

/352578/2022

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

No. Labr/07. / (LC-IR)/ 11L-61/17

Date: 03/01/2022.

ORDER

WHEREAS under the Government of West Bengal, Labour Department Order No. Labr/917-IR/I.R./11L-61/17 dated 07.02.2014 the Industrial Dispute between M/s. Hooghly Infrastructure Pvt. Ltd., Unit Hukum Chand Jute Mills, P.O. – Hazinagar, District – North 24 Parganas, and its workman Sri Surendra Prasad, Bengal Jute Shramik Sangha, BT Road, P.O. – Talpukur, Kolkata - 700123 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, First Industrial Tribunal, West Bengal.

AND WHEREAS the First Industrial Tribunal, West Bengal, has submitted to the State Government its award dated 29/11/2022 on the said Industrial Dispute vide memo no. 1826 – L. T. dated. 13/12/2022.

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,

sdt
Joint Secretary
to the Government of West Bengal

I/352578/2022

H/A *ETK*
3/22

No. Labr/. *07/1(5)*/(LC-IR) Date: *03/01.* /2022.

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

1. M/s. Hooghly Infrastructure Pvt. Ltd., Unit Hukum Chand Jute Mills, P.O. – Hazinagar, District – North 24 Parganas.
2. Sri Surendra Prasad, Bengal Jute Shramik Sangha, BT Road, P.O. – Talpukur, Kolkata - 700123.
3. The Assistant Labour Commissioner, W.B. In-Charge, Labour Gazette.
4. The O.S.D. & E.O. Labour Commissioner, W.B. New Secretariate Building, 1, K. S. Roy Road, 11th Floor, Kolkata- 700001.
- ✓ 5. The Sr. Deputy Secretary, IT Cell, Labour Department, with the request to cast the Award in the Department's website.

[Signature]
Joint Secretary

No. Labr/ *07/2(2)*/(LC-IR) Date: *03/01.* /2022.

Copy forwarded for information to:

1. The Judge, First Industrial Tribunal, West Bengal with reference to his Memo No. 1826 – L. T. dated. 13/12/2022.
2. The Joint Labour Commissioner (Statistics), West Bengal, 6, Church Lane, Kolkata -700001.

Joint Secretary

In the matter of an Industrial Disputes exists between M/s Hooghly Infrastructure Pvt. Ltd., Unit Hukum Chand Jute Mills, P.O. – Hazinagar, District – North 24 Pargans and their Workman Sri Surendra Prasad represented by Bengal Jute Shramik Sangha (Registered No. 28316), BT Road, P.O. – Talpukur, Kolkata – 700 123.

G.O. No. Labr./917/(LC-IR)/IR/IIL-61/2017 dated 06.09.2017
BEFORE THE FIRST INDUSTRIAL TRIBUNAL: WEST BENGAL

PRESENT

**SHRI UTTAM KUMAR NANDY, JUDGE
FIRST INDUSTRIAL TRIBUNAL, KOLKATA**

Date of Order: 29.11.2022

Case No.: VIII – 20/2017

The instant case has been initiated on receipt of Government Order No. Labr./917/(LC-IR)/IR/IIL-61/2017, dated 06.09.2017 from the Labour Department, Government of West Bengal, referring an industrial dispute exists between M/s Hooghly Infrastructure Pvt. Ltd., Unit Hukum Chand Jute Mills, P.O. – Hazinagar, District – North 24 Pargans and their Workman Sri Surendra Prasad represented by Bengal Jute Shramik Sangha (Registered No. 28316), BT Road, P.O. – Talpukur, Kolkata – 700 123 for adjudication the present dispute u/s 10 of the Industrial Disputes Act upon the following issues:

ISSUES

- 1) Whether the termination of service of the Workman by not allowing him to join duty with effect from 10.04.2016 is legal?
- 2) If not, what relief, if any, under the Industrial Disputes Act, 1947 the Workman is entitled to?

WORKMAN's CASE

The fact of the case as revealed from the Written Statement of the Union in short is that the Company under reference is a Company incorporated under the provision of Company's Act 1956 and carries on the business of manufacturing and trading of jute products.

The concerned Workman was appointed in the service of the Company w.e.f. 09.04.1995 at the Jute Mills and was covered under the provision of ESI Act and EPF Act.

He used to perform his duties under the instruction of higher authorities having no power of giving job requisition, sanctioning leave etc. and no employee was worked under his supervision.

During the eventful period the Workman applied for his long due leave of 26 (twenty-six) days which was sanctioned by the management of the Company under reference being commenced from 02.03.2016. it was supposed to be ended on 26.03.2016 but the same was allowed to be extended up to 31.03.2016 but due to medical emergency on him the concerned Workman could not join his service on 01.04.2016 and then he came to join on 05.04.2016.

On that day he was not allowed to join his duty by the officer named Rambabu who informed the Workman that the required pass was not there in the name of the concerned Workman and he should come back some other day.

