

4965/2019

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

No. Labr/933../(LC-IR)/

Date : 17/10/2019.

ORDER

WHEREAS under the Government of West Bengal, Labour Department Order No. 1129-I.R./IR/11L-80/12 dated 06.12.2012 the Industrial Dispute between M/s Devine Mercy School, Howrah, Anta Road, Rajpur, near 1 No. Pool, Domjoor, Howrah-711102 and its workman Sri Suresh Roy, Vill- Domjur, near BDO office, P.O.- Domjoor, Howrah-711405 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, Kolkata.

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

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

ANNEXURE

(Attached herewith)

By order of the Governor,

Sd/-

Deputy Secretary
to the Government of West Bengal

No. Labr/933/1(5)/LC-IR

Date : 17/10/2019.

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

1. between M/s Devine Mercy School, Howrah, Anta Road, Rajpur, near 1 No. Pool, Domjoor, Howrah-711102
2. Sri Suresh Roy, Vill- Domjur, near BDO office, P.O.- Domjoor, Howrah-711405
3. The Assistant Labour Commissioner, W.B. In-Charge, Labour Gazette.
4. The O.S.D. & E.O. Labour Commissioner, W.B. New Secretariat Buildings, 1, K. S. Roy Road, 11th Floor, Kolkata- 700001.
5. The O.S.D., IT Cell, Labour Department, with the request to cast the Award in the Department's website.

Rd 17.10.19.

Deputy Secretary

Date : 17/10/2019.

No. Labr/933/2(2)/LC-IR

Copy forwarded for information to :

1. The Judge, Second Industrial Tribunal, Kolkata with reference to his Memo No. 1259 - L.T. dated 12.09.2019.
2. The Joint Labour Commissioner (Statistics), West Bengal, 6, Church Lane, Kolkata -700001.

Deputy Secretary

In the matter of an industrial dispute between the workman Sri Suresh Roy, Vill. Domjur near BDO office, P.O. – Domjoor, Howrah – 711405 and the company M/s. Devine Mercy School, Howrah, Anta Road, Rajpur near 1 No. Pool, Domjoor, Howrah – 711102.

(Case No. VIII-57/2012)

BEFORE THE SECOND INDUSTRIAL TRIBUNAL: WEST BENGAL

PRESENT: SHRI SRIBASHJ CHANDRA DAS, JUDGE,

SECOND INDUSTRIAL TRIBUNAL, KOLKATA

Date of passing award – 30.08.2019

A W A R D

This case arose by order of reference. The workman is Suresh Roy, Vill. Domjur near BDO office, P.O. – Domjoor, Howrah – 711405 and the company is M/s. Devine Mercy School, Howrah, Amta Road, Rajpur near 1 No. Pool, Domjoor, Howrah – 711102. As per order of reference vide No. 1129-I.R./IR/11L-80/12 dt. 06.12.2012 by order of Governor signed by Deputy Secretary to the Government of West Bengal, Labour Department, I.R. Branch, Writers' Buildings, Kolkata – 1, an industrial dispute existed between M/s. Devine Mercy School as mentioned above and the workman Sri Suresh Roy as mentioned above relating to issues as mentioned in the order of reference stated to be being a matter specified in the second schedule to the Industrial Disputes Act, 1947, and it became expedient that the said dispute should be referred to an Industrial Tribunal constituted U/s. 7A of the Industrial Disputes Act, 1947 and then in exercise of power conferred by Section 10, read with Section 2A of the Industrial Disputes Act, 1947, the Governor was pleased by this order of reference to refer this dispute to this Tribunal stated to be constituted under Notification No. 808-IR/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 date of receipt of this order by this Tribunal in terms of Sub-section (2A) of Section 10 of Industrial Disputes Act, 1947 subject to other provision or provisions of the said act, the issues mentioned in the order of reference are,

- 1) Whether the termination of the service of Sri Suresh Roy by the management of the company M/s. Devine Mercy School w.e.f. 04.07.2011 is justified,
- 2) What relief, if any, is he entitled to?

After receipt of the order of reference as mentioned above, cognizance was taken over the matter and the case was registered and summons were issued to both parties and both parties also entered into appearance and filed written statements. In the written statement filed by workman Suresh Roy it has been contended that the O.P. Company /School Devine Mercy School is an educational institution locating at the address as mentioned in the cause title of this written statement. It is further stated that the management of the O.P. Company / School does



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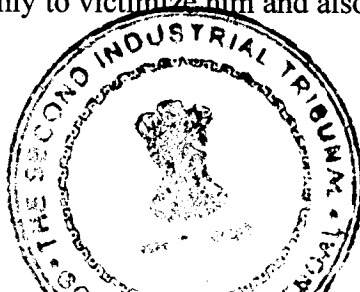
not follow labour laws as enacted by the government and terminate services of workman / employees now and then whimsically, arbitrarily with most illegal and unlawful manner. It is next stated that the workman was appointed as a Darwan by the management of the O.P. company/ School on and from 01.06.2008 but despite request, the management of the company / school never issued any appointment letter to the workman. It is further stated that during the working tenure by the workman in the O.P. Company /school, the workman / petitioner never ever supervised any other employee's work and he had been performing his duty diligently, honestly without any black-spot, and the workman / petitioner used to receive salary paid by the management of the O.P. Company / School without any demur by putting his signature on the vouchers as used to be prepared by management of the company/school for this purpose and the management of the company also never issued any sorts of salary receipt in support of payment of salary by the management of the company/school to the workman. it is next stated that on 4th July, 2011 when the petitioner / workman went to resume his duty, he was restraint by a newly appointed Darwan and when the workman / petitioner wanted to know the cause for such restraintment by the Darwan, the newly appointed Darwan stated to him that he was obeying the direction of the Principal of the management of the company/School, and then the workman / petitioner somehow met he Principal and wanted to know the reason for such restraintment by the newly appointed Darwan and then the Principal of the O.P. Company / School stated to the petitioner / workman that he i.e. workman was terminated from his service, and immediately thereafter workman / petition wrote a letter to the management of the company/ School raising strong protest against such illegal, unlawful and arbitrary act on the part of the management of the company/ School and also requested by that letter to reinstate him in service with full back wages, the workman / petitioner tried to serve this letter to the management of the company/ School but as it was refused, workman / petitioner sent the same by registered post with acknowledgement due, but the workman / petitioner did not get any response from the management of the company/ School and then he submitted a letter dt. 19.09.2011 to the Deputy Labour Commissioner to the Government of West Bengal at Howrah praying for his intervention in the matter. It is next stated that the Deputy Labour Commissioner then called for written comment from the management of the company/ School with regard to the dispute raised by the workman and then the management of the company/ School in an attempt to victimize the petitioner / workman tried to make out false and fabricated ground in its letter dt. 25.10.2011 mentioning that the petitioner / workman was at all not the employee under the management of the company/ School with addition that the workman / petitioner was merely a caretaker of the building wherein the school was situated but it is not maintainable in the eye of law and facts. It is next stated that the workman / petitioner then by a letter dt 30.11.2011 made a reply against the letter of the management of the company/ School dt. 25.10.2011 raising that the contentions raised by the management of the company/ School in its that letter is not only baseless but imaginary and expressed that such contention by the management of the company/ School was



an attempt to harass the petitioner / workman. it is next contended that the Assistant Labour Commissioner tried her level best to solve the dispute by holding several joint conference but nothing could be done due to adamant attitude from the part of the management of the company/ School and management of the company/ School then did not attend the conciliation proceeding and then the Assistant Labour Commissioner sent failure report to the Government who found existence of prima facie case in favour of the workman under the jurisdiction of this Tribunal. It is also stated that the last drawn salary by the petitioner / workman was Rs. 4000/- and due to personal malice and grudge on the part of the management of the company/ School and having taken the opportunity of poor economic condition of the workman, the management of the company/ School terminated the service of the workman w.e.f. 04.07.2011. it is next stated that the petitioner / workman is very poor and unemployed without any source of income except the service in question and has been facing trouble in maintaining his family. It is the prayer by the workman / petitioner to hold that the termination of the petitioner from his service is as illegal, unlawful and unjustified and also for an award in favour of the workman / petitioner with a direction on the management of the company/ School to re-instate him in his service with full back-wages with other consequential benefits.

The management of the company/ School contested the dispute raised by workman / petitioner by filing written statement raising some legal technicalities such as lack of prima facie case, non-maintainability of the case in its present form and prayer, lack of cause of action to bar the case, and denying the contention of para-1, para-2, the company has stated that these are matters of record and the management of the company/ School follows the requirement of laws. denying the contention of para-3 of written statement filed by the workman, the management of the company/ School has raised that no formal appointment was ever issued in favour of the workman / applicant and has asserted that such contention on the part of the workman is baseless and motivative and no agreement was entered into with the workman / petitioner by the management of the company/ School regarding terms and conditions for his appointment and workman / petitioner cannot get any relief under the Industrial Disputes Act, 1947. Denying the contention of para-4 to para-10 of the written statement filed by the workman, the management of the company/ School has asserted that the company always maintain necessary formalities diligently, honestly as an esteemed institution, and the workman / petitioner is required to prove his contention strictly and issuing of any salary receipt in favour of the workman did not arise and during the time in question the workman / petitioner was an employee of M/s. R.M. Construction under proprietorship of Mr. S.K. Lokman, and petitioner / workman Suresh Roy was never an employee of the company and therefore restraining him in resuming his duties on 04.07.2011 by the Darwan did not arise. The company in its written statement has also raised that the statement made by workman in para-12 of his written statement is not true and denied also that the management of the company/ School submitted a written comment before the Deputy Labour Commissioner only to victimize him and also to evade the charges against him

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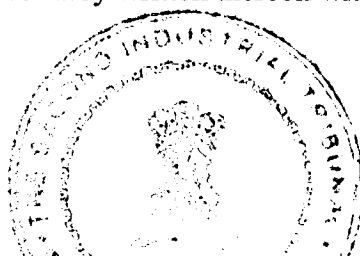


on false and fabricated grounds by letter dt. 25.10.2011, admitting to the extent that Suresh Roy was a mere caretaker of the building in which the school was situated. Requiring the workman to prove his contention in para-13 and para-14 of his written statement, the management of the company has asserted in its written statement that it is denied that the settlement would have been arrived at but due to adamant and non-cooperative attitude of the management of the company/school in the conciliation proceeding, mentioning that the school does not come within the purview of industry as per law and therefore the decision of Assistant Labour Commissioner is not warranted. Denying the contention of para-16 and para-17 of the written statement filed by the workman, the management of the company/ school has raised that there was no existence of any industrial dispute and consequently adjudicating the same by this Tribunal does not arise, specially mentioning that question of personal malice and grudge on the part of the management of the company/school on the petitioner requiring termination of the workman from service w.e.f. 04.07.2011 did not arise and also question of reinstating him in service with full back-wages does not arise and there was no appointment as regular service to the petitioner and question of drawing salary of Rs. 4000/- did not arise. Denying the contention of para-19 of the written statement filed by workman, the management of the company/school stated that the petitioner / workman was an employee of M/s. R.M. Construction during the time in question and the workman has been working there till date, further mentioning that no appointment letter was issued to the alleged workman in question and no agreement was also executed by the management of the company/school with the workman and the matter does not come within the purview of Section 2(P) of the Industrial Disputes Act, 1947 as decided in the case Bhrombho Samaj Education Society Vs. West Bengal College Employees Association and, the management of the company concluded written statement mentioning that educational, scientific research and training institute do not come under the definition of industry and therefore the petitioner / workman is not entitled to get any relief and the case should be dismissed.

During the hearing of the case workman Sri Suresh Roy examined himself as P.W.-1 and he also adduced documentary evidences which are,

- 1) Copy of envelop mentioning the name of Suresh Roy with the name of the company / school printed thereon (Ext. 1),
- 2) Another copy of envelop mentioning the name of Suresh Roy with the name of the company / school printed thereon (Ext. 1/1),
- 3) Group photograph with the name of the company / school printed thereon showing 2008-2009 thereon (Ext. 2),
- 4) One photograph mentioning the name of company / school printed thereon mentioning 2009-10 (Ext. 2/1),
- 5) Another photograph mentioning the name of company / school printed at the top with the name of Suresh Roy written thereon with 2010-2011 (Ext. 2/2),

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- 6) Copy of Staff attendance register mentioning non-teaching for the month of April, 2008 containing names of Suresh Rai (Darwan) and others (Ext. 3),
- 7) Copy of letter addressed to M/s. Devine Mercy School by Sri Suresh Roy (Ext. 4), with a postal A.D. thereto (Ext. 4/1),
- 8) Copy of letter addressed to Post Master, Treasury Building Post Office, Kolkata dt. 19.03.2013 by Suresh Roy (Ext. 5), with a letter of complaint settled reply dt. 17.06.2013 (Ext. 5/1),
- 9) Copy of letter addressed to Deputy Labour Commissioner, Howrah by Suresh Roy (Ext. 6),
- 10) Copy of letter addressed to Assistant Labour Commissioner, Howrah by Binita Ladia dt. 25.10.2011 (Ext. 7),
- 11) copy of letter addressed to Assistant Labour Commissioner, Government of West Bengal, Howrah by Sri Suresh Roy dt. 30.11.2011 (Ext. 8),

On behalf of the management of the company/school M/s. Devine Mercy School, Mrs. Binita Ladia examined herself as O.P.W.-1 and also adduced documentary evidences which are,

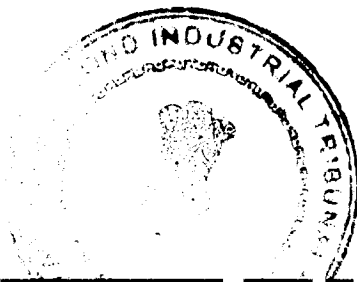
- a) Copy of attendance register only (Ext. A).

It appears that copy of attendance register having name of a company M/s. R.M. Construction was filed by the management of the company and it was merely made X for identification.

