workmen and the police also investigated the case and filed charge-sheet against all the four workmen before the court of Ld. Additional Chief Judicial Magistrate and therefore there had been prima facie materials against all the four workmen that they threatened the manager of the principal employer Mr. Alam and during the time in question all the four workmen did not report for duty as they were in the run to avoid arrest by police and subsequently all of them got bail from the criminal court. Ld. Lawyer for the contractor also submitted thus all the four workmen breached discipline, yet they were not terminated from service, Ld. Lawyer emphasised that as they were in the run to avoid arrest by police, they did not report for duty and thus they abandoned their services by themselves. Ld. Lawyer for the principal employer, as I mentioned earlier also, did not argue the case. Ld. Lawyer for the union in his argument has raised that the management of the principal employer in connivance with the contractor Mr. Jagat Mondal resorted to torturing on all the four workmen and they also threatened the four workmen by stating that they would be transferred to different places and thus management of the principal employer started maintaining grudge and inimical attitude on the workmen, Ld. Lawyer further raised that all the four workmen happened to the permanent employee and they found that they were being treated by the management of the principal employer and also by contractor as if they were slaves, Ld. Lawyer also argued that the management of the principal employer refused giving them minimum wages as per Minimum Wages Act and then the workmen and others formed the union under name and style of A.R.C.L. Organics Ltd. Contractors Workers Union and it was registered as per requirement of law and all the four workmen are the portfolio holders in the union in the way that workman Monotosh Dutta is the secretary of the union, workman Ashok Sardar is the executive member of the union, workman Raju Ganguly is the executive

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member of the union and workman Tushar Mandal is the assistant secretary of the union and the union then raised various demands before the management of the principal employer and also the contractor including demands to get minimum wages as per Minimum Wages act and due to such union activities by these workmen the management of the principal employer and also the contractor became furious on them and the management of the principal employer decided to take some action against them in an attempt to pre-empt them from making any such demands as union and on 21.11.2011 when they reported for duty the management of the principal employer refused them to give any work and at the same time the management of the principal employer in collusion with the contractor Mr. Mondal filed a written complaint against all of them before local Police Station intending them to be arrested by police so that the union could not make any demand but the allegations in the written complaint filed by the management of the principal employer were totally false. Ld. Lawyer for the union has also argued that as the allegations were false in that complaint, police never tried to arrest them in any way and they reported for duty and then they came to know about filing of the criminal case by the management of the principal employer, they prayed for bail before the concerned criminal court and the concerned criminal court finding no substance in the complaint against them granted bail to all of them. Ld. Lawyer for the union further raised that all the four workmen contested the criminal case and during trial of the criminal case, the criminal court issued summons to the defacto complainant and other witnesses but the other witnesses including the defacto complainant despite receiving such summon to appear as witness before the trial criminal court did not appear to say anything in support of his written complaint filed against all the four workmen. Ld. Lawyer for union has emphasised that both principal employer and the contractor in their respective written statement have uniformly raised that the four workmen as mentioned in the order of reference had mis-behaved and threatened Mr. Gulrez Alam with dire consequences on 17.11.2011 and this Mr. Gulrez Alam happened to be the manager of the principal employer company and the four workmen also instigated other workmen to stop work and thus resorted to indiscipline activities, and in the argument Ld. Lawyer for the employer has raised that all the four workers committed breach of the discipline of the principal employer company and also the company of the contractor in such a way that they should not be given any work in the company any further and explained that the way they misbehaved and threatened Mr. Gulrez Alam and Mr. Gulrez Alam became bound to file complaint at the local Police Station and after receiving the complaint, the local Police Station registered the case against all the four workmen and during investigation of the case by the police officers of the local Police Station strong materials came out against all of them and as a result the police filed charge-sheet U/s. 341/506/114 of the Indian Penal Court and due to availability of strong materials against all of them they are likely to be punished in that case and under such circumstances. Ld. Lawyer explained, the workman are not in a position to be placed in their service by way of reinstatement in any way, Ld. Lawyer also raised that actually the workmen were not terminated from service but during the time in question they purposely did not report for duty in fear of being apprehended by police. In reply Ld. Lawyer for the union has raised that the

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workmen never committed any illegality at any time and MR. Gulrez Alam who happened to be the manager of the employer company filed the FIR against all of them in the local Police Station in an attempt to pre-empt them from raising demands for getting minimum wages as per Minimum Wages Act and for other demands through their union as mentioned in the order of reference as the management of the principal employer in connivance with the a contractor started ill behaving with them and other workers by stating that they would be transferred to far other places in case the demand for getting minimum wages etc. and also the management of the company of the principal employer in connivance with the contractor ill treated them as if they were slaves. Ld. Lawyer for the union has further submitted that MR. Gulrez Alam filed the complaint at the local Police Station totally falsely only to brand them as persons of indiscipline-nature so that the management of the principal employer and the contractor could become able to terminate them from their services by way of refusal of employment as they have done already arising out of which the present case has come into existence.

Now it is to be seen whether the workmen work totally four in numbers resorted to any criminal activities by misbehaving / threatening the manager of the principal employer namely Mr. Gulrez Alam. Sri Monotosh Dutta who is one of the four workmen as per order of reference deposed as P.W.-1 and stated that he is the secretary of the ARCL Organics Ltd. Contractors Workers' Union registered under Trade Union Act, 1926 and having its certificate of registration No. 26176 of 13<sup>th</sup> August, 2011 and thus union is affiliated to INTTUC as per its certificate No. 869, P.W.-1 also deposed that he is deposing on behalf of this union and also on behalf of three other workmen namely Ashok Sardar, Raju Ganguly, Tusher Mondal, P.W.-1 also deposed that M/s. Debjani Enterprises is a proprietorship firm and a contractor under principal employer M/s. ARCL Organics Ltd. which is an added party in this case and this principal employer is a company within the meaning of Company's Act, 1956 and it has been carrying on business of manufacturing resin chemicals from its factory locating at Hyde Road Extension, Kolkata - 700088. P.W.-1 also deposed that he i.e. P.W.-1 and the other workmen Ashok Sardar, Raju Ganguly and Tushar Mondal were appointed by the contractor i.e. M/s. Debjani Enterprises for doing works in the manufacturing department of principal employer and this principal employer used to supervise and controlled them directly by taking their attendance, by maintaining log books in all the sheets of their works by issuing commands, directions etc. through its supervisors, officers including the manager and the contractor had no control at all on them and the role of contractor was nothing but a puppet, P.W.-1 also added that log books, attendance card contained signatures of the supervisors of the principal employer as principal employer exercised direct control on them. P.W.-1 also deposed that he i.e. P.W.-1 and three other workmen Ashok Sardar, Raju Ganguly, Tushar Mondal were covered by E.S.I. act and also Provident Fund Act. P.W.-1 also deposed that master and servant relationship existed between them i.e. P.W.-1 and other workmen as per order of reference on the one side and the principal employer and contractor on the other side. P.W.-1 also deposed that the personnel manager of the principal employer threatened them i.e. P.W.-1 and the other workmen as per order of reference by

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stating to terminate them from service by way of victimization, and also for transferring them to other places and the management of the company of the principal employer used to treat them as if they were all slaves, P.W.-1 also deposed that to get them protected from all such atrocities on the part of the management of the company, they formed the trade union as mentioned in the order of reference, P.W.-1 also deposed that their registered trade union started doing union activities by raising formal disputes separately for introducing Minimum Wages as per Minimum Wages Act, 1948 and also for stopping unfair labour practices such as transferring the workman from one place to another and the management of the principal employer having come to know about the disputes on demands of introducing minimum wage etc., both principal employer and the contractor became furious on them for their such any union activities and as a result they became eye-shore to both principal employer and the contractor. P.W.-1 also deposed that he also came to know that Labour Department, Government of West Bengal also filed a case against the company for not complying with the requirement of Minimum Wages Act and that case is pending. P.W.-1 also deposed that due to such personal malice and grudge the contractor in collusion with the principal employer i.e. added party terminated them from their services w.e.f. 20.11.2011 by way of refusal of employment in the way that when they went to join their duties as usual, they were stated that their services were no longer required and they terminated their services without conducting any disciplinary action and also without framing any charges against them and also did not pay any wages from July, 2011 on words and also did not pay any retrenchment compensation and notice pay etc. and such termination by way of refusal of employment is illegal and unlawful. P.W.-1 also deposed that against the illegal termination they raised strong objection and approached personally both principal employer and contractor and also raised formal dispute both orally and in writing before them by a letter of their union but the employer did not make any reply and finding no other alternative, they raised industrial dispute before the Labour Commissioner by letter dt. 16.12.2011 and it was registered as conciliation file No. 152/11/ALC. P.W.-1 also deposed that during the time of conciliation the management of the both companies attended and submitted their comments before Assistant Labour Commissioner raising allegation against all the four workmen in the way that all the four of them were terminated due to lodging of FIR before local Police Station U/s. 341/506/114 of the Indian Penal Code although, P.W.-1 further deposed, they did not commit any offence as per Sections mentioned in the FIR and all of them started contesting their criminal case. P.W.-1 denying the assertions in the written statements filed by both principal employer and the contractor that contract agreement between contractor and principal employer had expired, deposed that the company is not closed down and the company has been running as usual. P.W.-1 also deposed that due to personal malice and grudge and intending to victimize all of them the manager of the principal employer / added party Mr. Gulrez Alam filed the FIR containing false allegation against them and wanted strict proof of all such allegations, P.W.-1 also deposed denying that case is not maintainable and the added party i.e. principal employer has been added wrongly and as such a misjoinder of party, and P.W.-1 also deposed that the principal employer forced the contractor to not to