Decision with reasons on issue No. 1 – Whether the termination of the service of Sri Suresh Roy by the management of the company M/s. Devine Mercy School w.e.f. 04.07.2011 is justified, with reasons.

Ld. Lawyers of both sides have filed written notes of argument. Ld. Lawyer on behalf of the workman has raised in his argument that the O.P. Company /School i.e. Devine Mercy School is an educational institution and at present it is located at Howrah, Anta Road, Rajpur near 1 No. Pool, Domjoor, Howrah - 711102 and the workman was appointed as darwan by the management of the company/school w.e.f. 1st June, 2008 but in spite of repeated request by the workman, the management of the company/school did not issue any appointment letter to the workman, and after being so appointed the workman had been performing his duties in the school purely as darwan and his nature of duty does not fall under the category of supervisor as defined in the law. Ld. Lawyer has also mentioned that the management of the company/school used to pay the salary to the workman by putting the same in an envelope and the management of the company/school after giving salary in this way to the workman used to take signature of the workman on a voucher as a documentary proof of making payment. Ld. Lawyer has also mentioned that all on a sudden on 04.07.2011 when the workman / petitioner went to resume his duty, he was restrained by a newly posted darwan and by wanting to know the reasons for

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preventing him from joining his duty from that newly posted darwan, the newly posted darwan stated to the workman / petitioner that the newly posted darwan was just obeying with the direction of the Principal of the company / school, and then the workman / petitioner anyhow made the Principal of the O.P. Company / School to ascertain the reason for his being prevented from joining his duty by the newly posted darwan, the Principal of the O.P. Company / School stated to the workman / petitioner that he had been terminated from his service. Ld. Lawyer further mentioned that after that the workman / petitioner wrote a letter to the management of the company/school raising strong protest against such illegal / unlawful act on the part of the management of the company/school and at the same time requested the management of the company/school to reinstatement him in his service with full back wages. Ld. Lawyer for the workman has also mentioned that the petitioner / workman tried to serve that matter to the management of the company/school by hand but it was refused and then the workman / petitioner sent the same to the management of the company/school by registered post with acknowledgement due but the management of the company/school did not make any response after receiving that letter sent by the workman, the workman / petitioner submitted a letter on 19.09.2011 to the Deputy Labour Commissioner to the Government of West Bengal, Howrah requesting his intervention in that matter. It is next stated by Ld. Lawyer for the workman that Deputy Labour Commissioner, Howrah then called for written comment from the management of the company/school with regard to the industrial dispute and as per direction of the Deputy Labour Commissioner, Howrah, the management of the company/school submitted a letter dt. 25.10.2011 mentioning that the workman / petitioner was at all not a employee of the management of the company/school, further mentioning that the workman / petitioner was merely a caretaker of the building wherein the management of the company/school was previously located, but the management of the company/school failed to submit any documentary evidence to that effect, and then, it is further mentioned, petitioner / workman submitted a reply by a letter dt. 30.11.2011 mentioning that the contention raised by management of the company/school is not only baseless but also based on some imagination and also submitted documentary proof in support of his engagement by the management of the company/school. It is also raised in the argument by the Ld. Lawyer for the workman that the conciliation officer tried level best to solve the dispute by holding several joint conference but nothing could be arrived at by him due to adamant attitude on the part of the management of the company/school and also due to non-cooperative attitude on the part of management of the company/school by not attending the conciliation proceeding and then the conciliation officer having found no alternative sent the failure report to the Government which held that there was a prima facie case and also sent the same for adjudication before this Tribunal after framing issues as already mentioned earlier. Ld. Lawyer for the workman has also added that as per written statement filed by the management of the company/school, the management of the company/school has tried to raise a concocted story in the way that that the workman / petitioner

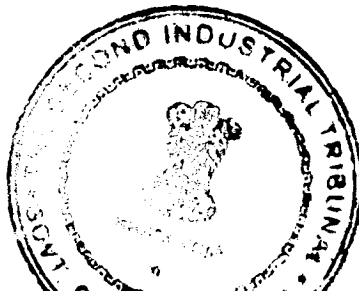


was no way connected with the management of the company/school explaining further that the workman / petitioner had been residing in the premises wherein the management of the company/school was located earlier and the workman / applicant used to act as a Caretaker of that building and the Principal of the management of the company/school used to keep her minor daughter with the family of the applicant / workman during her duty and thus the applicant / workman had access to the documents / staff members of the school, with further canvassing before this Tribunal that the workman / applicant is gainfully employed elsewhere. In his argument Ld. Lawyer for the workman has raised that the workman has brought some documentary evidences as have been clearly proved before this Tribunal and explained that the Ext. 1, Ext. 1/1 are the envelopes of the school and the name of the workman is also written on them, and mentioning that it is the case of the workman that the workman used to receive salary from the management of the company/school in this envelopes (Ext. 1 series) and the management of the company/school at no point of time has claimed that the documents (Ext. 1 series) are manufactured and not of the management of the company/school and even the management of the company/school did not put any question to the workman during his deposition as P.W.-1 raising any challenge over these documents (Ext. 1 series). Ld. Lawyer for the workman also mentioned that the Ext. 2 series are the photographs of the staff members of the management of the company/school for the year 2008 – 09, 2009 – 10 and 2010 – 11 respectively and the management of the company/school did not raise any question denying these documents (Ext. 2 series) as were proved by the workman as P.W.-1. Ld. Lawyer for the workman has further raised that the management of the company/school has also raised a concocted story involving these documents (Ext. 2 series) in the way that these documents were not only of the staff members of the management of the company/school but also persons who were connected with the company / school and to bring whom such concocted story Ld. Lawyer for the management of the company/school has raised in his argument that the workman was the personal driver of Mrs. Ladia but during cross-examination Mrs. Ladia as a witness of the management of the company/school could not give any satisfactory reply with regard to the occupancy of the workman / applicant and Ld. Lawyer explained that it is not in doubt that a Darwan cannot specify the duty and capacity of any person's engagement with the school, and also raised that it was a duty on the part of the management of the company/school to prove that the workman / applicant was a driver of Mrs. Ladia and not of the School and Ld. Lawyer for the workman also raised that the name of the workman / applicant appears in the attendance register of the school and thus, Ld. Lawyer explained, that no prudent-men can believe that under such circumstances workman / applicant was not the employee of the school or there was no employer-employee relationship between the workman and the management of the company/school. Ld. Lawyer for the workman in his argument has explained that the documents (Ext. 3 series) clearly proved that the applicant / workman was an employee of the management of the company/school, mentioning further that the attendance register of the company/School

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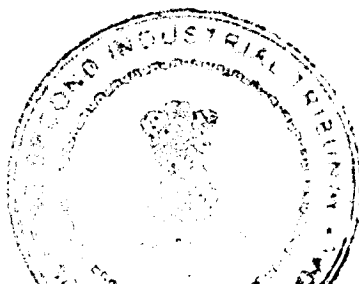
(Ext. 3) was proved without any objection from the side of the management of the company/school and this attendance register (Ext. 3) not only contains the signature of the workman but also contains the signature of other staff members of the management of the company/school, raising further that to contradict this document (Ext. 3) the management of the company/school has produced a manufactured attendance register and the management of the company also did not bring any of its employees as witness to substantiate the statement of the management, and on comparing the attendance register produced by the workman i.e. Ext. 3 and the other produced by the management of the company/school, it can be easily stated that the signatures appearing in the attendance register produced by workman i.e. Ext. 3 are genuine, and added that if for the shake of argument it is presumed that the workman manufactured the attendance register i.e. Ext. 3 then it would at all not be possible on his part to get the signatures of other / co-employees working under the management of the company/school, therefore the document produced by the applicant / workman i.e. Ext. 3 is a genuine one and it establishes that the workman / applicant had been a regular employee under the management of the company/school. Ld. Lawyer for the workman in his argument has also raised that evidences adduced by Mrs. Ladia (O.P.W.-1) cannot be taken into account as she examined herself on behalf of the management of the company/school without any authority and added that Mrs. Ladia as O.P.W.-1 also admitted that there is a managing committee for the management of the company/school and that managing committee of the management of the company/school did not authorise her i.e. Mrs. Ladia (O.P.W.-1) to depose in this case, not only that the management of the company/school filed the written statement stated to be verified allegedly by one Mr. Sandip Kr. Ladia and Smt. Ladia as O.P.W.-1 during cross-examination admitted that the signature made in the written statement filed by the management of the company/school is not of her husband and Ld. Lawyer thus raised that the written statement filed by Ld. Lawyer for the management of the company/school is not authentic and it cannot be, as a consequence, relied by the opposite party. Ld. Lawyer for the workman has also mentioned in his argument that it is not in dispute that the workman has been thrown out his employment by the management of the company/school without following compulsory legal requirement of law and also without giving any retrenchment compensation to the workman / applicant and under such circumstances the termination of services by the management of the company/school is required to be held illegal and unlawful as the management of the company/school has also failed to prove that the applicant / workman has been working gainfully elsewhere as against the evidences by workman that after termination of his service by the management of the company illegally he could not get any other employment as a source of income. Ld. Lawyer for the workman has also raised that the management of the company/school has denied existence of any employer-employee relationship between the workman and the management of the company, over which workman has adduced sufficient evidence to show that he was a workman under the management of the company/ school and raising that there is no abstract



rule or regulating such relationship Ld. Lawyer has stated that it depends upon the factual matrix of each case and referring one case law recorded in 2005 (10) SCC 792, Ld. Lawyer submitted that Hon'ble Apex Court in that case was very much pleased to hold observing that when the employee has produced some documents in support of his claim that he had been the employee under the company, and when such proof has remained unchallenged, the question of workman further proving his case that he is the workman legally does not arise and similar view was also taken by Hon'ble Apex Court in 2009 (1) 679.

Ld. Lawyer for the management of the company/school in his written argument has raised that as per written statement filed on behalf of the management of the company/school, the alleged workman / applicant Suresh Roy was never employed by management of the company/school and he did not have any employer-employee relationship with the management of the company/school and this much factum was incorporated in the written statement filed by the management of the company/school by way of amendment, and Ld. Lawyer by way of explanation has mentioned that the management of the company/school was originally housed in a rented accommodation at Howrah, Amta Road, Rajpur near 1 No. Pool, Domjoor, Howrah – 711102 near BDO office and workman Suresh Roy and his family has been residing in the same premises as tenants under common landlord and he i.e. Suresh Roy also acted as a caretaker of that premises, It is also stated that workman Suresh Roy and his family developed a cordial relation with the owner of the school and also with the other team members of the school and by virtue of that relationship, he i.e. Suresh Roy used to enjoy easy access office of the management of the company/school. It is further stated that the relationship between family of workman Mr. Suresh Roy and Smt. Vinita Ladia who is the owner of the school was so closed that infant daughter of Mrs. Ladia who used to accompany her used to be taken care of by wife / family of Suresh Roy during school hours, for which Smt. Ladia used to pay token amount of money to Suresh Roy and family of Suresh Roy for taking care of daughter of Smt. Ladia, it is stated that due to all such relationship, daughter of owner of the school Smt. Ladia and grand-daughter of Suresh Roy used to play together and after the school was shifted to its present address the grand-daughter of Suresh Roy was admitted in the school along-with the daughter of owner of the school Smt. Ladia, and due to closeness of such relationship Suresh Roy used to move in and around the school without any permission and he also developed friendly relationship with the staff members of the school but Suresh Roy was never appointed as a workman in the school at any point of time, and it is further stated in the written argument by Ld. Lawyer for the company that having taken this advantage of relationship with the owner of the school Smt. Ladia and other staff members of the school, Suresh Roy manufactured on attendance register in collusion with others only to achieve his ill-desire as in this case. Going further through the written argument filed by Ld. Lawyer for the Company / school, I find that Ld. Lawyer that discussed the oral evidences adduced by both parties along-with the exhibited

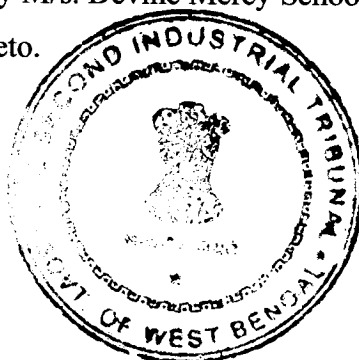
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documents and has also raised that the attendance register (Ext. 3 series) as has been proved by workman Suresh Roy as P.W.-1 with other documents i.e. envelop (Ext. 1 series) and group photograph (Ext. 2 series) in absence of any appointment letter are not sufficient to prove that Suresh Roy was an employee under the management of the company/school, adding further that the management of the company/school has challenged the genuineness of the attendance register (Ext. 3) as has been proved by workman Suresh Roy as P.W.-1 terming the same to be a manufactured one for reasons that Suresh Roy was not supposed to have copy of the attendance register (Ext. 3) and the management of the company/school has produced the original attendance register of non-teaching staff of the school, wherein name of Suresh Roy is not mentioned and the attendance record of 15.08.2009 shows that on that day the school remained closed but Ext. A shows that it was also signed by Suresh Roy and other staff, again the school remained closed during winter vacation from 25th December on word and the document Ext. 3 shows attendance of Suresh Roy and other staff, though as P.W.-1 Suresh Roy admitted that there were summer vacation, winter vacation and puja vacation in the school, further the attendance register (Ext. 3) does not bear the name of the school but the attendance register (Ext. A) contains the name of the school and all these will prove that Suresh Roy had resorted to unfair means and thus manufactured the attendance register (Ext. 3). Ld. Lawyer for the management of the company/school has further mentioned that Suresh Roy was never appointed by management of the company/school and question of his termination never arose and that cannot be any adjudication over the issues as per order of reference for non-existence of any fact requiring adjudication and as no salary used to be given to Suresh Roy by management of the company/school, the documents (Ext. 1 series) are of no use as there is no supporting document such as copy of leave application, with the addition that Suresh Roy appeared in the group photograph (Ext. 2 series) due to his friendly relationship with the owner of the school Smt. Ladia as photograph of Suresh Yadav is also found in that group photograph due to his relationship with Smt. Ladia as her driver. Ld. Lawyer for the management of the company/school also mentioned in his argument that once Suresh Roy was seeking employment but the management of the company/school could not absorb him as there was no vacancy and thus Suresh Roy was never employee under the management of the company/school and question of his termination from service does not arise. Ld. Lawyer for the management of the company/school has specifically also raised that Suresh Roy has all along been an employee of M/s. R.M. Construction under proprietorship of Sk. Lokman.

Ld. Lawyers of both sides have mentioned case laws in support of their respective arguments and this shall be discussed during the time of scrutinizing evidences.

Now I take up Issue No. 1 as to whether the termination of the service of Sri Suresh Roy by the management of the company M/s. Devine Mercy School w.e.f. 04.07.2011 is justified or not – for decision with reason thereto.



Contd. Page ...11

As has already been seen in the written statement filed by workman Suresh Roy, Suresh Roy was appointed as a darwan by management of the company/school w.e.f. 01.06.2008 at a monthly salary which is stated to be as Rs. 4000/- per month but despite repeated request by him the management of the company/school never issued any appointment letter and the management of the company/school during the tenure of service of Suresh Roy used to give him salary in cash by putting the same in an envelop after taking his signature on a voucher without issuing any sort of document to him for making payment of salary such a way but on 04.07.2011 when the petitioner / workman reported for duty, the newly appointed darwan restrained him from entering and when he wanted to know the reason for such restrain-ment by the newly appointed darwan, newly appointed darwan disclosed to him that such restrain-ment was as per direction of the principal of the school, and when he wanted to know the reason from the principal of the school, the principal of the school stated to him that his service was terminated, and even though he wrote letter to the management of the company/school requesting his re-instatement with back-wages , nothing was done by the management of the company/school, after which he submitted a letter dt. 19.09.2011 before Deputy Labour Commissioner to the Government of West Bengal at Howrah, who then sought for a comment from the management of the company/school and in the comment the management of the company/school mentioned that he was never an employee under the management of the company/school but he was merely a caretaker of the building in which the school was housed, which was denied by him by letter dt. 30.11.2011 but the dispute could not be solved during the process of conciliation proceeding.

As I have mentioned earlier, the petitioner / workman Suresh Roy in support of his contention that he was appointed as darwan by the management of the company/school w.e.f. 01.06.2008 but the management of the company/school did not give him any appointment letter despite his demand for the same has proved three sets of documents, which are envelopes (Ext. 1 series) mentioning that the management of the company/school used to pay him salary in case in envelopes after taking his signature on vouchers, photographs of staff members of the school (Ext. 2 series) asserting that he was included in those photographs as he was appointed darwan of the management of the company/school and the last one is copy of attendance register of the company (Ext. 3) asserting that his name i.e. Suresh Roy is included in the attendance register.

The petitioner / applicant Suresh Roy examined himself as P.W.-1 during hearing on merit, he deposed that he used to work in the Divine Mercy School as darwan, this school was previously located at Domjoor, near BDO office, Howrah, Amta Road but at present it is located at the present address as has been given. P.W.-1 also deposed that he joined school as darwan on 01.06.2008 the school authority used to give him salary direct in the school envelop and he produced the envelop which were marked Ext. 1 series without any objection as found in his deposition. P.W.-1 also deposed that every year the school authority used to take group photograph of the staff of the school and then he produced three numbers of group photographs deposing further that he is also included in the group photograph and these photographs were



then marked Ext. 2 series without any objection as I find from his deposition. P.W.-1 i.e. the workman also deposed that the school authority did not give him any pay slip, P.W.-1 used to sign in the attendance register of the school, and then he produced the copy of the attendance register of the school and deposed that these are the copies of attendance register of the staff of the school, it also bears his signature and then the copies of attendance register were marked ext. 3 series and the deposition shows that during admitting the copies of these attendance register of the staff of the school as Ext. 3 series, no objection was raised and it was marked exhibited. P.W.-1 also deposed that he was terminated from service by the school authority on and from 04.07.11, the school authority did not give him any termination letter but they verbally informed him about his termination, P.W.-1 also deposed that after that he gave a letter to the school authority with a request to reinstatement in his service and produced copy that letter of request for reinstatement and deposed that it is that copy of that letter as was written by him to the school authority, it was then marked Ext. 4, P.W.-1 also produced copy of the postal receipt of the letter and it was marked Ext. 4/1, P.W.-1 also deposed that he sent the letter i.e. Ext. 4 to the school authority by registered post with A.D. card but A.D. card was not returned by the postal department, P.W.-1 also deposed that after that he gave a letter to the postal department and produced copy of that letter dt. 19.03.2013, it was marked Ext. 5 and P.W. 1 also deposed that reply was given by postal department and produced the reply of the postal department, it was marked Ext. 5/1. P.W.-1 also deposed that after receiving his letter for request for reinstatement (Ext. 4), the school authority did not give him any reply, P.W.-1 also deposed that after that he sent a letter to the Deputy Labour (DLC), Howrah and produced a copy of that letter, it was marked Ext. 6, P.W.-1 also deposed that the school authority made a reply against letter dt. 25.10.2011 to the Assistant Labour Commissioner, Howrah and produced copy that letter of reply by school authority, it was then marked Ext. 7. P.W.-1 also deposed that a copy of letter dt. 25.10.2011 was also given to him i.e. P.W.-1 and then he i.e. P.W.-1 sent reply to Assistant Labour Commissioner against letter dt. 25.10.2011 and produced a copy of reply he gave to ALC dt. 30.11.2011, it was then marked Ext. 8. P.W.-1 also deposed that the dispute was not settled during the conciliation proceeding, his monthly salary was Rs. 4000/- while he had been in his service. P.W.-1 denied that he had not been an employee under the school and also denied that he had been working at the company M/s. R.M. Construction. P.W.-1 also deposed that the school authority did not issue him any show cause or charge-sheet prior to his termination and also deposed that no enquiry was held prior to his termination and also deposed that no retrenchment compensation was also given to him. P.W.-1 also deposed that he prays for reinstatement in his service with consequence benefits / other relief as prayed for.

Thus, from the deposition of P.W.-1 it is coming out that P.W.-1 has deposed all in line with the contention of his statement of claim / written statement. P.W.-1 was cross-examined by Ld. Lawyer for the company / school, during cross-examination as per question to him by Ld. Lawyer for the management of the company/school P.W.-1 deposed that he knows Miss

Ligia a director of a company and he knows the rules and regulation of the school as he had been working in the company on and from 01.01.2008, he also stated that in case of taking leave, leave application was required to be filed in the school but there was no prescribed form for such leave application. P.W. also stated in cross that as he had been in the service, he knew / know / knows the teachers and other staff of the school, at that stage a copy of attendance register was shown to the P.W. by Ld. Lawyer for the management of the company/school, who then stated that it contains some signature of teaching staff but immediately after that he stated that he did know the signatures of other staff excepting the one of himself. During cross-examination P.W.-1 further revealed that when he (P.W.-1) had entered in the school, there was no scheme for E.S.I. in the school. On being questioned by Ld. Lawyer for the management of the company/school on the copy of the attendance register which was marked Ext. 3 on the basis of evidence of P.W.-1 without any objection from other side, P.W.-1 clearly stated that he made xerox copy of the attendance register (Ext. 3) in the month of July, 2011 and the attendance register of the company (Ext. 3) of the staff is the official record of the school and that time he was darwan of the school and his duty was at the gate of the school, he also stated that the office room of the teaching and non-teaching staff is about 15/ 20 meters away from the gate where he used to remain for his duty and the attendance register of the company (Ext. 3) of the staff used to be kept where he (P.W.-1) used to remain on duty and he i.e. P.W.-1 made xerox of the attendance register of the company in a xerox-machine shop which is situated 2 Km. away from the school and P.W.-1 made xerox of the attendance register of the company (Ext. 3) on 1st July, 2011, and after xerox was done, he kept the attendance register of the company in the go-down, and this P.W.-1 denied a suggestion put to him by Ld. Lawyer for the management of the company/school that P.W.-1 in collusion with other staff of the school manufactured the attendance register of the management of the company/school. In cross-examination the P.W.-1 further stated that after 2011 he was not engaged anywhere and he does not / did not know one Mr. Dilip Kr. Ghosh. One xerox copy of attendance register of the company from April, 2008 to March, 2011 was placed to P.W.-1 on dock and P.W.-1 failed to identify that attendance register of the company and it was made X for reference on behalf of management of the company/school. In cross-examination Ld. Lawyer for the company wanted to know from the P.W.-1 as to if the P.W.-1 has been an workman in M/s. R.M. Construction Company and P.W.-1 replied that he never worked M/s. R.M. Company, after that a copy of attendance register of M/s. R.M. Construction company was placed before him during his cross-examination on dock and then P.W.-1 stated that his name has transpired in the copy of that attendance register but he denied putting any signature on that attendance register of M/s. R.M. Construction Company and it was made Y for reference on behalf of the company, at that stage Ld. Lawyer for the company put a suggestion to the P.W.-1 that he has been working in M/s. R.M. Construction company but P.W.-1 denied it. P.W.-1 also stated in cross that after February, 2011 he was not employed anywhere and in case of necessity he would be able to show his bank account to this



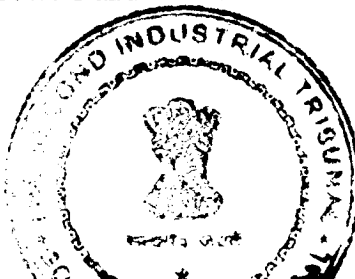
Court for transactions therein after February, 2011. P.W.-1 in his cross-examination has also stated that he did not / does not know as to how to read and write in English and for that reason he cannot say contention of letters (Ext. 4, Ext-5 & Ext. 6), and also stated in cross that he did not take any instruction from anyone before making correspondence with the management of the company/school but he has taken instruction from his lawyer for making correspondence with the management of the company/school. On being questioned by Ld. Lawyer for the management of the company/school to P.W.-1, P.W.-1 also stated in cross that he has not worked at any point of time in Diamond Security Service. P.W.-1 also stated in cross that he got himself married at the age of 20 but he cannot say his own age and also cannot say the age of his daughter. P.W.-1 also stated in cross that he knows the rules and regulations of the school where he used to work and Sunday, Saturday are holidays in the school in addition to calendar holidays, and there are also summer vacation, winter vacation, puja vacation in the school. P.W.-1 stated in cross he used to reside in the school, his residential house is in the first floor of the building and the school was in the 3rd floor of the building. In cross-examination P.W.-1 also stated that in the attendance register of the school his name and surname would appear including that of other non-teaching staff of the school, he i.e. P.W.-1 worked in the school in the month of July, 2011 also and his service was terminated w.e.f. 04.07.2011, when his salary per month was Rs. 4000/-. P.W.-1 denied a suggestion put to him by Ld. Lawyer for the management of the company/school that he was not terminated from service by the management of the company/school. In cross-examination P.W.-1 also deposed that he did not know the location of M/s. Maa Tara Engineering Shop. P.W.-1 also stated in cross that the school was in the first floor and second floor of the building and P.W.-1 cannot say as to on which date he surrendered his tenancy and Mr. Shyamal Mukherjee was his land lord and Mr. Sudhir Mukherjee is the son of that land lord, and he denied a suggestion put to him by Ld. Lawyer for the management of the company/school that he received Rs. 50,000/- in cash on surrendering his tenancy from Mr. Shyamal Mukherjee. At that stage Ld. Lawyer for the management of the company/school put a suggestion to P.W.-1 that P.W.-1 was never employed by the management of the company/school and P.W.-1 denied the same. In cross-examination P.W.-1 stated that he knew Mrs. Vinita Ladia, she was the principal of the school at that relevant period and her residence was in Kolkata and she would come to the school in her own car driven by driver Sri Suresh Yadav who appears in the photograph (Ext. 2), and P.W.-1 denied again a further suggestion that he was not the employee of the school, and that he was employed elsewhere and also denied a suggestion that the attendance register (Ext. 3) that has been filed by P.W.-1 is a manufactured for the purpose of this case.

Total number of documentary evidences are 8, Ext. 1, Ext. 1/1 are copy of cover of letters / envelop, on each of which the name of the O.P. School is mentioned at the left side and name of the P.W.-1 is found to be hand-written on the right side, Ext. 2 series are photographs with the name of the O.P. School mentioned thereon for the year 2008-09 it being the admitted



position that photograph of applicant / workman is also included in the group photograph (Ext. 2 , Ext. 2/1) is another group photograph for the year 2009-10 with the name of the school mentioned thereon and it is also the admitted position that photograph of the applicant / workman is also included in that group (Ext. 2/1), Ext. 2/2 is another group photograph for the year 2010-11 and the name of the school is also mentioned therein, it contains photographs of 8 persons including that of the applicant / workman, it being the admitted position. Ext. 3 is the attendance register of the management of the company/school for non-teaching staff starting from the month of April, 2008 at first page, month of May at 2nd page and so on, total no. of pages being 14, each being for a month in a succeeding way and admittedly the name of the applicant / workman is also included in the attendance register (Ext. 3) along-with others namely Minu-masi, Driver Suresh Yadav and Kuku. Ext. 4 is a letter from the workman Suresh Roy to M/s. Devine Mercy School i.e. of his school mentioning that the management of the company/school illegally terminated permanent service of the applicant / workman w.e.f. 04.07.2011 without affording an opportunity to him and it was done in total contravention of law mentioning that applicant / workman had been working in the management of the company/school as darwan after he was appointed on and from 01.06.2008 and by this letter (Ext. 4) the management of the company/school was requested to allow applicant / workman to do his duty and to pay his dues, Ext. 5 is a letter addressed to Post Master of Treasury Building, Calcutta by Suresh Roy, Ext. 5/1 is the letter by Post Master of Treasury Building post office to applicant / workman, Ext. 5 and Ext. 5/1 relates to a matter of complaint regarding non-receipt of postal acknowledgement by applicant / workman, Ext. 6 is a letter by applicant / workman to Deputy Labour Commissioner, Howrah mentioning that the management of the company/school without affording an opportunity to him i.e. applicant / workman terminated his service w.e.f. 04.07.2011 unlawfully and illegally and by this letter prayer was made for re-instatement with back wages, Ext. 7 is a letter by management of the company/school to Assistant Labour Commissioner, Howrah mentioning harassment and anxiety caused by Suresh Roy, and Ext. A is found to be a comment submitted by workman / applicant before Assistant Labour Commissioner, Government of West Bengal, Howrah against the comment (Ext. 7) submitted by management of the company/school before Assistant Labour Commissioner, Government of West Bengal, Howrah.