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allow them in the premises of the factory of the principal employer without following the principles of natural justice. P.W.-1 also deposed to hold that the termination of their service of them by way of refusal of employment w.e.f. 21.11.2011 as per instruction of principal employer / added party and also to direct both principal employer and the contractor to reinstate them in their respective service with full back-wages and benefits. The P.W.-1 also produced certificate of registration of its trade union and it was marked Ext. 1 without any objection from Ld. Lawyers of both O.P. Companies. The certificate of registration (Ext. 1) shows that it was issued by registrar of Trade Union, West Bengal and the name of the union is A.R.C.L. Organics Ltd. Contractors Workers Union and the registrar has mentioned that this union has been registered by him under the Trade Union Act, 1926 on 30.08.2011, P.W.-1 has also proved the maintenance of log books (Ext. 2 series), these log books show the job details performed by workman Monotosh Dutta (Ext. 2) with others on different dates starting from 28.10.2009 and I find from the evidences of P.W.-1 that the log books (Ext. 2 series) were marked as exhibited documents without any objection from Ld. Lawyers of both other sides, the attendance daily cards were marked on the basis of evidence of P.W.-1 without any objection by Ld. Lawyer of other side and Ext. 3 series show the time of attendance during the time of entry in the factory of the company and also the time of departure, Ext. 4 (series) are the identity cards of workman Tushar Mondal (Ext. 4), workman Ashok Sardar (Ext. 4/1), workman Monotosh Dutta (Ext. 4/2) and workman Raju Ganguly (Ext. 4/3) and all these documents were marked as exhibited documents without any objection from the Ld. Lawyer of other side, and Ext. 5 series are copies of employee's card in the name of workman is showing details of Employees Provident Fund Scheme including rate of interest as applicable to the scheme. P.W.-1 deposed that the unions sent a letter to the Labour Commissioner, Government of West Bengal dt. 08.12.2011 and as per evidence of P.W.-1 it was proved and marked Ext. 6 without any objection from Ld. Lawyer of other side, this letter (Ext. 6) shows that by this letter (Ext.6) union of P.W.-1 made a complaint before Labour Commissioner, Government of West Bengal for non-payment of minimum wages mentioning that they i.e. P.W.-1 and other three workmen had been working in the production department of principal employer company being engaged by the contractor company had not been paying minimum wages since their time of engagement in the production department of the employer company by the contractor company mentioning further that as per declaration by Justice Hingbins of Australian Court of Commonwealth Countries that the industry cannot survive unless they failed to pay minimum wages to their workers, a universally accepted rule and the union requested the Ld. Labour Commissioner to make arrangement for such payment, it is found to be in line with the deposition of P.W.-1 that the principal employer in connivance with the contractor company had not been paying minimum wages to the workman, Ext. 6/1 is a letter dt. 07.12.2011 addressed to labour Commissioner, Government of West Bengal by the union of P.W.-1 mentioning that management of the company had resorted to persecution in an enhanced manner on the workers and as an example, the union has mentioned that Labour Commissioner, Government of West Bengal called for a joint conference on 29.11.2011 in an attempt to solve the dispute in the case and it was attended by the union but the management

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of the company did not turn up and the management of the company filed FIR against all the four workmen as mentioned in the order of reference in Taratala Police Station and also filed a copy of the FIR before the Ld. Labour Commissioner and thus the management of the company had subjected them to increasing persecution and with this letter (Ext. 6/1) the union urged the Ld. Labour Commissioner to take appropriate measure so that such persecution on them by the management of the company could be stopped, Ext. 7 was proved by P.W.-1 without any objection from the side of Ld. Lawyers of the companies as mentioned earlier, it is addressed to the contractor Sri Jagat Mondal, in this letter (Ext. 7) the union has mentioned that the contractor MR. Jagat Mondal in connivance with the employer company i.e. M/s. A.R.C.L. Organics Ltd. terminated all of them i.e. four workmen as mentioned in the order of reference w.e.f. 21.11.2011 illegally and by the letter (Ext. 7) the union requested contractor MR. Jagat Mondal to reinstate them in their respective posts / services with all due wages within three days mentioning further that in case of default, the union would try to get justice over the matter from Ld. Labour Commissioner, Ext. 8 is a letter d. 09.01.2012 addressed to Assistant Labour Commissioner Mr. P.P. Das by Mr. Gulrez Alam, HR & Administration of principal employer and it is found that by this letter MR. Alam has informed Assistant Labour Commissioner that all the four workmen as per order of reference affiliated to the contractor company were 'made to sit because of their immoral and unlawful activities' and as mentioned in the letter (Ext. 8) MR. Alam has enclosed a copy of 'FIR recorded against them at the local Police Station', Debjani Enterprises has been informed in writing to restrict the workmen from sending them for work in the company of the principal employer as criminal case is pending against them and also enclosed a copy of the letter sent by MR. Alam to M/s. Debjani Enterprises, Ext. 8/1 is a letter written by contractor dt. 12.01.2012 to Assistant Labour Commissioner informing him that the workers were made to sit after receiving written information from the principal employer requiring him to bar them from going to the company of the principal employer mentioning further that an FIR were lodged against all the four workmen for immoral and indecent behaviour on the manager of he principal employer and a case U/s. 341/506/114 of the Indian Penal Code at local Taratala P.S. was started, and it is found that it is in line with the deposition of P.W.-1 who deposed that the management of the principal employer in league with the contractor started harassing the by different means as in his deposition and even did not pay them minimum wages as per Minimum Wages Act, 1948 and to get relief from such atrocities, P.W.-1 and other workmen as per order of reference formed union (Ext. 1) and started union activities and made demands including getting of minimum wages but due to their such union activities the management of the principal employer in lieu with contractor terminated their service and at the same time also filed a false FIR against them in the local Police Station i.e. Tartala P.S. Ext. 8/2 is a letter addressed to the contractor MR. Mondal by the manager of the principal employer mentioning that police case was filed against all the four workmen as per order of reference mentioning the name of the workmen therein i.e. Monotosh Dutta an three others and directed the contractor not to send them i.e. workmen as per order of reference to the factory of the principal employer, Ext. 8/3 is a letter addressed to Labour Commissioner,

Sd/-  
P.P. Das



Government of West Bengal by the union mentioning that management of principal employer in liague with contractor terminate the service of the four workmen illegally and then the union requested the principal employer and also the contractor to re-instate them in the services with all back-wages and requested the Labour Commissioner for justice, Ext. 9 shows that it is a letter by Assistant Labour Commissioner dt. 17.01.2012 addressed to principal employer and contractor requesting both of them to attend a joint conference on 30.01.2012 at 11.30 a.m. in the office of Assistant Labour Commissioner, Ext. 9/1 is also a notice by Assistant Labour Commissioner d. 31.01.2012 to both principal employer and the contractor to attend a joint conference on 16.02.2012 at 11.30 a.m. in the office of Assistant Labour Commissioner on the subject mentioned as illegal and unjustified retrenchment of the workman as mentioned in the order of reference. Ext. 10 is also found to be a notice dt. 30.12.2011 to the president of the union to see the Assistant Labour Commissioner on 02.02.2012 at noon.