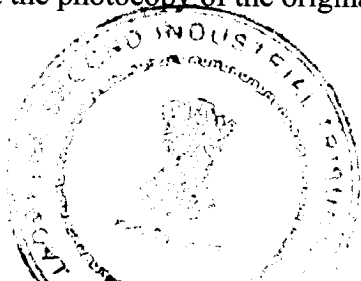
Thus from the evidences of workman / applicant (P.W.-1) it is coming out that workman Suresh Roy was appointed in the school of the management of the company/school as darwan on and from 01.06.2008 at a monthly salary of Rs. 4000/- and he used to be given salary by the management of the company/school in envelop (Ext. 1 series) after taking his signature on a voucher and the management of the company/school did not give him any appointment letter and in the capacity of darwan in the school he also figured in the group photographs of the school staff (Ext. 2 series) and he would also signed the attendance register of the school that was proved on the evidences of P.W.-1 and marked Ext. 3 without any objection from side of



the management of the company/school. Workman / applicant (P.W.-1) also deposed that his service was terminated by the management of the company/school w.e.f. 04.07.2011 but the school authority did not issue to him any show cause or charge-sheet prior to his termination and no enquiry was also held prior to his termination and no refreshment compensation was also given to him.

As against all these Mrs. Vinita Ladia as O.P.W.-1 on behalf of the management of the company/school deposed that she (O.P.W.-1) is the founder of the management of the company/school which was earlier situated at Howrah, Amta opposite to B.D.O. office in her rented house but at present it is at Howrah, Amta Road. O.P.W.-1 also deposed that petitioner Suresh Roy as he used to reside in the same building with his family as a tenant and for that reason he had easy access to the school office and school class-rooms as there was a common passage for entry. O.P.W.-1 also deposed that she had a very good relation with Suresh Roy and his family members. O.P.W.-1 also deposed the she used to run the administration of the school and also take classes and she (O.P.W.-1) used to carry her infant daughter of about 5 months of age and Suresh Roy/ workman and his family members used to take care of her infant daughter and grand-daughter of Suresh Roy who was also of same age as that of daughter of O.P.W.-1 used to play together and wife of workman / applicant used to give food to daughter of O.P.W.-1 and also take care of her and workman / his family used to prepare lunch for her (O.P.W.-1) and for this she i.e. O.P.W.-1 used to pay some money to him. O.P.W.-1 further deposed that she never employed Suresh Roy in her school and workman / Suresh Roy became acquainted with the teaching and non-teaching staff of the school. O.P.W.-1 also deposed that he used to maintain attendance register teaching and non-teaching staff of the school and name of Suresh Roy was not in that attendance register and after seeing the attendance register as was produced by workman / applicant i.e. Ext. 3. O.P.W.-1 deposed that it was i.e. Ext. 3 was not the attendance register of her school, and then a copy of attendance register was shown to the O.P.W.-1 and O.P.W.-1 deposed that it was attendance register of the school and against this Ld. Lawyer for the workman raised objection and it was marked Ext. A with objection, with the addition that O.P.W.-1 further deposed that the attendance register (Ext. A) after objection did not contain the name of applicant / workman. O.P.W.-1 also deposed that O.P.W.-1 never paid a salary to Suresh Roy in an envelop and O.P.W.-1 denied to have given any salary to the applicant in the envelop (Ext. 1 series). Regarding group photograph (Ext. 2 series), the O.P.W.-1 deposed that the photographs (Ext. 2 series) included that of Suresh Roy/applicant and further deposed that it is the practice of the school that the end of each session photograph of the staff attached with this school are taken and Suresh Roy was also included in the group since Suresh Roy used to look after daughter of O.P.W.-1 but Suresh Roy never asked for employment. O.P.W.-1 also deposed that attendance register of the school (Ext. A) was misplaced, I find that against this Ld. Lawyer for the workman raised objection as recorded in the deposition, O.P.W.-1 also deposed that Ext. 3 is not the photocopy of the original attendance register of the school,

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O.P.W.-1 also deposed that she thought that attendance register (Ext. 1) was stolen but it was subsequently found. O.P.W.-1 also deposed that non-teaching staff teaching staff of the school are cover by P.F. & E.S.I. O.P.W.-1 also deposed that Suresh Roy is employed at different places and O.P.W.-1 knows Sujauddin Anish Daftory. O.P.W.-1 proved one money receipt (Ext. B) adding that Suresh Roy was never terminated from service and also stated that Suresh Roy is employed in M/s. R.M. Construction of Mr. S.K. Lokman and produced another document deposing that it is handwriting of Mr. Lokman but against this deposition, Ld. Lawyer raised objection and then document marked ext. C with objection. In cross-examination O.P.W.-1 admitted that the management of the company/school did not informed the police station regarding missing of attendance register (Ext. A). O.P.W.-1 in cross-examination admitted that the management of the company/school belongs to her i.e. O.P.W.-1 and there is also one managing committee for the school and earlier one Mr. RAjib Chakraborty was the Principal of the school and O.P.W.-1 is the present education director of the school. O.p.W.-1 also deposed that the written statement filed in this case on behalf of the management of the company/school was signed by her husband with the addition that if the signature on the written statement filed on behalf of the management of the company/school is of her husband or not. O.P.W.-1 admitted that she cannot remember if there was any form for leave application during the period 2008-2011 in the school or not. O.P.W.-1 also admitted that sometime she i.e. O.P.W.-1 used to keep the key of the school with the applicant Suresh Roy though there were other tenants and she used to do so on being instructed by land lord. O.P.W.-1 also admitted that when the school was shifted to the new premises, applicant / workman and his family used to look after daughter of O.P.W.-1 and only applicant / workman used to come to the new premises of the for this purpose. O.P.W.-1 also admitted she submitted comments before Labour Commissioner at Howrah. O.P.W.-1 also admitted that granddaughter of Suresh Roy is a student of her school and O.P.W.-1 would not charge any admission or other fees from Suresh Roy who wanted concession. O.P.W.-1 also admitted that in the attendance register (Ext. A) arrival and departure time are not mentioned but in the attendance register (Ext. 3) arrival and departure time is mentioned, with further admission that she i.e. O.P.W.-1 cannot remember if she i.e. O.P.W.-1 handed over documents (Ext. 2/2) to Suresh Roy or not with further admission that no domestic enquiry was held against Suresh Roy and O.P.W.-1 denied a suggestion put to her by the Ld. Lawyer for the applicant / workman that she / O.P.W.-1 charged fees at concessional rate for the studies of grand-daughter Suresh Roy in her school as Suresh Roy was a workman under the management of the company/school and also denied a suggestion that the attendance register produced by O.p.W.-1 is a manufactured one.

From the documentary evidences (i.e. attendance register, Ext. A with objection) shows that it contains names of some persons excluding the name of applicant / workman, and it is found that this is the only document filed on behalf of the management of the company/school, it was marked Ext. A with objection and it is found that no other evidence was adduced on behalf

of the management of the company/school to clear the objection, it is also found that management of the company/school also filed xerox copy of attendance register mentioning name of R.M. Construction which were made X for reference / identification but management of the company/school did not adduce any evidence to get it admitted into evidence as exhibited document.

Thus from the evidences of O.P.W.-1 Mrs. Ladia it is coming out that though on behalf of the management of the company/school written statement was filed, it was signed by the husband of O.P.W.-1 but after seeing the written statement during her examination as O.P.W.-1 she stated that she cannot ascertain if the signature of her husband on the written statement is of her husband or not, and thus the authenticity of written statement filed on behalf of the management of the company/school has remained questionable. As per deposition of O.P.W.-1 applicant / workman was a tenant in the building in which the school was situated earlier and as a result O.P.W.-1 used to get help from applicant / workman and his wife for taking care of her infant child during school hours for which O.P.W.-1 used to pay to applicant / workman and applicant / workman/ his wife also prepared food i.e. lunch for her but the management of the company/school never engaged applicant / workman as darwan in the school and the documents i.e. the attendance register filed by workman (Ext. 3) is a manufactured one and it is not the original attendance register of the management of the company/school but the attendance register (Ext. A) filed by O.P.W.-1 is the original attendance register of the school and the photo of applicant / workman Sri Suresh Roy in the group photographs of the management of the company/school i.e. Ext. 2 series is only for friend relation of Sri Suresh Roy with her i.e. O.P.W.-1 and also for the reason that Suresh Roy and his wife used to take care of her daughter and also prepared lunch for her during school hours. The management of the company/school has also raised through evidences of O.P.W.-1 vis a vis written statement filed by the applicant / workman that Suresh Roy has been a workman under M/s. R.M. Construction company of one MR. Lokman, M/s. Diamond Security Service and also of M/s. Maa Tara Engineering Workshop.

Now whether the applicant / workman was the service-man of any of the three companies i.e. M/s. R.M. Construction company of one MR. Lokman, M/s. Diamond Security Service and also of M/s. Maa Tara Engineering Workshop or not without being the service-man under the management of the company/school is to be decided on the basis of adduced evidences by both sides. I have already mentioned the arguments mentioning the written notes of argument filed by both sides. Ld. Lawyer for the workman has raised his argument that applicant / workman had not been working in any of the three companies as have been mentioned and raised by Ld. Lawyer for the management of the company/school during cross-examination of the applicant / workman as P.W.-1 vis a vis the evidences adduced by the Principal of the management of the company/school and all these have been raised by the management of the company/school without any basis. Ld. Lawyer for the workman has further raised that to support such factum



that the workman has been working in the above-mentioned three companies, Ld. Lawyer has filed a xerox copy of attendance register of M/s. R.M. Construction Company and therefore as it was asserted by Ld. Lawyer for the management of the company/school, it was legally bound to prove that assertion beyond all reasonable doubt but despite getting opportunity, Ld. Lawyer for the management of the company/school did not call for any witness to prove the attendance register of M/s. R.M. Construction Company, about which Ld. Lawyer for the company has asserted that it was owned by one Mr. Lokman, therefore, the management of the company/school was in a position to call for Mr. Sk. Lokman as witness but it did not do so, and the O.P.W.-1 also could not say anything properly about the attendance register of M/s. R.M. Construction Company and when it was produced before the Court, it was made X for identification without being marked as an exhibited document. Against all these Ld. Lawyer for the management of the company/school has raised that the applicant / workman had been working in M/s. R.M. Construction Company, in M/s. Diamond Security Service and also in M/s. Maa Tara Engineering Workshop and on behalf of the management of the company/school the copy of the attendance register has been filed and even though it was made X for identification, yet the Court should consider it as a proper document as it contains the name of the applicant / workman showing therein that the workman had sign the same i.e. X for identification.

Going through the evidences of the applicant / workman i.e. P.W.-1, P.W.-1 clearly deposed that he never worked in any of this companies i.e. M/s. R.M. Construction company of one MR. Lokman, M/s. Diamond Security Service and also of M/s. Maa Tara Engineering Workshop and added that his service as a darwan in the management of the company/school was a permanent service and before coming to this permanent service under the management of the company/school, he would work under a contractor but now he cannot say the name of that contractor. O.P.W.-1 Smt. Ladia in the capacity of Principal of the management of the company/school and also in the capacity of Director of Education of the management of the company/school only stated that she came to know from Mr. Sk. Lokman that applicant / workman has been working under him. There is no other evidence in support of the assertion by the management of the company/school that applicant / workman has been working in three companies i.e. M/s. R.M. Construction company of one MR. Lokman, M/s. Diamond Security Service and also of M/s. Maa Tara Engineering Workshop. Going through the written statement filed by the management of the company/school, it is coming out that no particulars of all these three alleged companies i.e. M/s. R.M. Construction company of one MR. Lokman, M/s. Diamond Security Service and also of M/s. Maa Tara Engineering Workshop have been mentioned. Ld. Lawyer for the company has asserted that M/s. R.M. Construction Company belongs to one Mr. Sk. Lokman. It is not necessary to mention here that the management of the company/school has asserted the at the workman has been a service holder in the companies i.e. M/s. R.M. Construction company of one MR. Lokman, M/s. Diamond Security Service and also



of M/s. Maa Tara Engineering Workshop and therefore it is the duty on the part of the management of the company/school to clearly prove the same and the most easy way was to call for someone from any of the companies i.e. M/s. R.M. Construction company of one MR. Lokman, M/s. Diamond Security Service and also of M/s. Maa Tara Engineering Workshop including Mr. Lokman. But going through the case record I find that on behalf of the management of the company/school no step at all was taken to call anyone from any of those companies i.e. M/s. R.M. Construction company of one MR. Lokman, M/s. Diamond Security Service and also of M/s. Maa Tara Engineering Workshop. Ld. Lawyer for the management of the company/school filed a copy of attendance register stated to be of M/s. R.M. Construction Company, but did not adduce any evidence in support of the same and then it was made X for identification and it was not admitted into evidences as exhibited documents. Further it is the assertion by the management of the company/school that MR. Lokman is the proprietor of M/s. R.M. Construction Company but admittedly the management of the company/school did not call for Mr. Lokman as a witness. Further going through the copy of the attendance register made X for identification it is found that there are other names such as Dilip Ghosh, M.A. Halim, Tamal Kr. Ghosh and further admittedly the management of the company/school never took any step to call for any of them as a witness but did not do so. Similarly, no such step was taken by the management of the company/school to call for anyone from the companies namely M/s. Diamond Security Service and also of M/s. Maa Tara Engineering Workshop. Now question arises as to what is the reason behind not taking any step on the part of the management of the company/school to call for anyone from any of these companies i.e. M/s. R.M. Construction company of one MR. Lokman, M/s. Diamond Security Service and also of M/s. Maa Tara Engineering Workshop to assert that applicant / workman has been working in all these companies and going through the deposition of Principal of the school Smt. Ladia (O.P.W.-1) and also from elsewhere, nothing is coming in support of such assertion by the management of the company/school and all these have been supporting the argument by Ld. Lawyer for the workman that this X for identification has been purposefully created falsely to pre-empt the workman from claiming his genuine position that the workman was appointed as darwan in permanent capacity by the management of the company/school and nothing else. As already mentioned the applicant / workman clearly deposed that he had never been service holder in any of the companies i.e. M/s. R.M. Construction company of one MR. Lokman, M/s. Diamond Security Service and also of M/s. Maa Tara Engineering Workshop and I find that Ld. Lawyer for the company did not like to cross-examine in detail over this much evidence of the P.W.-1 and there is also nothing in the evidence of O.P.W.-1 to distort this evidence as given by applicant / workman as P.W.-1. Thus, the management of the company/school has miserably failed to bring even an iota of evidence in support its assertion that applicant / workman Suresh Roy has been working in all these companies i.e. M/s. R.M. Construction company of one MR. Lokman, M/s. Diamond Security Service and also of M/s. Maa Tara Engineering Workshop and



Contd. Page ...21

it is established by evidence that the management of the company/school has failed in its attempt to establish that applicant / workman has been a service holder in any of these companies i.e. M/s. R.M. Construction company of one Mr. Lokman, M/s. Diamond Security Service and also of M/s. Maa Tara Engineering Workshop and the submission of Ld. Lawyer for the workman that the X for identification is nothing but a falsely created document is found to have been substantiated without being brushed aside.

As already seen, as per written statement filed by the workman, he was appointed as darwan by the management of the company/school w.e.f. 01.06.2008 for performing duty in the office / school but in spite of repeated request, the management of the company/school did not issue any written appointment letter to him and as per his written statement, the management of the company/school did so for safeguarding itself and during the working tenure by the applicant / workman in the management of the company/school, he performed his duties diligently, honestly without any black spot. The applicant would receive salary from the management of the company/school by putting his signature on vouchers as would be prepared by the management of the company/school but never issued any paper for receipt of salary to him. But all on a sudden on 04.07.2011 when he reported for duty, he was restrained by the newly appointed darwan who also stated to the petitioner / workman that he was doing so on being directed by the Principal of the management of the company/school, and then when he went to the principal of the management of the company/school, the principal informed / stated to him that he was terminated from service, after that he wrote letter to the management of the company/school raising protest against such illegal, unlawful arbitrary act on the part of the management and also demanded reinstatement in his service with all benefits but the management of the company/school did not make any reply to him and then he wrote a letter dt. 19.09.2011 to the Deputy Labour Commissioner to the Government of West Bengal, Howrah requesting his intervention. The Deputy Labour Commissioner then call for comments from the management of the company/school and on 25.10.2011 the management of the company/school made a written comment denying him to be an employee under the management of the company/school but in reply dt. 30.11.2011 the workman / applicant raised that the contention in the comment made by management of the company/school is false and asserted that he had been working under the management of the company/school as a darwan at a monthly salary of Rs. 4000/- but the dispute could not be solved during the process of conciliation proceeding due to adamant attitude on the part of the management of the company/school. As P.W.-1 applicant / workman Suresh Roy deposed that he would work in the management of the company/school namely Devine Mercy School as darwan and he joined as darwan in that school on 01.06.2008. P.W.-1 also deposed that the school authority used to give him salary in school envelop and proved the copies of envelop (Ext. 1 series). P.W.-1 also deposed that every year the school authority used to take group photograph of the staff of the school and proved photographs for three years (Ext. 2 series) and also deposed that the group photographs (Ext. 2 series) also

Contd. Page ...22



included him. P.W.-1 also deposed that the school authority did not give him any pay slip and P.W.-1 used to sign in the attendance register of the school and P.W.-1 produced the copy of the attendance register deposing further it to be the attendance register of the staff and it also bears his own signature and then the attendance register was marked Ext. 3. P.W.-1 also deposed that he was terminated from his service by the school authority on and from 04.07.2011 by the school authority did not give him any termination letter but only verbally informed him about his termination. After that, P.W.-1 further deposed, he gave a letter to the school authority with a request for his reinstatement in his service and produced that letter during his recording of evidences, it was marked Ext. 4 and the postal receipt of that letter was marked Ext. 4/1, mentioning further that he sent a letter i.e. Ext. 4 by registered post but the A.D. card was not returned and then he gave a letter to the postal department and produced the copy of that letter, it was marked Ext. 5 and postal department made a reply dt. 17.06.2013, it was marked Ext. 5/1. P.W.-1 also deposed that the school authority did not give him any reply against his letter (Ext. 4) requesting his reinstatement, and P.W.-1 further deposed that after that he sent a letter to the D.L.C. i.e. Deputy Labour Commissioner, Howrah and produced the copy of that letter, it was marked Ext. 6. P.W.-1 also deposed that the school authority made a reply against his letter dt. 25.10.2011 to Assistant Labour Commissioner, Howrah and produced a copy of that letter as was served upon him, it was made Ext. 7. P.W.-1 also deposed that he then gave a reply to Assistant Labour Commissioner against the letter dt. 25.10.2011 filed by the school authority and he produced a copy of reply of letter dt. 31.11.2011 as was given to Assistant Labour Commissioner, Howrah, it was marked Ext. 8. He also deposed that the dispute was not settled during conciliation proceeding. P.W.-1 also deposed that his monthly salary of Rs. 4000/-. P.W.-1 also denied that he was not the employee of the school and he also deposed that the school authority did not issue to him any show cause or charge-sheet prior to his termination and no enquiry was held against him prior to his termination and he was also not given any retrenchment compensation. He also deposed that he prays for reinstatement in his service with other relief.

Thus, as per evidence of P.W.-1 his documentary evidences are Ext. 1 to Ext. 8. As per deposition of P.W.-1, the school authority would give him salary in envelop containing the name of the school i.e. Ext. 1 series. Ext. 1 shows that it contains the name of the O.P. Company/school printed on it and name of this applicant / workman is in handwriting and Ext. 1/1 also contain the name of the school printed thereon with the name of the applicant / workman handwritten thereon. I also find from the deposition of P.W.-1 that these documents i.e. Ext. 1 series was proved by the applicant / workman while he was deposing as P.W.-1 but Ld. Lawyer for the management of the company/school did not raise any objection against these documents i.e. Ext. 1 series, it is also the deposition of P.W.-1 that the school authority used to give him money in case after taking his signature on vouchers but the school authority did not give him any salary slip. Going through the cross-examination of P.W.-1 by Ld. Lawyer for the management of the company/school, I find that Ld. Lawyer for the management of the

company/school did not put any question to the P.W.-1 challenging the authenticity of these documents in the way that the school authority would give salary to P.W.-1 in these envelopes in cash after taking signature on vouchers, even though the witness of the management of the company/school Smt. Ladia as O.P.W.-1 deposed that the school authority never paid any salary to the P.W.-1 in envelopes, Ld. Lawyer for the management of the company/school also did not raise any challenge mentioning that / by putting any question that the envelopes i.e. Ext. 1 series are not of school authority and the writing of the name of the applicant / workman thereon (Ext. 1 series) with pen is not of anyone of the school authority, thus the authenticity of the documents i.e. Ext. 1 series is not under challenge by the Ld. Lawyer for the management of the company/school.

Further there is also no challenge on the documents i.e. photographs as has been produced and proved by applicant / workman as P.W.-1 as marked Ext. 2 series. Ext. 2 contains the name of the school and the photograph (Ext. 2) further shows that the group photograph is of the staff of the school for the period 2008-09 and it also includes the photograph of the applicant / workman. Ext. 2/1 is the photograph with the name of the school mentioned thereon, it is for the period 2009-10 and it also includes the photograph of applicant / workman, Ext. 2/3 is another photograph of the staff of the school for the year 2009-10 having name of the school printed thereon and it also includes the photograph of applicant / workman. it is the deposition of workman as already seen as he was the service holder in the O.P. Company /school, he was included in the photographs i.e. Ext. 2series, and I find that Ld. Lawyer for the management of the company/school did not raise any challenge against these documents (Ext. 2 series) during cross-examination of the applicant / workman as P.W.-1 and Ld. Lawyer for the management of the company/school also did not put any question during cross-examination of he P.W.-1 by him that the applicant / workman Suresh Roy was included in those photograph due to his cordial relation with the Principal of the school Smt. Ladia i.e. O.P.W.-1 only for his good relation with the Principal of the school i.e. O.P.W.-1 but not as a service holder in the management of the company/school, and I find from the deposition of P.W.-1 that these photograph was marked as exhibited (Ext. 2 series) without any objection by Ld. Lawyer for the management of the company/school, even though it is within the knowledge of the Ld. Lawyer for the management of the company/school that as per evidence of P.W.-1, P.W.-1 claimed that management of the company/school included him i.e. P.W.-1 in the group photograph (Ext. 2 series) of the school in the capacity of his service in the O.P. Company /school as a darwan.

Further the applicant / workman as P.W.-1 has proved the attendance register of the school, it was marked Ext. 3 during his examination-in-chief and Ld. Lawyer for the management of the company/school did not raise any sort of objection against bringing this evidence into record, and in connection with this document i.e. Ext. 3, P.W.-1 deposed that it is the attendance register of the non-teaching staff of the school and it also includes his name and signature thereon. During cross-examination of P.W.-1 by Ld. Lawyer for the management of



the company/school, P.W.-1 stated that while he had been in service in the O.P. School he would know the teachers and non-teaching staff of the school, and at that time there was no scheme of E.S.I. in the school, P.W.-1 also stated in cross that he had made xerox copy of the attendance register (Ext. 3) in the month of July, 2011, the attendance register of the staff of the school (Ext. 3) is the official record of the school, the attendance register of the staff used to be kept at a place where P.W.-1 used to remain on duty in the school and P.W.-1 made xerox copy of the attendance register (Ext. 3) in a xerox-machine-shop which is situated 2 km from the school, P.W.-1 also stated in cross that on 01.07.2011 he made the xerox copy of the attendance register, I find that at this stage of cross-examination of P.W.-1, Ld. Lawyer for the management of the company/school put a suggestion to the P.W.-1 that P.W.-1 has manufactured the attendance register (Ext. 3) in collusion with the staff of the school.

At that stage of cross-examination of the P.W.-1, Ld. Lawyer for the management of the company/school showed another two xeroxed copies of attendance register for the period from April, 2008 to March, 2011 to the P.W.-1 and P.W.-1 stated in cross that signatures made on that attendance register are not known to him and then this two copies of attendance register were made X for identification. During cross-examination P.W.-1 also stated that the attendance register of the school (Ext. 3) contains his name and his surname with the names of other non-teaching staff of the school and P.W.-1 worked in the office/ school in the month of July, 2011 but his service was terminated on 4th July, 2011. P.W.-1 also denied a suggestion put to him by Ld. Lawyer for the management of the company/school that the attendance register proved by P.W.-1 (Ext. 3) is a false document and he manufactured the same for the purpose of the case.

I have already mentioned the case raised by management of the company/school in his written statement, though the written statement has come into controversy in the way that it is the argument by Ld. Lawyer for the workman / applicant that the witness of the management of the company/school Smt. Ladia as O.P.W.-1 deposed clearly that there is a managing committee of the school and P.W.-1 has not become able to produce any letter of authority enabling her to appear as a witness on behalf of the management of the company/school and also argued that O.P.W.-1 admitted that the written statement filed by the management of the company/school was signed by her husband but during her examine as O.P.W.-1, she clearly admitted that she i.e. O.P.W.-1 cannot ascertain if the written statement filed by on behalf of the management of the company/school was really signed by her husband or not. Ld. Lawyer for the management of the company/school raised that this matter is of not much important. Going through the evidences of Smt. Ladia as O.P.W.-1, I find that she admitted that there is one managing committee in the school, she cannot remember the number of members of the managing committee at the present time, in the past the managing committee of the school comprised of her husband and herself, when the school was started it was not affiliated to any board and when the affiliation for any board was processed, there was a principal in the school and that principal took up the matter of affiliation for all purposes and Mr. Rajib Chakraborty is the principal of



the school, Mr. RAjib Chakraborty took over charge as principal of the school in 2011 and at present she i.e. O.P.W.-1 is the education director of the school and not a part of the managing committee and she i.e. P.W.-1 has not produced the authority letter. O.P.W.-1 also admitted in cross that the written statement was signed by her husband, but she i.e. O.P.W.-1 is not sure if the signature of husband on the written statement is in really or not, the verification in the written statement appeared to O.P.W.-1 to have been signed by her husband but the signature shows that it was not the signature of her husband and O.P.W.-1 also admitted that her husband at that time of her examination as witness was present in the Court. But admitted Ld. Lawyer for the management of the company/school did not call husband of the O.P.W.-1 to appear as a witness to show if the written statement filed on behalf of the management of the company/school was really a written statement of the management of the company/school or not, and it could not be ascertain from the evidences as to why Ld. Lawyer for the company did not take any proper step to ascertain as to whether the written statement filed on behalf of the management of the company/school was really a written statement on behalf of the management of the company/school or not and the reason being best known to the Ld. Lawyer for the management of the company/school. Thus, as has been raised by Ld. Lawyer for the workman that the authenticity of the written statement filed by / on behalf of the management of the company/school is in question.