Thus, the union through its witness Monotosh Dutta as P.W.-1 with documentary evidences (Ext. 1 to Ext. 10) has become able to prima facie prove that workman MOnotosh Dutta (P.W.-1) the secretary of the union under name and style of A.R.C.L. Organics Ltd. Contractors Workers Union registered under Trade Union Act, 1926 having certificate of registration No. 2616 dt. 30.08.2011 issued by the registrar of Trade Unions, West Bengal, Kolkata, it being affiliated to INTTUC bearing permanent affiliation certificate No. 869 and the rest of the four workmen i.e. Ashok Sardar, Raju Ganguly and Tushar Mondal are office bearers of that union (Ext. 1), and the contractor M/s. Debjani Enterprises being a proprietorship firm is a contractor under the principal employer being M/s. A.R.C.L. Organics Ltd. which is a company under the Company's Act, 1956 having its office at Kolkata. P.W.-1 and other three workmen as per order of reference were appointed by the contractor to do works in the manufacturing department of principal employer at Kolkata and this principal employer used to supervise and control the services, duties of all the four workmen directly by taking their attendance (Ext. 3 series) through its supervisor, officers including its manager and the contractor had no control on them (Ext. 2 series) and P.W.-1 and other three workers as per order of reference were covered under E.S.I. and provident fund (Ext. 4 series, Ext. 5) and thus master and servant relationship existed between the workmen on one side and the principal employer / contractor on the other side, but the personnel manager of the principal employer threatened the workmen by stating that the workmen would be terminated / dismissed from their service by way of victimization and also by transferring them to other far places and treated them as if the workmen were slaves under them, the workmen used to work in the principal employer's production job, maintenance job (Ext. 3 series) and to protect them from such atrocities on the part of the management of the principal employer, they formed the trade union (Ext. 1) and then the Trade Union started union activities by raising formal disputes separately for introducing payment of minimum wages as per Minimum Wages Act, 1948 and also for stopping unfair labour practices on the part of the management of the company but due to their such union activities and also for their demand for introduction of minimum wages through the union

management of the company did not go for any disciplinary action against any of these four workmen by issuing any charge-sheet and the management of the company did not pay their due wages from July, 2011 and also did not pay retrenchment compensation and notice pay, and then the union raised strong objection and the workmen also met the principal employer and the contractor and raised objection and also raised formal dispute both orally and also in writing but the management of the company did not make any reply and they raised industrial dispute before the Labour Commissioner by the letter dt. 16.12.2011 (Ext. 8/3) through the union as was registered in the conciliation file No. 152/11/LC and the management of the company submitted its comment before Assistant Labour Commissioner that the workmen were terminated due to filing of FIR in the local Police Station U/s. 341/506/114 of the Indian Penal <sup>code</sup> Court although the workmen did not commit any such offence and due to personal malice and grudge on the part of the manager of the principal employer Mr. Gulrez Alam, Mr. Gulrez Alam filed that FIR falsely against all of them in an attempt to victimize them (Ext. 6, Ext. 6/1, Ext. 7, Ext. 8, Ext. 8/1 and Ext. 8/2, Ext. 8/3, Ext. 9 series), and thus all the four workmen were terminated from their permanent employment illegally simply arising out of malice and grudge on the part of the manager of principal employer MR. Alam in collusion with the contractor Mr. Mondal, and I find that the documentary evidences (Ext. 1 to Ext. 10) have well corroborated the version of the P.W.-1.

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I have already mentioned the contention of written statement filed by the contractor Mr. Jagat Mondal, proprietor of M/s. Debjani Enterprises and also written statement filed by the added party i.e. the principal employer M/s. A.R.C.L. Organics Ltd. The contractor Mr. Mondal of M/s. Debjani Enterprises has mentioned in his written statement that his business under name and style of M/s. Debjani Enterprises is a proprietorship one and admitted that the four workmen as mentioned in the order of reference had been working in the company but not in permanent capacity but in casual capacity, the workmen were negligent in doing their duties and yet they were also not terminated from their services either by the principal employer or by him i.e. contractor MR. Mondal and contractor MR. Mondal got a letter dt. 02.02.2011 from the principal employer requiring him i.e. Mr. Mondal not to send the four workmen as mentioned in the order of reference to the factory of the principal employer for doing works therein and as a reason the principal employer mentioned in that letter that all the four workmen became involved in a criminal case on the basis FIR filed against them in the local Police Station and due that direction by the principal employer on the contractor Mr. Mondal, contractor MR. Mondal stopped them from doing works in the factory of the principal employer w.e.f. 05.12.2011 and in the written statement, the contractor Mr. Mondal has also raised some legal technicalities to bar the present proceeding and it is found that the filing of the FIR against all the four workmen has also be supported by the contractor MR. Mondal by pointing out that the workmen were not doing works properly and misbehaved with the manager for the principal employer.

The principal employer after being added as a party also mentioned in it written statement admitting that all the four workmen were engaged by the contractor Mr. Jagat

Mondal of Debjani Enterprises for doing manufacturing works in the manufacturing department of the principal employer arising out of a contract between the principal employer and the contractor MR. Mondal but the four workmen resorted to persistent disruptive activities in the factory of the principal employer and they also threatened and intimidated, and as a result the manager of the principal employer filed written complaint against all the four workmen in the local Police Station and it was registered as FIR No. 160 dt. 21.11.2011 U/s. 341/506/114 of the Indian Penal Code and also by issuing a letter to the contractor Mr. Mondal, the manager MR. Alam of principal employer asked contractor MR. Mondal not to send them i.e. the four workmen to the factory of the principal employer for doing any work and accordingly the contractor MR. Mondal stopped them from going to work in the manufacturing department of the principal employer.

The principal employer did not adduced any evidence in support of its case raised in its written statement as I mentioned earlier and also Ld. Lawyer for the principal employer did not put forward any argument either orally or in writing. The contractor Mr. Jagat Mondal of M/s. Debjani Enterprises examined himself as O.P.W.- 1 and as I find from the record Ld. Lawyer for the contractor alone cross-examined the witness of the union Sri Monotosh Dutta (P.W.-1), during cross-examination of P.W.-1, Ld. Lawyer for the contractor wanted to know from P.W.-1 if his union was registered and other matters relating to union and P.W.-1 stated that his union was registered and it was recognized by principal employer and also by contractor company and also denied a suggestion that the contractor did not recognized the union, denying further suggestion that P.W.-1 has been employed elsewhere. P.W.-1 in cross admitted that the criminal case against him and other three workmen as per order of reference was filed by personnel manager of the principal employer and it was pending before the Court of Ld. Chief Judicial Magistrate at Alipore. Ld. Lawyer for contractor wanted to know from P.W.-1 about the work of P.W.-1 and other three workmen in the company of the principal employer and P.W.-1 stated that P.W.-1 used to work in the maintenance department of the principal ~~workmen~~ and the rest three workmen namely Ashok Sardar, Tushar Mondal and Raju Ganguly used to work in the shifting department of the principal employer and the work of all of them related to resin department for resin production of the principal employer and the principal employer used to supervise their works directly as P.W.-1 has mentioned in his examination-in-chief in its para-5 and to support such assertion of the P.W.-1, P.W.-1 referred his document (Ext. 5), and P.W.-1 denied a suggestion that contractor used to supervise their works, P.W.-1 also denied a suggestion that the contractor asked the four workmen including P.W.-1 to join the duties in the factory of the principal employer and also denied further suggestion that the union of the P.W.-1 does not exist and P.W.-1 further stated that there are 22 members in his union. In cross P.W.-1 also stated that he knows the contention of Ext. 8/2 and also stated that he filed copy of FIR (Ext. A) and also stated that P.W.-1 and other workmen were realised on bail in that criminal case and also stated that he knows the contention of FIR (Ext. A), P.W.-1 also stated that on 21.11.2011 that he and other workmen went to join their duties and also denied a suggestion that the contention of para-13 to 15 of its written statement are not correct and also denied a suggestion that he was

both contractor and the principal employer became furious on them and thus they became eye-shore before the management of the company and even the union came to know from Labour Department, Government of West Bengal that a criminal case was filed against the management of the company for not complying with the requirement of Minimum Wages Act, 1948, and due to such personal malice and grudge the principal employer in collusion with the contractor terminated all the four workmen from their permanent service w.e.f. 21.11.2011 by way of refusal of employment by stating to them that their services would no longer be required and describing the termination as illegal, it is also stated that the management of the company did not go for any disciplinary action against any of these four workmen by issuing any charge-sheet and the management of the company did not pay their due wages from July, 2011 and also did not pay retrenchment compensation and notice pay, and then the union raised strong objection and the workmen also met the principal employer and the contractor and raised objection and also raised formal dispute both orally and also in writing but the management of the company did not make any reply and they raised industrial dispute before the Labour Commissioner by the letter dt. 16.12.2011 (Ext. 8/3) through the union as was registered in the conciliation file No. 152/11/LC and the management of the company submitted its comment before Assistant Labour Commissioner that the workmen were terminated due to filing of FIR in the local Police Station U/s. 341/506/114 of the Indian Penal Code although the workmen did not commit any such offence and due to personal malice and grudge on the part of the manager of the principal employer Mr. Gulrez Alam, Mr. Gulrez Alam filed that FIR falsely against all of them in an attempt to victimize them (Ext. 6, Ext. 6/1, Ext. 7, Ext. 8, Ext. 8/1 and Ext. 8/2, Ext. 8/3, Ext. 9 series), and thus all the four workmen were terminated from their permanent employment illegally simply arising out of malice and grudge on the part of the manager of principal employer MR. Alam in collusion with the contractor Mr. Mondal, and I find that the documentary evidences (Ext. 1 to Ext. 10) have well corroborated the version of the P.W.-1. ✓