For recapitulation it is to mention that the stance of the management of the company/school is that previously the office/ school was situated in the building in which the applicant / workman would reside with his family as a tenant and at the time he was also the caretaker of the building and the O.P.W.-1 Smt. Ladia in the capacity of principal of the school would come to school and would also take classes and she would come / attend school with her baby in her lap and she gradually became acquainted with the applicant / workman and his family, who would take care of her baby who was of same age of the grand daughter of applicant during the time she would remain busy in the school and for such work done by applicant / workman, she would pay money to the applicant / workman but the workman was never appointed as darwan in the school at a monthly salary of Rs. 4000/-. Thus, the only admission that is coming from the stance of the management of the company/school that applicant / workman would do work of the principal of the school i.e. O.P.W.-1 not in the capacity of service holder as darwan in the school, and the rest of the case matter as raised by applicant / workman have been totally denied. Smt. Ladia as O.P.W.-1 deposed that she is the founder of the O.P. school and earlier it was located in a rented two storied building. P.W.-1 knows the petitioner Suresh Roy, petitioner Suresh Roy used to reside in that building with his family in which the school was located earlier, Suresh Roy was a trainer in that building and as a result, he had easy access to the class-rooms, school office and O.p.W.-1 had a very good relation with him. P.W.-1 also deposed that she used to see the administration of the school and also take classes, she used to carry her infant daughter of 5 months of age to the school and her infant



baby / daughter used to be taken care of by Suresh Roy and his family as her daughter being of same age of the grand-daughter of Suresh Roy and they could play together, and Suresh Roy would also prepare lunch for O.P.W.-1, O.P.W.-1 would also pay some money for such work to Suresh Roy. O.P.W.-1 also deposed that Suresh Roy was very much acquainted with the teaching / non-teaching staff of the school. O.P.W.-1 also deposed that she would maintained attendance register of the school but name of Suresh Roy is not in the attendance register of the school and denied the attendance register (Ext. 3) to be the attendance register of the school, at that stage the attendance register as was produced by Ld. Lawyer for the management of the company/school as was made X for identification earlier was shown to her but it was objected by Ld. Lawyer for the workman and it was marked Ext. A with objection. O.P.W.-1 also deposed that she never paid any salary to Suresh Roy in envelopes. O.P.W.-1 also deposed that in the group photographs of the school (Ext. 2 series) include photograph of Suresh Roy and Suresh Roy was included in the group photograph (Ext. 2 series) of the school as Suresh Roy used to look after the daughter of P.W.-1, and she never gave any salary to Suresh Roy in the envelopes (Ext. 1 series). During cross-examination O.P.W.-1 stated that MR. Rajib Chakraborty, was the principal of the school, O.P.W.-1 also admitted that sometimes she (O.P.W.-1) would keep he keys of the school with applicant / suresh Roy on being asked by landlord. Regarding the requirement of any format for filing leave application by any staff of the school, O.P.W.-1 stated in cross-examination that she cannot remember if there was any form or application for leave during the time in question i.e. 2008 to 2011. O.P.W.-1 also admitted in cross-examination that the attendance register used to be also signed by one Mr. Suresh Yadav who happened to be the driver of the O.P.W.-1 and in the group photographs (Ext. 2 series), both Suresh Roy and Suresh Yadav are included. O.P.W.-1 also admitted in cross-examination that when the matter of dispute was raised before the Labour Commissioner to the Government of West Bengal, she could not specifically say and remember as to what she said to the Labour Commissioner as it was a case of 6 / 7 years old regarding coming of Sri Suresh Roy to her new school premises to look after her daughter, O.P.W.-1 also stated that the grand-daughter of Sri Suresh Roy is a student of her school and from the beginning of the study of grand-daughter of Suresh Roy in her school, she would not charge any admission fees or other fees as Suresh Roy wanted concession and she would provide relaxation to him, O.P.W.-1 also stated in cross that Suresh Roy was not a workman in the management of the company/school and she denied a suggestion put to her by Ld. Lawyer for the workman that as Suresh Roy was a workman and would do work in the management of the company/school under her i.e. O.P.W.-1, she allowed concession to grand-daughter of Sri Suresh Roy for her studies in the O.P. Company / school.

Thus, after scrutinizing the evidences of applicant / workman, it is coming out that the applicant / workman was a permanent service holder in the management of the company/school in the capacity of a darwan but during the time of his appointment by the management of the company/school, no appointment letter was given to him and even after repeated request by him

the management of the company/school did not give him any appointment letter, and to prove that he had been working in the management of the company/school as darwan, he has filed three sets of documents, one is Ext. 1 series, these are cover of envelop having name of the management of the company/school printed thereon and name of applicant / workman is hand written thereon, and the applicant / workman as P.W.-1 deposed that the management of the company/school would give him salary in the envelopes i.e. Ext. 1, Ext. 1/1 after taking his signature on a voucher without giving any sort of paper / document to him for payment of salary by the management of the company/school, the next set is three group photographs of the staff of the management of the company/school admittedly including the photograph of applicant / workman Suresh Roy therein, the first one is for 2008-2009 with the name of the school mentioned therein (Ext. 2), the other is for the year 2009-2010 with the name of the school printed thereon (Ext. 2/1) and the third one is for the year 2010-2011 with the name of the management of the company/school printed thereon with address (Ext. 2/2) and in this connection i.e. Ext. 2 series the applicant / workman as P.W.-1 as already seen deposed that he was the appointed darwan in the management of the company/school and his photograph is also included with other staff of the company / school in all the group photograph (Ext. 2 series), and the third document produced by applicant / workman is the xerox copy of attendance register containing 14 pages from April, 2008 (Ext. 3) and in this connection i.e. Ext. 3, applicant / workman as already seen deposed that the school authority did not give him the pay slip, he used to sign the attendance register of the school and produced the copy of the staff attendance register and also deposed that the staff attendance register bears his signature and then this staff attendance register of the school was marked Ext. 3 series without any objection from Ld. Lawyer for the management of the company/school. But as O.P.W.-1, Smt. Ladia denied having given any salary to the workman / applicant in any envelop, and admitting that the group photograph (Ext. 2 series) includes the photograph of the applicant / workman, O.P.W.-1 has raised that the applicant / workman would do her work in the way that the applicant / workman used to take care of her infant baby, would prepare food for lunch for her and for these works, she would pay money to the applicant / workman but the workman was not a appointed darwan of the management of the company/school, O.P.W.-1 however has produced a separate copy of attendance register deposing it to be the proper attendance register of the company/ school and it does not include the name of the applicant / workman Suresh Roy and then it was marked Ext. A with objection as was raised by Ld. Lawyer for the workman. Now it is to be determined whether the documents as mentioned above i.e. Ext. 1 series, Ext. 2 series and Ext. 3 vis a vis Ext. A are of any use in regarding a finding as to whether the workman / applicant was really appointed by the management of the company/school as darwan in the company /school or not. In his argument Ld. Lawyer for the workman, as has already been seen, has raised that Ext. 1 series are the envelop of the school and bear the name of the school, it is a case of workman that he used to receive salary given to him in these envelops (Ext. 1 series) and the management of

Contd. Page ...28



the company/school at no point of time claimed these documents (Ext. 1 series) as manufactured and also did not claim them (Ext. 1 series) to be not of the school and the Ld. Lawyer for the management of the company/school did not put any question to the workman during his cross-examination as P.W.-1 denying the claim of the workman that the management of the company/school used to give him salary in those envelopes (Ext. 1 series) and those envelopes were proved before this Court with clear evidences and it was marked Ext. 1 series without any objection from Ld. Lawyer of the management of the company/school. Ld. Lawyer for the workman has also mentioned in its written argument that Ext. 2 series are the three photographs of the staff, members of the school for the year 2008-09, 2009-10 & 2010-11 and the Opposite Party did not deny the photographs, yet in an attempt to safeguard their interest, the opposite party came out with a concocted story that the said photographs were not only of the staff members of the school but also of the persons who were connected with the management of the company/school, and in support of all these the management of the company/school has stated that the photographs also include Suresh Yadav, the driver of O.P.W.-1 but during cross-examination O.P.W.-1 Smt. Ladia could not able to prove and / or give any satisfactory answer with regard to occupancy of Suresh Yadav, Ld. Lawyer also mentioned in the argument that it is not in doubt that the darwan cannot specify the duty and / or capacity of any person's engagement with the school and it was the duty on the part of the management of the company/school that Suresh Yadav was the driver of Smt. Ladia and not of the school, it is also pointed out that the name of Sri Suresh Yadav is appearing in the attendance register of the school, and no prudent-man can believe that Sri Suresh Yadav was an employee of the school, and thus the contention of the management that the photographs (Ext. 2 series) do not prove employer-employee relationship between the workman and the management of the company/school and Ld. Lawyer for the workman also raised that the management of the company/school also did not examine Sri Suresh Yadav to prove his assertion and contention that he was not the employee of his school. Ld. Lawyer has further raised that attendance register (Ext. 3) categorically proved that the applicant / workman was an employee of the management of the company/school, these documents (Ext. 3) which was clearly proved by applicant / workman and Ld. Lawyer for the management of the company/school also did not raise any objection against the document (Ext. 3), Ext. 3 contains signature of the workman as like as signature of other staff members of the management of the company/school. Ld. Lawyer further raised that to contradict these documents i.e. Ext. 3 the O.P. School has produced a manufactured attendance register and has also raised that the management of the company/school did not come forward with any employee of the school to substantiate such statements by the management of the company/school. Ld. Lawyer for the workman has further raised that on comparing the attendance register produced by workman i.e. Ext. 3 with the copy of attendance register filed by management of the company/school, it can be easily stated that the signatures as are appearing in the attendance register filed by and on behalf of the applicant / workman (Ext. 3)

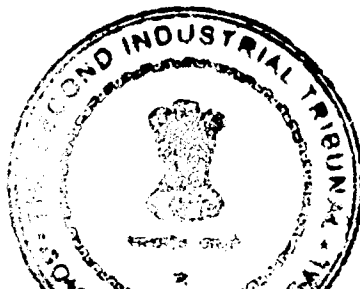


are genuine and Ld. Lawyer has further raised that therefore specific question about that even if for the same of argument it is presumed that the workman manufactured all these documents, even then it would not be possible to collect signatures of the employees of the school thereon (Ext. 3), and Ld. Lawyer also raised that it is not in doubt that for safeguard in the service of the individual persons therein i.e. the management of the company/school, if the management directed them they would put signature in the attendance register (Ext. A), and Ld. Lawyer has mentioned in his argument that O.P.W.-1 could not be taken into account as much as he came to depose on behalf of the management of the company/school without any authority and O.p.W.-1 also admitted that there is a managing committee in the school and the managing committee did not authorise her in the matter and further that the written statement that has been submitted by the management of the company/school has been verified allegedly by Mr. Sandip Ladia and O.P.W.-1 in her cross admitted that the signature on the verification of the written statement is not of her husband Mr. Ladia and therefore the written statement filed by on behalf of the school is not authentic and cannot be relied upon. Against all these the Ld. Lawyer for the management of the company/school has mentioned in the argument that the applicant / workman was very closed to O.P.W.-1 Smt. Ladia and for that reason he had access everywhere in the school and O.P.W.-1 deposed that as the applicant / workman had access to the school and used to take care of minor daughter of O.P.W.-1 and all the staff member of the school were also acquainted with him and having taken that opportunity, he has claimed to be in the service of the management of the company/school and only photograph is not sufficient to prove that he was the appointed darwan of the school particularly when the attendance register (Ext. A) does not bear his name and signature.

Now the controversy is required to be decided with the help of evidences. The workman / applicant as P.W.-1 produced the cover of envelopes (Ext. 1 series) by deposing that in this envelopes (Ext. 1 series) the management of the company/school would pay salary to him after taking his signature on vouchers and the management of the company/school would not give him any document / copy of salary slip, and it was admitted into evidence (Ext. 1 series) without any objection from the side of the management of the company/school, further P.W.-1 proved the group photograph (Ext. 2 series) of the staff member of the school and it is the admitted position that photograph of applicant / workman is included in the group photographs (Ext. 2 series) of the school and during admitting all these (Ext. 2 series), Ld. Lawyer for the management of the company/school did not also raise any objection and Ld. Lawyer for the management of the company/school also did not raise any objection when on the basis of evidence of P.W.-1 the copy of the attendance register was admitted into evidence (Ext. 3 series). Both envelopes contained the name of the school printed thereon and the name of the applicant / workman is hand-written thereon (Ext. 1 series), admittedly the group photograph (Ext. 2 series) are for the year 2008-09, 2009-10 & 2010-11 and all these (Ext. 2 series) include photograph of applicant / workman and on each of the photograph the name of the school is



printed therein. The attendance register produced by P.W.-1 (Ext. 3) was admitted into evidence on the basis of evidence of applicant / workman as P.W.-1 without any objection from the side of the management of the company/school in any way, applicant / workman in this connection as P.W.-1 deposed that the school authority did not give him any pay slip and he used to sign the attendance register (Ext. 3) and produced the attendance register mentioning that it bears his signature and it was marked Ext. 3 series without any objection by Ld. Lawyer for the management of the company/school, and in cross-examination P.W.-1 stated that he made xerox copy of the attendance register (Ext. 3) in the month of July, 2011, he was the darwan of the school, his duty was at the gate of he school, the office room of the teaching an non-teaching staff is about 15 / 20 meters away from the gate where P.W.-1 used to remain on duty and the attendance register of the staff used to be kept where he used to remain on duty and he i.e. P.W.-1 made xerox copy of the attendance register in a xerox shop situated took away from the school on 01.07.2011 and after making xerox copy of the attendance register P.W.-1 kept the attendance register in the go-down and he cannot say whether the school found the attendance register subsequently or not and P.W.-1 denied a suggestion put to him by Ld. Lawyer for the management of the company/school that P.W.-1 manufactured the attendance register (Ext. 3) in collusion with the staff of the school, P.W.-1 shown the attendance register of the company(Ext. A) and P.W.-1 stated that he cannot identify the same, in cross P.W.-1 also stated that he used to reside in the school premises, his residence is in the same building, the attendance register (Ext. 3) contains his name with surname including the name and surname of other non-teaching staff of the school, now having taken this evidences, the documents i.e. Ext. 1 series, Ext. 2 series and the attendance register of the company are found to be in line of uniformity, the envelops (Ext. 1 series) show that the name of applicant / workman is hand-written thereon and there is no evidence on the part of the management of the company/school that no staff member of the school wrote his name on them i.e. Ext. 1 series, it is the admitted position that the group photograph (Ext. 2 series) include photograph of applicant / workman. it is the argument by Ld. Lawyer for the management of the company/school that Suresh Yadav who is the personal driver of Smt. Ladia i.e. O.P.W.-1 and he is not a service-man in the school but he is also included in the group photograph (Ext. 2 series) and due to close relationship of the applicant / workman with the O.P.W.-1, he was also taken in the group photograph (Ext. 2 series) as like as applicant / workman and against this Ld. Lawyer for the workman as per his argument raised that O.P.W.-1 has given false evidence in this regard and explained that in the attendance register (Ext. 3) Suresh Yadav is found to be a driver of the school and accordingly his name is mentioned thereon and he also signed he attendance register (ext. 3) as driver of the school, Ld. Lawyer also raised that the attendance register was marked as Ext. 3 without any objection from the side of management of the company/school but during cross-examination of P.W.-1 Ld. Lawyer for the management of the company/school gave a suggestion to P.W.-1 that P.W.-1 was acquainted with the teaching, non-teaching staff members of the school and due to



his closeness if such relationship with them, P.W.-1 manufactured the attendance register (Ext. 3), Ld. Lawyer for the workman also raised that the attendance register of the company produced by O.P.W.-1 is a subsequent one manufactured in an attempt to pre-empt the case of the applicant / workman with the addition that the staff members of the school are under O.P.W.-1 Smt. Ladia and therefore they were afraid of loosing their service and creating such a fear psychosis on them the management of the company/school was able to prepare the attendance register subsequently without mentioning the name of applicant / workman therein (Ext. A), Ld. Lawyer for the workman also raised that when Ld. Lawyer for the management of the company/school suggested to the P.W.-1 that he manufactured the attendance register (Ext. 3) in collusion with the staff members of the school, then it was compulsory on the part of the management of the company/school to bring any of the staff members along with the driver Suresh Yadav as witness to substantiate his such submission. Admittedly Ld. Lawyer for the management of the company/school suggested to the P.W.-1 that as he was closely associated with the staff members of the school, he prepared the attendance register (Ext. 3) in collusion with staff members of the school, then legally it was compulsory on the part of the management of the company/school to prove his such assertion by bringing cogent evidence and examined for this purpose any of the staff members of the school but Ld. Lawyer for the management of the company/school did not do anything and also did not assign any reason for doing so by taking any proper step, admittedly no such step was also taken by Ld. Lawyer for the management of the company/school. Further it is the assertion by Ld. Lawyer for the management of the company/school vis a vis evidence of O.p.W.-1 that MR. Suresh Yadav was the personal driver of Smt. Ladia and for that reason his photograph was also taken in the group photograph (Ext. 2 series) as like as that of the applicant / workman with whom O.p.W.-1 had a good relation. Going through the attendance register produced by applicant / workman I find that the name of applicant / workman is mentioned therein (Ext. 3 series) as darwan and the name of driver Mr. Suresh Yadav is also mentioned therein (Ext. 3 series) as a driver along with other signatories in it (Ext. 3 series) such a Binu masi, Kuku therein (Ext. 3 series) which is starting from April 2008 mentioning it to be of non-teaching staff. attendance register produced by Smt. Ladia, as found on the case record, was not filed along with the list of documents during the stage of filing list of documents as provided in the rules but it was filed subsequently on 26.08.2014 with a separate petition for using the same in evidence by grant of special leave, though it was objected to by Ld. Lawyer for the workman, after passing necessary order he management of the company/school was allowed to use the same as evidence and accordingly O.p.W.-1 produced the same (ext. A), gong through the Ext. A I find that it has some common signatories such as Binu Das, Suresh Yadav etc., and when during the time of cross-examination of P.W.-1, Ld. Lawyer for the management of the company/school suggested to the P.W.-1 that due to his closeness with staff members of the school, the applicant / workman (P.W.-1) prepared / manufactured the attendance register (Ext. 3) in collusion with them, then therefore,

Contd. Page ...32



it was compulsorily required as principles of evidence says to bring any of such staff members to bring them as witness to adduce evidence in support of such assertion as raised by Ld. Lawyer for the management of the company/school that applicant / workman (P.W.-1) manufactured the attendance register (Ext. 3) in collusion with them, they were further required to adduce evidence when management of the company/school asserted Ext. A to be the proper attendance register of the management of the company/school and Ld. Lawyer for the workman raised that the staff members of the school were under fear of the management of the company/school and being bound due to fear of loosing their service, the attendance register (Ext. A) was subsequently created, further it is the assertion of the management of the company/school that Suresh Yadav was not a service holder in the capacity of driver of the school but due to his good relation with O.p.W.-1 Smt. Ladia and being her personal driver, he was included in the group photograph (Ext. 2 series) as was the case in respect of applicant / workman and therefore it was also necessary on the part of the management of the company/school to bring Suresh Yadav as witness to ascertain that he was not the driver of the school and thus not in the service of the school as a driver but only a personal driver of Smt. Ladia. But admittedly the management of the company/school did not do so and never took any step in this regard and also did not assign any reason whatsoever for not doing so. As per argument by Ld. Lawyer for the workman that keeping the staff members of the school in fear of loosing service, the attendance register(Ext. A) was manufactured illegally subsequently to pre-empt the applicant / workman from making any claim of which he is legally entitled, Ld. Lawyer also raised that as P.W.-1, applicant / workman deposed that he took xerox copy of the attendance register and kept the attendance register in the go-down and O.P.W.-1 also admitted in her evidence that attendance register of the company was missing for sometime, and all these clearly prove that the attendance register of the company(Ext. A) was subsequently forged by the management of the company/school to protect it from illegal activities and the attendance register produced by applicant / workman is genuine one.

It is the admitted position that the attendance register of the company (Ext. A) was not filed by the management of the company/school during the stage of filing documents as provided in the rules and it was filed subsequently on 26.08.2014 with a leave application praying for grant of leave to use it (Ext. A) during evidence and accordingly leave was granted for interest of justice, further physically examining the attendance register of the company, it appears that it is found so fresh that though it is mentioned to be from month of May, 2008 i.e. 9 / 10 years old, yet it appears that it is not of so much old and the submissions by Ld. Lawyer for the workman that it was subsequently prepared keeping the staff member of the school in fear psychosis of loosing the service cannot be brushed aside and possibility of the same has become much more dense when persons who are required to be compulsorily be examined by the management of the company/school were not examined without assigning any reason arising out of the fact that Ld. Lawyer for the company / school during admission of attendance register

(Ext. 3) by evidence of applicant / workman was admitted into evidence without any objection from Ld. Lawyer for the management of the company/school and Ld. Lawyer for the management of the company/school suggested to P.W.-1 that P.W.-1 manufactured the attendance register in collusion with the staff members of the school but admittedly the management of the company/school did not bring any of the staff members including driver / suresh Yadav as witness to substantiate such assertion on the part of the management of the company/school. The attendance register as has been produced by workman / applicant Suresh Roy (Ext. 3 series) as have been proved by direct evidence of P.W.-1 and also by circumstantial evidences as discussed above along with the covers of envelopes (Ext. 1 series) and group photograph (Ext. 2 series) which are also proved by direct evidences of P.W.-1 and at the same time circumstantially found to be admitted have proved that workman / applicant Suresh Roy was appointed as darwan of the school in permanent capacity w.e.f. 01.06.2008 at a monthly salary of Rs. 4000/- by the management of the company/school and the management of the company/school terminated him from service illegally w.e.f. 04.07.2011.

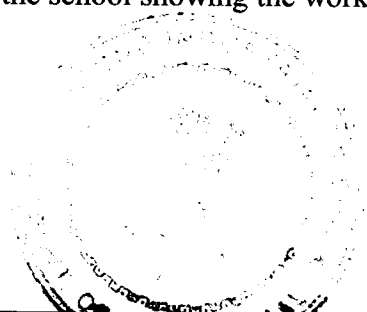
The applicant / workman also deposed that the management of the company/school verbally terminated him from service and then he gave a letter to the school authority with a request to reinstate him in the service and produced the copy of that letter which was marked Ext. 4 along with A.D. Card thereto marked Ext. 4/1 without any objection from the side of management of the company/school. P.W.-1 also proved a letter received from postal department on the basis of his letter dt. 19.03.2013 and the copy of this letter was marked Ext. 5 and the reply from the postal depart was marked Ext. 5/1. P.W.-1 also deposed that the school authority did not give any reply after receiving his letter praying for re-instatement in his service (Ext. 4) and thereafter he wrote a letter to the D.L.C. i.e. Deputy Labour Commissioner, Howrah and he proved copy of that letter to D.L.C., Howrah (Ext. 6). P.W.-1 also proved that after that by letter dt. 25.0.2011 the school authority made a reply to D.L.C. Howrah, it was marked Ext. 7 without any objection, he also deposed that a copy of letter dt. 25.10.2011 written by school authority to A.L.C. Howrah, i.e. Assistant Labour Commissioner, Howrah was given to him by A.L.C. Howrah and then he made a reply against the same and proved it, it was marked Ext. 8 without any objection. P.W.-1 also deposed that the dispute was not settled during conciliation proceeding and the school authority did not issue to him any show cause or charge-sheet prior to his termination from service and no enquiry was also held prior to his termination and no retrenchment compensation was also given to him. Ld. Lawyer for the management of the company/school as I find concentrated cross-examination on P.W.-1 mainly on the matters of the attendance register (Ext.3, Ext. A) and on the matters that the workman had been a service-man in the companies namely M/s. R.M. Construction company of one Mr. Lokman, M/s. Diamond Security Service and also of M/s. Maa Tara Engineering Workshop as discussed earlier and it appears that all such deposition with documentary evidences of P.W.-1 as mentioned above have remained unchallenged. Ext. 4 shows that it is a letter by applicant /



workman M/s. Devine Mercy School mentioning that the management of the company/school has illegally and unlawfully terminated permanent service of the P.W.-1 04.07.2011 without affording any opportunity to him in total contravention of the law in force mentioning further that he had been working in the management of the company/school as darwan since 01.06.2008 and rendered lawless service without any break of service and requested the management of the company/school to allow him into his duty and also to get his dues, Ext. 4/1 is the A.D. card of Ext. 4, Ext. 5 is a letter by applicant / workman to the post master, Treasury Building Post Office, Kolkata dt. 19.03.2013 mentioning that P.W.-1 posted one letter under registered post with A.D. through this post office on 29.07.2011 addressing the management of the company/school but the A.D. card was not returned and requested for getting an intimation, which is found to be made on 17.06.2013 by Treasury Building Post Office S.O. addressing P.W.-1 mentioning that complaint of P.W.-1 as per his letter (Ext. 5) was taken for action, Ext. 6 is a letter by applicant / workman addressed to Deputy Labour Commissioner, Howrah drawing his attention that he had been an employee in the management of the company/school but without affording any opportunity to him, the management of the company/school terminated his service w.e.f. 04.07.2011 illegally and unlawfully and requested D.L.C. Howrah to get reinstatement in his service with full back wages and also requested to enable him to join the service, Ext. 7 is a letter dt. 25.11.2011 addressed to the A.L.C. Howrah by O.P.W.-1 Smt. Ladia as Director of the management of the company/school mentioning that applicant / workman was a caretaker in the building where the school was located but after that the school was shifted on that place and grand-daughter of applicant was a student of her school and since then applicant / workman had been appealing for an employment in the school but he was refused for want of vacancy and then he had been trying to defame the school, Ext. 8 is a letter in reply to letter of school authority to A.L.C. Howrah (Ext. 7) by applicant / workman addressed to A.L.C. Howrah mentioning that the contention of letter of the school authority (Ext.-7) is utterly false and baseless and devoid of truth, mentioning further that the school authority by Ext. 7 made out a fabricated story just to wriggle out of the situation wherein they proved themselves by their own unlawful conduct, asserting that the management of the company/school cannot washout their hands that he was the caretaker and performed his duty and added that from Ext. 7 it is crystal clear that he served the school, with addition that one prudent man cannot believe that a person can introduce himself as a caretaker of the building to a tenant without verification of the fact recruited in the school and the question would also arise as to why the school management was paying salary to him but not to landlord and it is false to say that he had ever prayed for a job before management of the company/school rather he prayer for reinstatement in his service and protested against his illegal and unlawful termination of his service mentioning further that he has raised the legitimate dispute before his good-self i.e. A.L.C. Howrah claiming his legal right and the management of the company/school had always been threatening him in the garb of throwing out his grand-daughter from the school and requested