I have already mentioned the contention of written statement filed by the contractor Mr. Jagat Mondal, proprietor of M/s. Debjani Enterprises and also written statement filed by the added party i.e. the principal employer M/s. A.R.C.L. Organics Ltd. The contractor Mr. Mondal of M/s. Debjani Enterprises has mentioned in his written statement that his business under name and style of M/s. Debjani Enterprises is a proprietorship one and admitted that the four workmen as mentioned in the order of reference had been working in the company but not in permanent capacity but in casual capacity, the workmen were negligent in doing their duties and yet they were also not terminated from their services either by the principal employer or by him i.e. contractor MR. Mondal and contractor MR. Mondal got a letter dt. 02.02.2011 from the principal employer requiring him i.e. Mr. Mondal not to send the four workmen as mentioned in the order of reference to the factory of the principal employer for doing works therein and as a reason the principal employer mentioned in that letter that all the four workmen became involved in a criminal case on the basis FIR filed against them in the local Police Station and due that direction by the principal employer on the contractor Mr. Mondal, contractor MR. Mondal stopped them from doing works in the factory of the

principal employer w.e.f. 05.12.2011 and in the written statement, the contractor Mr. Mondal has also raised some legal technicalities to bar the present proceeding and it is found that the filing of the FIR against all the four workmen has also be supported by the contractor MR. Mondal by pointing out that the workmen were not doing works properly and misbehaved with the manager for the principal employer.

The principal employer after being added as a party also mentioned in it written statement admitting that all the four workmen were engaged by the contractor Mr. Jagat Mondal of Debjani Enterprises for doing manufacturing works in the manufacturing department of the principal employer arising out of a contract between the principal employer and the contractor MR. Mondal but the four workmen resorted to persistent disruptive activities in the factory of the principal employer and they also threatened and intimidated, and as a result the manager of the principal employer filed written complaint against all the four workmen in the local Police Station and it was registered as FIR No. 160 dt. 21.11.2011 U/s. 341/506/114 of the Indian Penal Code and also by issuing a letter to the contractor Mr. Mondal, the manager MR. Alam of principal employer asked contractor MR. Mondal not to send them i.e. the four workmen to the factory of the principal employer for doing any work and accordingly the contractor MR. Mondal stopped them from going to work in the manufacturing department of the principal employer.

The principal employer did not adduce any evidence in support of its case raised in its written statement as I mentioned earlier and also Ld. Lawyer for the principal employer did not put forward any argument either orally or in writing. The contractor Mr. Jagat Mondal of M/s. Debjani Enterprises examined himself as O.P.W.- 1 and as I find from the record Ld. Lawyer for the contractor alone cross-examined the witness of the union Sri Monotosh Dutta (P.W.-1), during cross-examination of P.W.-1, Ld. Lawyer for the contractor wanted to know from P.W.-1 if his union was registered and other matters relating to union and P.W.-1 stated that his union was registered and it was recognized by principal employer and also by contractor company and also denied a suggestion that the contractor did not recognized the union, denying further suggestion that P.W.-1 has been employed elsewhere. P.W.-1 in cross admitted that the criminal case against him and other three workmen as per order of reference was filed by personnel manager of the principal employer and it was pending before the Court of Ld. Chief Judicial Magistrate at Alipore. Ld. Lawyer for contractor wanted to know from P.W.-1 about the work of P.W.-1 and other three workmen in the company of the principal employer and P.W.-1 stated that P.W.-1 used to work in the maintenance department of the principal employer and the rest three workmen namely Ashok Sardar, Tushar Mondal and Raju Ganguly used to work in the shifting department of the principal employer and the work of all of them related to resin department for resin production of the principal employer and the principal employer used to supervise their works directly as P.W.-1 has mentioned in his examination-in-chief in its para-5 and to support such assertion of the P.W.-1, P.W.-1 referred his document (Ext. 5), and P.W.-1 denied a suggestion that contractor used to supervise their works, P.W.-1 also denied a suggestion that the contractor asked the four

deposing falsely, P.W.-1 also denied a further suggestion by Ld. Lawyer for contractor that contentions in para-18 & 19 of his examination-in-chief are false, and also denied a suggestion that the workman including P.W.-1 have no grievance against the contractor and also denied a further suggestion by Ld. Lawyer for contractor that the claims of the workman are not correct and that P.W.-1 was deposing falsely. P.W.-1 also revealed in cross-examination dt. 27.04.2017 that P.W.-1 had been working in the company since 2008 and worked in 2011 and his designation was maintenance helper and he got the service through the contractor and his salary is to be paid by Mr. Sunny Hazra, an accountant of the principal employer. P.W.-1 also admitted in cross-examination that the company filed an FIR against him and three other workmen and after that P.W.-1 and other workmen were acquitted from that case and P.W.-1 filed certified copy of orders and judgement of Ld. Judicial Magistrate, 7<sup>th</sup> Court, Alipore in 24-Parganas (S), and these have been marked Ext. B and P.W.-1 denied a suggestion by Ld. Lawyer for the contractor that P.W.-1 threatened the personnel manager of the principal employer.

The contractor MR. Jagat Monal on behalf of his company M/s. Debjani Enterprises has examined himself as O.P.W.- 1, O.P.W.- 1 deposed that he is the proprietor of M/s. Debjani Enterprises and his business is to supply labours to different concerns and he also supplied labours to the principal employer, O.P.W.- 1 also deposed that he knows Monotosh Dutta, Ashok Sardar, Raju Ganguly and Tushar Mondal because they worked under him. O.P.W.- 1 produced one formal FIR, it is dt. 24.11.2011 and deposed that this FIR was filed by Mr. Gulrez Alam of principal employer company in the capacity of its personnel officer, O.P.W.- 1 also deposed that this FIR was filed against Monotosh Dutta, Ashok Sardar, Raju Ganguly and Tushar Mondal and on the basis of evidences of O.P.W.- 1 FIR was marked Ext. D. O.P.W.-1 also deposed that the workmen Monotosh Dutta, Ashok Sardar, Raju Ganguly and Tushar Mondal used to work under him earlier, O.P.W.-1 also deposed that he never refused employment to any of the workman and also never terminated them from service and also deposed that O.P.W.- 1 is willing to take back them in their respective service. O.P.W.-1 also deposed that he heard that the workman formed a union. O.P.W.- 1 proved one letter addressed to Assistant Labour Commissioner, Kolkata Mr. P.P. Das written by him on 12.01.2012, it was marked Ext. E, he also proved a letter dt. 02.12.2011 written by manager of principal employer Mr. Gulrez Alam addressing O.P.W.- 1, it is marked Ext. F, O.P.W.- 1 also proved a letter dt. 01.10.2010 written by Director of principal employer Mr. R.K. Vijayn addressed to O.P.W.-1, it is marked Ext. G. O.P.W.- 1 also proved a memo received from Assistant Labour Commissioner MR. P.P. Das dt. 17.01.2012 addressed to both O.P.W.- 1 and the principal employer relating to allegations of retrenchment of the four workmen, it is marked Ext. H. These are the evidences given by O.P.W.- 1 in examination-in-chief and from his evidences as O.P.W.- 1 it is coming out that all the four workmen were engaged by O.P.W.- 1 in the capacity of labour contractor for doing works in the factory of the principal employer and O.P.W.- 1 in the capacity of contractor never terminated them but the principal employer through its manager Mr. Alam filed one police case against them. As per FIR (Ext. A) the police case was started U/s.