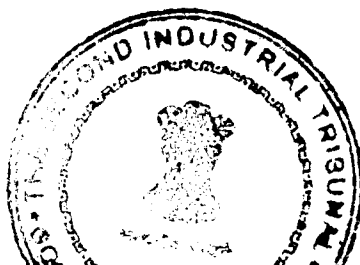


A.L.C. Howrah to intervene the matter and to ask the management of the company/school to reinstatement in his service with full backwages. It is the specific case against all these by the management of the company/school that applicant / workman was at all not an appointed darwan in the management of the company/school as discussed earlier. Going through the evidences of Smt. Ladia as O.P.W.-1 and also the cross-examination of P.W.-1 i.e. applicant / workman, it is coming out that there is nothing against the evidences of P.W.-1 who as seen deposed that he had been the permanent darwan in the school by the management of the company/school but he was illegally terminated as discussed earlier. The deposition of P.W.-1 as discussed above with the documentary evidences Ext. 4 to Ext. 8. Ld. Lawyer for the workman has cited one case law in 2005 (2) Supreme Court of India 628 and submitted that in that case the appellant claimed that the workman was never an employee under the appellant and he was not given any appointment letter by the appellant company but the workman only produced three vouchers showing that he was given salary by the appellant and in that case Tribunal found one evidence that thought there was no letter of appointment yet the vouchers produced by the workman supported the stance of workman that he had been working under the appellant as workman and accordingly the Tribunal passed an order making reinstatement of the workman with full back wages and also with continuity of service and against this award of the Tribunal the appellant company preferred the appeal before Hon'ble High Court and Hon'ble High Court was pleased to observe that the burden of proof that the workman had been in the employment of the management of the company/school lies on the workman and the workman proved the vouchers showing that he had been in employment under the management of the company/school and management of the company/school could not produce any evidence in rebuttal, then question of workman proving his case further did not arise, and Ld. Lawyer for the workman has also raised in his argument that in the present case the workman has produced the attendance register and in rebuttal the management of the company/school could not produce anything and the workman had been working under the company in permanent capacity and this observation of Hon'ble Court in this cited case is also applicable in this case. Ld. Lawyer for the workman has filed another case law in 2008(8) Supreme Court of India 823 and explained that in that case Hon'ble Supreme Court of India was very much pleased to observe that in case of industrial laws / labour laws when the management of the company/school raises challenge raising absence of master-servant relationship, then the burden of proof of being in employment of a particular management primarily lies on the person making the claim and explained that in this case also the management of the company/school raised a claim that there is no master servant relationship between the management of the company/school and the workman /applicant but the management of the company/school has not brought any evidence to support the same but the workman has produced sufficient evidence such as oral evidence of workman as P.W.-1 with his documentary evidences which are copies of envelops (Ext. 1 series), group photograph (Ext. 2 series) of the staff of the school showing the workman in the photograph (Ext. 2 series) and



the copy of the attendance register (Ext. 3 series) and these are sufficient evidence on the part of the workman and there is nothing from the side of the management of the company/school against all such evidences and Ld. Lawyer for the workman has asserted that the above-cited ruling are also applicable in this case. On the other hand I find that Ld. Lawyer for the management of the company/school by filing a list of case laws wanted to cite as many as 5 case laws but last of all only three were available, and citing one case law in 2019 0 Supreme (SC) 650 Ld. Lawyer has raised that when master and servant relationship is under challenged and workman admitting absence of appointment letter, provident fund number or wage slip then it is to be held that there is no master and servant relationship and raised that for that reason the case laws cited by Ld. Lawyer for the workman cannot be applied in this case with addition that the attendance register (Ext. 3) as has been produced by the workman as P.W.-1 was obtained by P.W.-1 illegally and cannot be accepted as evidence. Citing another ruling in 2004 (2) Supreme 50 of Supreme Court of India Ld. Lawyer has raised that relationship of master and servant cannot be determined by a single test and explained that in the present case management of the company/school has also filed the attendance register (Ext. A) and it does not contain the name of workman and therefore management of the company/school has become able to prove that there was no master and servant relationship between the management of the company/school and the workman / applicant, and by citing another ruling in 2005 3 CHN 161 of Hon'ble High Court, Calcutta, Ld. Lawyer for the management of the company/school submitted that in that case the workman were working as a security strapper with Air India and to prove their case the workman filed document relating to getting medical benefits etc. but Hon'ble High Court was very much pleased to observe that the workman have acquire any right to claim permanency. In reply Ld. Lawyer for the workman has submitted that the workman produced the xerox copy of the original attendance register of the attendance of the staff members of the management of the company / school (Ext. 3) and it includes the name of workman as darwan of the management of the company/school in permanent capacity and there is no evidence by the management of the company/school to distort the same (Ext. 3) and the copy of attendance register (Ext. A) filed by the company was subsequently prepared only to create a vail to pre-empt the workman from making any claim but the workman has proved by sufficient evidence that he had been working as darwan in the management of the company/school in permanent capacity.

I have already discussed the matter involving the documents i.e. attendance register (Ext. 3) as has been produced by workman and the copy of the attendance register (Ext. A) and it has already been found that the attendance register (Ext. A) produced by management of the company/school was subsequently prepared and the attendance register produced by workman / applicant (Ext. 3) is the copy of the genuine attendance register of the management of the company/school and though Ld. Lawyer for the management of the company/school raised question that the workman manufactured the attendance register (Ext. 3) in collusion with staff



members of the school with whom the workman had been maintaining friendly relationship, and then as was discussed, it became compulsory on the part of the management of the company/school to bring the staff members of the school to substantiate such assertion but the management of the company/school did not do so, further Ld. Lawyer for the workman also raised that the copy of the attendance register (Ext. A) was subsequently prepared and the staff members only avoided the wish of the management of the company/school being in fear of losing service, and then it was also necessary to bring the staff members of the school to clear the same as burden of proof of such assertion remained on the management of the company/school. The attendance register of the company (Ext. 3) is also corroborated by other documentary evidences i.e. Ext. 1 series and Ext. 2 series. Admittedly the workman as P.W.-1 has admitted in cross-examination that he took xerox copy of the attendance register of the management of the company/school by taking the same to a xerox shop locating about 2km away from the school and Ld. Lawyer for the company raised that it was illegal. Against it Ld. Lawyer for the workman raised that the copy of the attendance register of the company (Ext. 3) became public and it (Ext. 3) being genuine, there is no illegality in view of the observation of Hon'ble Supreme Court of India in the verdict on Rafal deal. The entire matter has already been discussed earlier and the attendance register of the company (Ext. 3) as has been produced by workman is found to be genuine and at the same time corroborated by other two documents i.e. Ext. 1 series and Ext. 2 series. It appears that by filing the document (Ext. A) the management of the company/school attempted to create a veil but the evidences i.e. Ext. 1 series, Ext. 2 series and Ext. 3 have pierced the same, and I also find that the case laws cited by Ld. Lawyer for the workman have also supported the same. The case law cited by Ld. Lawyer for the company in 2005 3 CHN 161 relates to claim permanency in service but in the present case evidences have established that the workman was appointed as darwan in permanent capacity (Ext. 3) and therefore this ruling cannot be applied in this case, the ruling cited by Ld. Lawyer for the company in 2004 0 Supreme S.C. 154 arose out of a claim for permanency in service arising on a matter of contract is a contract of service vis a vis contract for service and it cannot be applied in this case and the other one in 2019 0 Supreme S.C. 650 also cannot be applied in this case as in the present case the workman has become able to bring sufficient evidence i.e. Ext. 1 series, Ext. 2 series and Ext. 3 as against Ext. A to show that he was appointed by the management of the company/school as darwan in permanent capacity in the school.

Further the applicant / workman as P.W.-1 also deposed that after he was dismissed from service orally he wrote a letter to the management of the company/school requesting him to reinstatement in his service and he has proved the copy of that letter (Ext. 4) and also gave a copy of that letter to Deputy Labour Commissioner, Howrah and also proved the copy of that letter (Ext. 6) and then the management of the company/school sent a comment by a letter dt. 25.10.2011 to A.L.C., Howrah and A.L.C., Howrah gave a copy of that letter to him and he i.e. P.W.-1 proved the copy of that letter dt. 25.10.2011 written by school authority to A.L.C.,



Howrah, (Ext. 7) and then he also submitted a written reply against the comment of management of the company/school dt. 25.10.2011 (Ext. 7) before A.L.C., Howrah and he also proved the same (Ext. 8). It is found that all these i.e. Ext. 4 to Ext. 8 were proved and admit into evidence without any objection from Ld. Lawyer for the management of the company/school. Ext. 4 shows that the workman in this letter (Ext. 4) requested the management of the company/school stating that he was illegally terminated from service and requested the management of the company/school to reinstate him without any break in the service and Ext. 4/1 shows that management of the company/school received that letter of workman i.e. Ext. 4 and as per deposition of P.W.-1 management of the company/school did not make any reply after receiving that letter from him i.e. Ext. 4. Ext. 6 shows that workman i.e. P.W.-1 addressed it to the Deputy Labour Commissioner, Howrah mentioning the he had been employee to the management of the company/school and the management of the company/school without providing any opportunity to him(P.W.-1) terminated his service on and from 04.07.2011 illegally and unlawfully and he prayed for reinstatement in his service with full backwages and consequential benefits and also requested D.L.C., Howrah to take up the matter to the management of the company/school to enable him to join the service. Ext. 7 is found to be the written comment by Director of the management of the company/school to A.L.C. Howrah mentioning that applicant / workman was the caretaker of the building in which the school was located and when the school was shifted to its present address, applicant / workman appealed before school authority to get a service and then applicant / workman had been trying to extort money from the management of the company/school, and over this Ld. Lawyer for the workman submitted that Ext. 7 contains false allegation against the workman as he never extorted a money from the management of the company/school, which also has not adduced by supporting evidence and Ld. Lawyer for management of the company/school is also silent over this matter and admittedly there is no evidence by the management of the company/school that applicant / workman extorted money from the management of the company/school, and Ext. 8 is the reply against that written comment (Ext. 7) as made by company before A.L.C. Howrah that workman / applicant wanted service from the management of the company/school and when he was refused he attempted extortion of money from it and in reply applicant / workman has mentioned (Ext. 8) that the comment by the management of the company/school(Ext. 7) is false, baseless and devoid of truth and the management made out a fabricated story just to riggle out of the situation wherein they put themselves by their own illegal conduct and mentioned that he served that school and also mentioned that he never prayed for a job before the management of the company/school but he prayed for reinstatement in his service and protested against termination of his service by management of the company/school illegally and requested A.L.C. Howrah to intervene in the matter and to ask the management of the company/school to reinstatement in his service with full back-wages and consequential benefits. P.W.-1 also deposed that his monthly salary was Rs. 4000/- and during conciliation proceeding the dispute was not settled

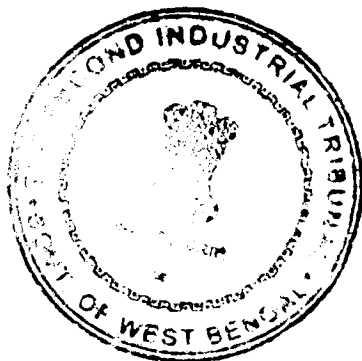


and also deposed that the school authority did not issue him any show cause or charge-sheet prior to his termination of his service by the management of the company/school and also conducted no enquiry against him before his termination and he was also given no retrenchment compensation by the management of the company/school. Ld. Lawyer for the management of the company/school cross-examined the P.W.-1 and it appears that all such evidences of P.W.-1 have remained not distorted in any way and further the management of the company/school has also not adduced any evidence against such evidences, excepting producing the attendance register (Ext. A) which is found to be unauthentic and the attendance register (Ext. 3) corroborated by copies of envelopes (Ext. 1 series) and group photograph (Ext. 2 series) proved that the applicant / workman was appointed by management of the company/school as darwan in the school in permanent capacity. But the evidences (Ext. 4 to Ext. 8) and also Ext. A have proved that the management of the company/school terminated him illegally without complying of the compulsory provisions of law and it comes under the 5th schedule of the Industrial Disputes Act, 1947 providing for unfair labour practices.

applicant / workman also deposed that after being terminated from service in such a way by the management of the company/school he has remained unemployed and during his service time he would earn monthly salary of Rs. 4000/- and Ld. Lawyer for the workman and Ld. Lawyer for the workman argued that he was terminated from service purposefully doing all illegalities and he should get reinstatement in his service with all consequential benefits Ld. Lawyer for the management of the company/school raised that the workman has been a service man in three companies namely M/s. R.M. Construction company of one Mr. Lokman, M/s. Diamond Security Service and also of M/s. Maa Tara Engineering Workshop. Ld. Lawyer for the management of the company/school claimed that workman had been in service in all such companies and therefore burden a proof lies on it to prove the same independently but it failed, over which a discussion has already been made earlier.

In the summing up it is to say that the applicant / workman has got sufficient evidence to prove that the management of the company/school appointed him as darwan in permanent capacity in the school and then without complying with the compulsory requirement of law, management of the company/school terminated him from service though the principal of the school (O.P.W.-1) circumstantially admitted that the applicant / workman would do her work but not as a appointed employee but otherwise for which she (O.P.W.-1) would pay money to him and thereby attempted to create a vail but ultimately the evidences as discussed earlier have become able to pierce the vail and it has come out and at the same time proved that the management of the company/school appointed the applicant / workman as darwan in the school in permanent capacity at a monthly salary of Rs. 4000/- and in gross violations of even the

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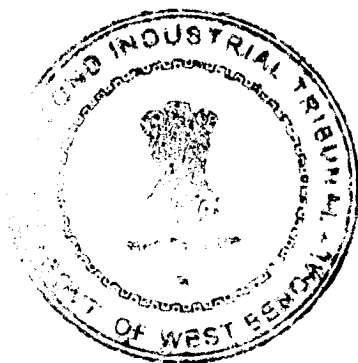
compulsory requirement of law the management of the company/school terminated from service. It is therefore,

ORDERED

that the issues i.e. whether the termination of the service of Sri Suresh Roy by the management of the company M/s. Devine Mercy School w.e.f. 04.07.2011 is justified or not and what relief, if any, is he entitled to – are decided on contest in favour of the workman Sri Suresh Roy, Vill. Domjur near BDO office, P.O. – Domjoor, Howrah – 711405, and it is held that termination of service of the petitioner / workman Sri Suresh Roy is found to be illegal, unlawful and unjustified ab initio and the same is set aside and it is also held that the petitioner Suresh Roy is entitled to get reinstatement in his service with full back-wages and consequential benefits, consequently the management of the company/school i.e. M/s. Devine Mercy School, Howrah, Amta Road, Rajpur near 1 No. Pool, Domjoor, Howrah – 711102 is directed to reinstate the petitioner immediately in his service with full back-wages and consequential benefits and to pay him all the dues arising out of this order forthwith, and this is to be treated as an award of this Tribunal in view of the order of reference vide No. 1129-I.R./IR/11L-80/12 dt. 06.12.2012. It is directed that necessary number of copies of this judgement and award be prepared and sent to the Additional Chief Secretary to the Government of West Bengal, Labour Department, N.S. Buildings, 12th Floor, 1, K.S. Roy Road, Kolkata- 1 as provided in the rules.

Dictated & corrected by me.

Judge



sd/-
(Sribash Ch. Das)
Judge
2nd Industrial Tribunal
30.08.2019