341/506/114 of the Indian Penal Code against all the four workmen on the basis of filing of complaint by MR. Gulrez Alam at Taratala Police Station, Ext. B is the certified copy from the Court of Ld. Judicial Magistrate 1<sup>st</sup> Class, 7<sup>th</sup> Court at Alipore, Ext. C is a letter by C.E.O. of principal employer to the contractor relating to activities in the company of principal employer, Ext. D is the formal FIR, another copy of which has already been marked Ext. A, Ext. E is a letter addressed to Assistant Labour Commissioner, Kolkata by contractor Jagat Mondal informing filing of FIR against all the four workmen, Ext. F is a letter addressed to contractor by manager of principal employer directing the contractor not to send the four workmen to the factory of the principal employer due to filing of a case by him i.e. manager of principal employer against all the four workmen and Ext. G is a letter addressed to the contractor by director of principal employer relating to matters of production in the factory of the principal employer and Ext. H is a notice by Assistant Labour Commissioner to both principal employer and the contractor on the matter of illegal and unjustified retrenchment of the four workmen as per order of reference and also on the matter of their attendance in the office of Assistant Labour Commissioner for a joint conference.

Having gone through the evidences adduced by union and also by the contractor Mr. Jagat Mondal, it is appearing that all the workmen as per order of reference were engaged by the contractor Mr. Jagat Mondal for working in the factory of the principal employer and as per versions of union the manager of the principal employer MR. Gulrez Alam started ill treating all the four workmen by different means such as threatening them by stating to dismiss them from service by way of victimization, transferring them to far other places and the workmen were not been given even the minimum wages as per requirement of Minimum Wages Act, 1948, over which the workmen also made demands and being persecuted by the manager MR. Alam of the principal employer the workmen formed the union under name and style of A.R.C.L. Organics Ltd. Contractors Workers Union and it was also registered and also got affiliation and then the workmen resorted to doing union activities separately raising demands for getting minimum wages as per Minimum Wages Act, 1948 and others and all such union activities on the part of them i.e. workmen being office bearers in the union, became eye-shore before the management of the principal employer and also before the contractor and then the manager Mr. Alam filed the FIR in question (Ext. A) before Taratala Police Station and police case U/s. 341 506 114 of the Indian Penal Code was started against all the four workmen and in the meantime all the four workmen were also terminated from their service by way of refusal of employment w.e.f. 21.11.2011 and it is also the version of the union the FIR (Ext. A/ Ext. D) was filed by way of conspiracy by Mr. Alam in collusion with the contractor Mr. Mondal only to victimize the four workers. But from the evidences given by Mr. Mondal, the contractor, it is coming out that all the four workmen are engaged by him for working in the factory of the principal employer but the manager of the principal employer Mr. Alam filed the FIR in question against all the four workmen in Taratala Police Station as a result of which police case against all the four workmen was started and out of fear of being arrested by police, all the four workmen did not report for duty and their services were also not terminated, with addition that though the service of the

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workmen were not terminated, yet the manager of the principal employer MR. Alam wrote a letter to the contractor Mr. Jagat Mondal mentioning that as criminal case was started against all the four workmen, the contractor must not send the workmen to the factory of the principal employer and directed the contractor to cause the workmen to sit.

I have already mentioned the argument made by Ld. Lawyer for workmen. Ld. Lawyer for the workmen has raised that the principal employer sent a letter dt. 09.01.2012 to the Assistant Labour Commissioner informing Assistant Labour Commissioner that all the four workmen were made to sit due to immoral and unlawful activities on the part of the workmen as mentioned in the FIR and that letter has already been marked Ext. H and added that Ext. A & Ext. D is the copy of the FIR in question against the four workmen as per complain by Mr. Alam in the capacity of manager of the principal employer and case No. 160 dt. 24.11.2011 against the workmen was started and the principal employer by issuing letter to the contractor being ext. 8/2 & Ext. F directed the contractor not to allow the workmen for work in the factory of the principal employer due to filing of the case against them and by letter dt. 12.01.2012 by the contractor to the Assistant Labour Commissioner, being ext. 8/1 & ext. E, the contractor was asked to cause the workmen to sit. Ld. Lawyer for the union orally explained that it is the stance of the principal employer and also of the contractor that all the four workmen misbehaved with the manager of the principal employer Mr. Alam and for that reason Mr. Alam filed the FIR against the workmen in local Taratala Police Station and for that reason out of fear being arrested the workmen fled away and did not report for duties in the factory of the principal employer but they were not terminated but all the four workmen were innocent and they did nothing at all and the manager of the principal employer MR. Alam filed the written complaint against them falsely to victimize them as they being the office bearer of the union started union activities and separately raised demand for getting minimum wages as per Minimum Wages Act, 1948 which was refused to them illegally and also raised protest against the atrocities perpetrated on them by the manager of the principal employer in collusion with the contractor Mr. Mondal and the entire matter of police case at the instance of MR. Alam is false and as per reason Ld. Lawyer for union raised that the workmen never fled away as alleged offences were bailable and the Court Ld. Additional Chief Judicial Magistrate at Alipore granted bail to them as soon as the four workmen appeared before that Ld. Court, Ld. Lawyer further explained that MR. Alam the manager of the principal employer being the defacto complainant of that police case was an important witness and during the trial of the case by Ld. 7<sup>th</sup> Court of Judicial Magistrate 1<sup>st</sup> Class at Alipore, the manager did not appear to adduce any evidence even after receiving summon from that Ld. Court and thus MR. Alam declined to justify the matter of written complaint against the four workmen before the Ld. Magistrate during trial and perhaps MR. Alam knew that he might be caught telling lies in the written complaint and get punishment. Ld. Lawyer for union added that MR. Alam maintaining personal malice and grudge against the four workmen for resorting to union activities by them and he wanted to victimize them any how and filed the FIR falsely. Ld. Lawyer for union further raised that admittedly Mr. Alam by his letter asked the contractor to cause the workmen to sit and directed the contractor

not to send them to the factory of the principal employer to do any work and in the written statement filed by the contractor and also as O.P.W.- 1 the contractor Mr. Jagat Mondal has admitted that due to such direction from MR. Alam to not to send the four workmen to the factory of the principal employer, the workmen were not sent and they were asked to not to go to the principal employer as MR. Alam directed him to cause them to sit. Ld. Lawyer for union explained that the meaning of the word – sit – is nothing but retrenchment as has been asserted by the workmen that they reported for duty and they were not allowed to do any work by Mr. Alam of the principal employer. Against all these Ld. Lawyer for contractor has raised that the four workmen misbehaved with the manager of the principal employer Mr. Alam and for that reason MR. Alam filed the complaint in the local Police Station against all the four workmen and then out of fear being arrested by police, the workmen fled away and did not report for duties in the factory of the principal employer and neither the principal employer nor the contractor terminated the service of the workmen.

Going through the cross-examination of P.W.-1 on behalf of union by Ld. Lawyer for the contractor, I find that there is nothing in the cross-examination of the P.W.-1 to anyway distort the evidences given by P.W.-1 as discussed earlier. The O.P.W.- 1 i.e. the contractor Mr. Jagat Mondal admitted that the FIR was filed by the manager of the principal employer against all the four workmen, O.P.W.- 1 further admitted that he did not retrenched any of the workmen on 21.11.2011 but the retrenchment of the four workmen was done by the principal employer, in cross O.P.W.- 1 repeated that the workmen were retrenched by the principal employer and O.P.W.- 1 received the letter from the principal employer (Ext. 8/2) asking O.P.W.-1 to stop the four workmen from entering into the factory of the principal employer, O.P.W.- 1 also admitted that there was existence of master and servant relationship between the company and the workmen in cross-examination O.P.W.- 1 further admitted that the principal employer Mr. Gulrez Alam filed the FIR against all the four workmen and O.P.W.- 1 also admitted that he does not like to say against the document (Ext. 1) which is the registration certificate of the union under name and style of A.R.C.L. Organics Ltd. Contractors Workers Union. Further Ext. A/ Ext. D is the formal FIR and it contains that the manager of the principal employer MR. Gulrez Alam filed the FIR against all the four workmen and accordingly Taratala Police Station case No. 160 dt. 24.11.2011 U/s. 341 506 114 of the Indian Penal Code was started against them. Section 341 I.P.C. speaks about wrongfully restraining anyone and it is bailable. Section 506 IPC speaks about criminal intimidation providing maximum punishment for two years but it is non-cog and bailable and Section 114 IPC speaks about abetment, and all these are triable by Judicial Magistrate, 1<sup>st</sup> Class. Ld. Lawyer for union has produced the certified copy of order-sheet and judgement in the above-mentioned case of the Court of Ld. Judicial Magistrate 1<sup>st</sup> Class at Alipore (Ext. B), which shows that on 02.12.2011 the workmen were granted bail as soon as they appear before the Ld. Court of Ld. Chief Judicial Magistrate at Alipore and then the case was transferred to the Court of 7<sup>th</sup> Judicial Magistrate at Alipore for trial and disposal, it further shows that during examination of the workmen U/s. 251 CRPC they pleaded not guilty and the Ld. Court issued summons to the witnesses including defacto complainant and it appears

that the witnesses received the summon but as per order dt. 01.09.2016 by that Ld. Trial Court the defacto complainant Mr. Alam did not appear as a witness, the written complaint filed by defacto complainant Mr. Alam has not been filed before this Court but from the judgement dt. 03.09.2016 by Ld. trial criminal court of 7<sup>th</sup> Judicial Magistrate, Alipore, it is coming out that the defacto complainant on 17.11.2011 was at Hyde Road factory and at the time only the workmen went to him and wanted to commit his murder by shooting him, in the reasoning part of the judgement Ld. trial criminal court observe that there was at all no evidence against any of the workmen and all the four workmen namely Monotosh Dutta, Ashok Sardar, Raju Ganguly and Tushar Mondal were acquitted U/s. 255(1) of the Criminal Procedure Code.

Thus, Mr. Alam in his written complaint alleged that the workmen went to shoot him and thus he raised highly serious allegation against the workmen but he never appear before the Ld. trial criminal court as witness to justify his such allegation against the workmen, Ld. Lawyer for union as mentioned earlier raised that this MR. Alam subjected the workmen to persecution by various means such as threatening them to dismiss them from service by victimization, transferring them to far other places and to save themselves from such atrocities by the management of the principal employer in collusion with the contractor Mr. Mondal, the workmen formed the union (Ext. 1) and resorted to union activities and due to such union activities the management of the principal employer and the contractor wanted to victimize them and filed the FIR against them totally falsely and last of all MR. Alam did not appear before trial Court of Magistrate and thus Mr. Alam in collusion with the contractor Mr. Mondal filed the police case falsely and at the same time terminated the workmen from their service by refusal of employment and after above discussion I find that Ld. Lawyer for the union properly submitted that Mr. Alam filed the case against the workmen falsely.

The union through P.W.-1 deposed that the workmen were appointed by the contractor for work in the factory of the principal employer in permanent capacity and the work of the workmen used to be controlled, supervised directly by the principal employer by recording their attendances, log books by issuing direction etc. and the contractor had no role at all and they had been working properly without any question being raised against any of them by the management of the principal employer and contractor but they used to threat them by various means such as taking away of their services by way of victimization, transferring them to other places and did not give them minimum wages and then they formed the union (Ext. 1) and resorted to union activities and separately demanded for implementation of minimum wages, for which the management of the principal employer and contractor became furious on them and the manager of the principal employer MR. Alam filed the criminal case as dealt with earlier but as already seen the contractor in its written statement raised some legal technicalities such as order of reference is misconceived/ illegal. there was no refusal of employment and dismissing them from service by way of refusal of employment is false and the workmen filed the case only to get money from the company. the union has no locus standi the dispute is not an industrial dispute, the reference suffers

from non-application of mind, on 21.11.2011 the workman did not reported for duty as they were absconding due to the criminal case at the instance of manager of principal employer Mr. Alam against them etc. and Ld. Lawyer for the contractor in his argument has mentioned that the workmen are still employee of the contractor and they were not terminated at any point of time but the workmen did not resume their duties despite request by the contractor and thus the workmen themselves abandoned their services without any reason and the workmen Monotosh Dutta as P.W.-1 has also admitted that the contractor never terminated the workmen from services. Ld. Lawyer for contractor has cited one ruling in 2005 12 SCC 738 and submitted that in that case if there is any infirmity, the validity of the order of reference can be questioned, also cited another ruling in 1967 1 LLJ page-423 and submitted that in that case Hon'ble Supreme Court of India was very much pleased to observe that the Tribunal cannot widen the scope of enquiry the terms of reference and parties cannot be allowed to challenge the basis of the issue also cited another ruling in 1976(323) FLR 50

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and submitted that Hon'ble Calcutta High Court was very much pleased to observe that in that case the Tribunal cannot travel beyond the ambit of reference, Ld. Lawyer has also cited a further ruling in (2009) 5 Supreme Court Cases 705 on the matter of condition of granting back wages, also cited another ruling in 2006 1 CLR 39 and submitted that in that case Hon'ble Supreme Court of India was very much pleased to observe that no precise formula can be laid down as to under what circumstances payment of full back wages should be allowed and it all depends on the facts and circumstances of each case.

Admittedly on behalf of principal employer no evidence either oral or documentary have been adduced and Ld. Lawyer for the principal employer also did not make any argument. the contractor Mr. Jagat Mondal examined himself as O.P.W.-1 and deposed that he is a labour contractor and supplied labour to the principal employer but presently he has stopped supplying labour to the principal employer and as a reason he has stated the principal employer company is already closed and his contract for supplying labour also ended. P.W.-1 admitted that the workman Monotosh Dutta, Ashok Sardar, Raju Ganguly and Tushar Mondal worked under him but the manager of the principal employer Mr. Gulrez Alam filed FIR against all the four workmen and then all the four workmen abandoned the service by themselves and they were not terminated from the service and O.P.W.- 1 also did not refuse service to them and he is willing to take back all the four workmen in service. O.P.W.- 1 denied that the workmen were refused employment on and from 21.11.2011 and also admitted that O.P.W.- 1 heard about the formation of the union by the workmen. O.P.W.- 1 also admitted receiving notice from conciliation officer and also admitted submission of comment by the company before that conciliation officer by O.P.W.- 1 and also by principal employer on the matter of retrenchment of all the four workmen. O.P.W.- 1 also deposed that contentions of para-5 to para-21 of the examination-in-chief filed by the P.W.-1 Monotosh Dutta are false and also deposed that all the four workmen are not gainfully employed in different companies. Thus from the examination-in-chief of O.P.W.- 1 who is the contractor it is coming out that the workman were never retrenched from their service by way of refusal of employment but due to filing of a police case against them by the manager of principal employer MR. Alam, all the four workmen fled away to avoid arrest by police and did not report for duty and thus all the four workmen abandoned their services voluntarily by themselves. In cross-examination O.P.W.- 1 admitted that he did not file the agreement of supplying labours to the principal employer and also did not file the contract labour licence before this Tribunal and O.P.W.- 1 further admitted that the contract labour licence might have expired a long back and it was not renewed. O.P.W.- 1 also admitted that he came to

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know that union raised dispute before the Labour Commissioner regarding termination of the four workmen from their respective services and O.P.W.-1 also filed written comment before the Labour Commissioner and identifying his comment filed before the Labour Commissioner (Ext. 8/1), O.P.W.-1 admitted that FIR was filed against all the four workmen by the manager of the principal employer and O.P.W.- 1 denied a suggestion that manager of the principal employer filed that FIR costly and also denied a suggestion that O.P.W.- 1 himself is involved with the filing of FIR. O.P.W.-1 admitted further the workmen were retrenched from their service by the management of the company i.e. the principal employer and O.P.W.- 1 in cross also admitted that in this regard he received a letter from the principal employer (Ext. 8/2) and by that letter Ext. 8/2 the principal employer asked him i.e. O.P.W.- 1 to stop the worker from entering into the factory of the principal employer and O.P.W.- 1 also stated in cross that O.P.W.-1 does not know that all the four workmen have been acquitted by the Ld. Judge of the criminal court. O.P.W.-1 further admitted that he has not filed the contract licence before this Court and denied a suggestion that the work order (Ext. 11) is a manufactured one and also admitted that there was master and servant relationship between the company and the workmen and also admitted that O.P.W.-1 did not framed any charge against any of the workmen on the allegation that all the four workmen abandoned their services, O.P.W.-1 also admitted that the principal employer through its manager Mr. Alam filed FIR against all the four workmen and denied a suggestion that he knows the judgement of the criminal case against all the four workmen and at that stage after seeing the judgement of that criminal court, O.P.W.-1 admitted that all the four workmen have been acquitted from the criminal case started on the basis of FIR filed by the management of the principal employer Mr. Alam. It is the argument by Ld. Lawyer for the contractor that the company had not terminated the service of the workman but the workman deliberately did not report for duties with some mala fide intention despite the contractor requested them to resume their duties and the workmen field this case suppressing material fact which is that the workmen themselves abandoned their services and this aspect of the matter was not conceded by the appropriate government in making the order of reference, Ld. Lawyer for contractor also mentioned in the argument that on 02.12.2011 the principal employer wrote a letter to the contractor directing the contractor to not to send the four workmen as mentioned in the order of reference to the factory of the principal employer mentioning a ground that against all the four workmen criminal case was filed and the termination of the services by refusal of employment is bad in law and for that reason the order of reference is not maintainable and the allegation of refusal of employment as mentioned in the order of reference are not tenable. Ld. Lawyer for contractor has also argued that the witness of the union i.e. P.W.-1 has admitted in his evidence that the contractor did not terminate him and accordingly the matter of refusal of employment as has been raised by union is vague and the order of reference is not tenable. Ld. Lawyer for contractor has also mentioned in the argument that question of any personal malice and grudge against the workmen cannot arise as the workmen left their services by themselves and the union failed to make out any case of refusal of employment, Ld. Lawyer for contractor has also argued that as the P.W.-1 has

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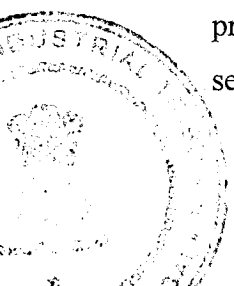
admitted that the contractor did not retrenched them, the case laws cited in (2005) 12 SCC 738, 1967 1 LLJ 424 and 1976 (33) FLR 15 become applicable in the present case but Ld. Lawyer for the union has argued that the above cited cases by Ld. Lawyer for contractor cannot be applied in this case because the first one arose out of binding effect of settlement U/s. 18(1) of the Industrial Disputes Act, 1947, and the next one arose out of the matter relating to calculation of bonus which is not an issue in this case and regarding the last one also cannot be applied in this case because that judgement i.e. FLR 1076 Vol. 33 of Calcutta High Court of 1964 but Section 2A was amended in 1965 and Ld. Lawyer for union has also argued that as relied by the union as per petition dt. 18.07.2019 which was not countered by Ld. Lawyer for the contractor and it is the observation of Hon'ble Calcutta High Court that the judgement of Sabitri Motors does not come to the rescue of employer as Section 2A of the Industrial Disputes Act, 1947 was not in existence at the time of Sabitri Motors services were decided and more over in West Bengal amendment Act at in Section 2A(a) of the Industrial Disputes Act, 1947, after the words dismisses, retrenches, the words refuses employment, (b) after the words dismissal, retrenchment, refusal of employment were mentioned. From the documentary evidences I find that ext. 1 is the certificate of registration of trade union and the contractor Mr. Jagat Monal as O.P.W.- 1 has admitted in cross that he does not tried to say anything against this document, further the document (Ext. 8) is also admitted one, it is a letter addressed to Assistant Labour Commissioner Mr. P.P. Das dt. 09.01.2012 and by this letter the manager, HR & Administration of principal employer informed Assistant Labour Commissioner that by this letter (Ext. 8) MR. Alam of principal employer directed the contractor (O.P.W.-1) not to send the four workmen as mentioned in the order of reference to the factory of the principal employer for any work and also directed the contractor to cause all the four workmen to sit and as O.P.W.- 1 the contractor has also admitted that same and having given the reference of this letter (Ext. 8), the contractor also wrote a letter to Assistant Labour Commissioner Mr. Das (Ext. 8/1) mentioning that all the four workmen were asked to cause to sit after receiving the letter from the principal employer(Ext. 8) in this regard, in which (Ext. 8/1) the contractor has also mentioned that the principal employer filed the FIR against all the four workmen alleging immoral and indecent activities and accordingly a police case U/s. 341/506/114 of the Indian Penal Code has already been started against them, further Ext. 8/2 is a letter addressed to contractor (O.P.W.- 1) by manager P&A of principal employer Mr. Alam and admittedly it contains a direction by Mr. Alam on the contractor to restrict them bar four workmen Monotosh Dutta, Ashok Sardar, Raju Ganguly and Tushar Mondal from entering into the factory of the principal employer, and all these have also been admitted by O.P.W.-1 thus all these documents (Ext. 8 series) clearly proved that both principal employer and the contractor retrenched the four workmen in guise of causing them to sit and when they reported for duty on 21.11.2011 they were illegally refused from joining their duties in the factory of the principal employer. Further as discussed earlier, it is the assertion of O.P.W.- 1 Mr. Mondal that four workmen committed the illegalities and for that reason the manager of the principal employer Mr. Alam filed the police case against them and the case is not false, and over this matter I have already

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mentioned the argument of Ld. Lawyers of both sides, Ld. Lawyer for union raised that the management of the principal employer in collusion with the contractor Mr. Mondal subjected the four workmen to tortures by threatening that the workmen would be transferred to different places, they would be dismissed from service by way of victimization and also refused to pay minimum wages and then the union resorted to union activities and separately demanded wages as per Minimum Wages Act, 1948 and at that time only the manager of principal employer in collusion with the contractor Mr. Mondal filed the police case against them raising serious allegation against all the four workmen but the evidences have established that during the time of trial of that case in police court at Alipore, the defacto complainant Mr. Alam after even after getting summon did not appear to say anything in support of his complaint against the four workmen and after trial Ld. Court of Judicial Magistrate, 7<sup>th</sup> Court Alipore found no substance in the allegations raised by MR. Alam and the case against them was found to be false and Ld. Magistrate acquitted all the four workmen U/s. 255(1) of Criminal Procedure Code (Ext. B series). Ext. 1 proves the formation of the union complying with all legal requirements, Ext. 2 series, 3, 4 series, 5 series prove that the workman had been working in the factory of the principal employer as also deposed by P.W.-1 and in cross-examination of P.W.-1 nothing has come against all such evidences, further Ext. 6/1 shows that the union raised dispute before the Labour Commissioner, Government of West Bengal mentioning that the management of the principal employer filed FIR against all the four workmen as the four workmen demanded payment of wages as per Payment of wages Act, Ext. 7 is a letter addressed to the contractor by union in which union has raised that the management of the principal employer in connivance with the contractor illegally terminated all the four workmen w.e.f. 21.11.2011 and demanded their reinstatement with all back wages (Ext. 7), ext. 8/3 is a letter addressed to Labour Commissioner, Government of West Bengal by union in question mentioning that w.e.f. 21.11.2011 contractor and principal employer illegally terminated the service and union demanded their reinstatement with all back-wages from 21.11.2011 but the management of the principal employer / contractor did nothing, and Ext. 9, 9/1 show that the conciliation officer took the dispute in the conciliation proceeding in an attempt to resolve the same but, as P.W.-1 deposed, no settlement could be arrived at due to adamant attitude by management of principal employer in connivance with the contractor, and in cross-examination of P.W.-1 there is at all nothing against all such evidences.

Therefore, the evidences have established that the management of the principal employer in connivance with the contractor started threatening the workmen by stating to them that they would be transferred to different places / dismissed from services by way of victimization and the workmen formed the union in question (Ext. 1) and resorted to union activities and separately demanded for minimum wages and at that moment only the principal employer in connivance with the contractor terminated them from service w.e.f. 21.11.2011 by way of refusal of employment and Ext. 8 series which are admitted documents have proved that as the union raised union activities, the workmen were terminated from their service and the manager of the principal employer directed the contractor (Ext. 8/2) to restrict



and bar the workmen from entering into the factory of the principal employer and accordingly the contractor also barred them from entering into the factory of the principal employer (Ext. 8/1) as also earlier admitted by the contractor (O.P.W.-1) and it is established that the workmen were terminated from their service without following the compulsory requirement of law and therefore such termination is found to be void ab initio and the case law cited by Ld. Lawyer for the contractor on the question of barring the dispute on legal technicalities such as locus standi of the union, illegality in order of reference are not found to be applicable in any way and such assertion by both principal employer and the contractor are found to be baseless and it is further established that both principal employer and the contractor resorted to practicing of unfair labour practices as mentioned in the 5<sup>th</sup> schedule of the Industrial Disputes Act, 1947 in a grievous way as the management of the principal employer at the instance of its manager Mr. Alam tried to implicate the workmen in a police case falsely attempting to send them to jail for no reason (Ext. D, Ext. 8 series, Ext. B series).

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The contractor (O.P.W.- 1) has repeatedly admitted in cross-examination that in labour contractor licence expired a long back and it was not renewed and also admitted in cross-examination that he did not file the contractor licence in the Court and this is the admission by labour contractor MR. Mondal that his labour contractor licence expires a long back and it was not renewed, and Ld. Lawyer for the union has mentioned in the written argument that in the absence of contractor labour licence workmen became direct employee of the principal employer and relationship of master and servant between the company and the workmen being admitted by O.P.W.- 1, and to justify his submission Ld. Lawyer for union cited case laws in Food Corporation of India Workers' Union Vs. F.C.I. reported in 1990 1 CLR 829, FCI Vs. presiding officer, Central Government Industrial Tribunal in 1988 LIC 730, Anapole Vs. Anapole Vs. JSEV in 2003 II LLJ 335 and also in 2007 LIC 3705 and I find that Ld. Lawyer for contractor has raised that these are not applicable. Admittedly O.P.W.- 1 has admitted in cross-examination that his labour contractor licence already expire and he did not renew it and also did not file it in the court, and in the above cited case laws Hon'ble Court was very much pleased to observe that effect of non-renewal of labour licence or non-registration is that where the workmen are employed by principal employer through contractor but two conditions of obtaining registration U/s. 7 by the principal employer and of holding licence by contractor U/s. 12 are not complied with and then the workmen can claim to be the direct employee of the principal employer and the contractor through whom the workmen were engaged did not process licence issued U/s. 12 of the Act by the appropriate government for that period and the workmen can claim that they were employed directly by the principal employer. After admission on the part of the contractor that his labour contract licence expired a long back, and he did not renew it, therefore by operation of law as observed by Hon'ble Courts in the case laws cited by Ld. Lawyer for union as mentioned above are found to be applicable in this case and therefore the workmen as per order of reference have become direct employees under the principal employer.

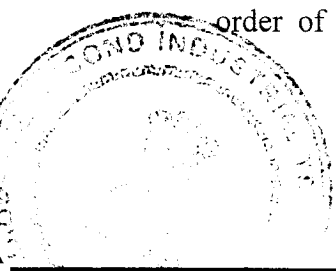
The Ld. Lawyer for contractor has argued that the workmen cannot get any back wages as they are employed in different companies making huge earnings and therefore the union cannot get any relief as per issue No. 2, adding that the principal employer company has become sick. Ld. Lawyer for the union has argued that the contractor vis a vis the principal employer asserted that the workmen are employed in different companies and thus making earnings and therefore it was necessary on the part of the company to prove the same independently but the company did not adduce any such evidence and also any evidence to support that the company is sick. Admittedly the principal employer has not adduced any evidence either oral or documentary excepting filing of the written statement. the contractor Mr. Jagat Mondal in his evidences as P.W.-1 has stated that the four workmen are engaged indifferent companies making income therefrom. P.W.-1 has denied to be in gainful employment and to a question in cross-examination by Ld. Lawyer for contractor P.W.-1 deposed that sometime he drives his house car. I have already cited the case laws mentioned by Ld. Lawyer for contractor. In (2009 ) 5 Supreme Court Cases 705 as cited by Ld. Lawyer for contractor Hon'ble Court observed that financial condition of the employer is one of the factors to consider for full back wages on reinstatement in case of illegal termination. I have already mentioned that the principal employer has not adduced evidence on any matter in support of his written statement including financial condition of the company of the principal employer and as per required by the principles of burden of proof, the company was required to bring sufficient evidence to show that the workmen are in gainful employment but conspicuously the company / contractor did not do so and I do not find any reason to apply the cited case laws by Ld. Lawyer for contractor in this case.

In the summing up it is to say that there is at all no support by evidence over the legal technicalities that the union does not exist, the order of reference suffers from illegality or that the workmen did not complete 240 days of continuous work during the preceding year immediately before the retrenchment in question by way of refusal of employment. The union has become able to clearly prove by evidence that all the four workmen namely Monotosh Dutta, Ashok Sardar, Raju Ganguly and Tushar Mondal were permanently engaged by the contractor Mr. Jagat Mondal who is the proprietor of M/s. Debjani Enterprises for working in the factory of the principal employer M/s. A.R.C.L. Organics Ltd. and that principal employer M/s. A.R.C.L. Organics Ltd. directly supervised the performance of the workmen but the workmen used to be not given wages as per Minimum Wages Act, 1948 etc. and then the personal manager of the principal employer Mr. Gulrez Alam threatened the workmen raising that they would be terminated / dismissed from service by way of victimization or by implicating them in a criminal case on some false charges and to get rid from all such threatening by the manager of the principal employer MR. Alam the workmen formed union under name and style of A.R.C.L. Organics Ltd. Contractors Workers Union (Ext. 1) as admitted by O.P.W.- 1 also in his cross-examination stating that he has nothing to say about the union (Ext. 1) and then the union raised demands of getting minimum wages separately besides others (Ext. 7, Ext. 6 series), as a result of which the management of the principal employer and also the contractor MR. Jagat Mondal became furious and terminated the

service of all the four workmen as per order of reference by way of refusal of employment w.e.f. 21.11.2011 and at the same time the manager of the principal employer M/s. A.R.C.L. Organics Ltd. filed F.I.R. against all the four workmen at the local Taratala Police Station raising allegations that the four workmen, as revealed from the copy of the judgement of Ld. Judicial Magistrate, 1<sup>st</sup> class, 7<sup>th</sup> Court, Alipore, wanted to shoot the manager of the principal employer MR. Gulrez Alam. Yet after getting summon from the Ld. Criminal Court to appear as a witness, MR. Alam being defacto complainant did not appear to justify allegations he made in the FIR (Ext. A / Ext. D) and Ld. Trial Court of Ld. Judicial Magistrate 7<sup>th</sup> Court at Alipore did not find any materials / iota of evidence in support of the allegations U/s. 341/506/114 of the Indian Penal Code and acquitted all of them from the police case, all of which have justified the submission of Ld. Lawyer for union that both principal employer and the contractor conspired to take out all the four workmen from their service, and though both principal employer and the contractor denied terminating the workman from service asserting that the workman abandoned their services by themselves, yet the document Ext. 6 series, Ext. 8 series have perfectly established that Mr. Alam in the capacity of manager of the principal employer immediately after filing the police case against the workman directed the contractor Mr. Jagat Mondal to bar / prevent all the four workmen from entering into the factory of the principal employer and the contractor complied with the same immediately (Ext. 8/1) and thus the workmen were terminated from service by way of refusal of employment without following the compulsory requirement of law and at the same time in violation of fundamental requirement of principles of natural justice. As the contractor Mr. Jagat Mondal as O.P.W.- 1 has admitted in cross-examination that his registration / contract licence had already expired a long back and did not renew the same, all the four workmen have become direct employee of the principal employer by way of operation of law (1990 ICLR 829, 1988 LIC 730 etc.). P.W.-1 deposed that he and other workmen are still unemployed. Ld. Lawyer for contractor raised that all the four workmen are employed in different companies and P.W.-1 has a car yet as required by law there is no evidence to support that the workmen are in gainful employment. Thus, the issues go to be decided in favour of the union. It is, therefore,

#### ORDERED

that the issues – whether the termination of service of four workmen namely Monotosh Dutta, Ashok Sardar, Raju Ganguly and Tushar Mondal by way of refusal of employment w.e.f. 21.11.2011 by the management of the contractor company M/s. Debjani Enterprises are justified or not, and to what relief, if any, the workmen are entitled – are decided in favour of the union A.R.C.L. Organics Ltd. Contractors Workers Union as mentioned in the order of reference and it is held that the termination of services of the four workmen namely Monotosh Dutta, Ashok Sardar, Raju Ganguly and Tushar Mondal w.e.f. 21.11.2011 by way of refusal of employment as mentioned in the order of reference are illegal, not justified and void ab initio and the same is quashed, and it is further held that all the four workmen as per order of reference became direct employees of the principal employer M/s. A.R.C.L.



Organics Ltd. as observed in the judgement and both employers i.e. the principal employer M/s. A.R.C.L. Organics Ltd. and the contractor M/s. Debjani Enterprises are directed to reinstate all the four workmen as per order of reference with full back-wages and consequential benefits immediately, and this is to be treated as an award of this Tribunal in view of the order of reference vide No. 789-I.R./IR/11L-65/12 dt. 21.08.2012. There is no order as to cost. Necessary number of copy of this judgement and award be sent to the Ld. Additional Chief Secretary to the Government of West Bengal, Labour Department, N.S. Buildings, 12<sup>th</sup> Floor, 1, K.S. Roy Road, Kolkata – 700001 without any delay.

Dictated & corrected by me.

*g/d*  
Judge



*Scd/r*  
*Scd/r*  
( Sribash Chandra Das )  
Judge  
Second Industrial Tribunal  
26.09.2019