The Workman reported this incident to his immediate officer with a prayer to join his duties when the Workman was instructed to report for duties after few days and again on 09.04.2016 the concerned Workman came and met with said Rambabu who issued appropriate gate pass entitling the concerned Workman to join his duty from 10.04.2016 and on that day when the Workman went to join his duty he was directed by Shri Subhas Thakur, Department-in-Charge and Shri Swapan Ghosh, a staff of the Company under reference to go to the Labour Officer whereat he tersely told by Shri Narad Muni Mishra, Personnel Manager to the effect that the concerned Workman was late in joining his duty according to the standing order of the Company and therefore, he could not be allowed to join his duty when the concerned Workman narrated the entire chain of event claiming himself that he had no fault on his part and therefore, he ought to be allowed his duty to earn his living.

On hearing such requested said Narad Muni Mishra the Personnel Manager became furious and drove out the concerned Workman by say that he would not be allowed to join in the Company in any way and thereafter, the concerned Workman was terminated from service by way not allowing him to join his duty w.e.f. 10.04.2016.

Thereafter, the concerned Workman requested all and sundry of the Company through all communications, channels to allow him to join his normal duties but he was not allowed by the management for without any rhyme or reason and thereafter the Union under reference raised an industrial dispute with the Labour Commissioner, Government of West Bengal vide representation dated 03.05.2016 espousing the case of the concerned Workman over which a conciliation proceeding was initiated whereat the Company also submitted its comment on 12.05.2017. But due to uncompromising stand from the end of the Company the conciliation proceeding failed.

It is also stated by the Union that Hukum Chand Jute Shramik Sangha requested the Company under reference by its letter dated 06.05.2016 requesting the management to allow him to join his normal duties but the same was turned down by the Company under reference.



It is further claimed that no show-cause or chargesheet was ever issued to the concerned Workman nor any domestic enquiry was ever held against him and therefore, it was utter violation of the principles of natural justice in spite of his illegal, unjustified termination of service by way of refusal of employment w.e.f 05.04.2016.

As no proper notice or compensation was ever paid to him the Workman after illegal termination was remained unemployed and his last drawing wages was Rs. 12,000/- per month.

In view of the facts and circumstances the Union prayed for passing an Award holding that the termination of the employment of the concerned Workman by not allowing him to join his duties w.e.f. 10.04.2016 by the management of the Company under reference is unjustified and totally illegal and arbitrary and also prayed for directing the Company to reinstate the concerned Workman with full back wages and other consequential benefits as prayed for or pass such other order/orders as the Tribunal may deem fit and proper.

On the other hand the Company under reference contested the case by filing Written Statement and contended inter-alia to the effect that the order of reference is not maintainable since the appropriate Government as pre-judged the whole issue and since no dispute has been properly raised by the Workman and since the appropriate Government had no material to frame the issue under reference based on incorrect assumption of facts and laws and since the Workman has failed to make any demand for justice and/or raised any dispute before the management prior to making representation to the Assistant Labour Commissioner, Government of West Bengal, Barrackpore regarding his alleged termination of service w.e.f. 10.04.2016 and lastly the order of reference suffers from the infirmity and non-application of mind rendering the reference bad in law.

Secondly by Part-II the Company contended inter-alia to the effect that Workman Surendra Prasad was a Badli Worker during the tenure of his employment with the Company and he was never a permanent worker. He was granted statutory leave on and from 02.03.2016 to 26.03.2016.

It is claimed by the Company that the Workman neither submitted any document to the Company /in Labour Office in favour of his extension of his leave nor he has satisfied the management as to his said illegal and unauthorized absence/over staying after expiry of his leave by offering any explanation/documents before the management of the Company to this effect and it is also claimed by the Company that the Workman did not report to Labour Office for joining his duty on 05.04.2016 or on and from 10.04.2016.

It is claimed that he was not refused employment by the Company rather he himself refused to take employment without reporting to his duty after expiry of his statutory leave by submitting any document to this effect.

It is further claimed by the Company that according to Section 9C of the certified Standing orders as applicable to the Company since the Surendra Prasad failed to return within 8 (eight) days of the expiry of the leave and explanation to the satisfaction of the management regarding inability to return before expiry of his leave Surendra Prasad had lost his lien on his appointment and as such he shall be entitled to be kept on the list of fresh Badlis and he has at liberty to join as fresh Badli.

It is further claimed by the Company that Surendra Prasad was member of Bengal Jute Shramik Sangh because the said union never sent any list of Committee members to the management of the Mills.

Company further claimed that Surendra Prasad joined in the Company under reference as Badli on 09.04.1995 and he was always a Badli Worker till his last working day.

It is further claimed by the Company that after expiry of statutory leave since Surendra Prasad neither joined his duty nor had applied for extension of leave till 31.03.2016. The question of extension of leave is falsely stated and does not arise at all, nor he came to join his duty on 05.04.2016.

It is further claimed Surendra Prasad was not allowed to join his duty by the concerned officer Rambabu as alleged or at all. Rambabu is a clerk in Labour Office, is not an officer and he has no power to deny or allow the Workman to join his duty.

It is also claimed that Surendra Prasad did not report to his immediate officer with a prayer to join his duty when he was instructed to report for duties after a few days alleged or at all.

It is further claimed by the Company that Surendra Prasad did not meet with Rambabu on 09.04.2016 who issued the appropriate employment pass entitling him to join duties from 10.04.2016 as was directed by Subhas Thakur, Department-in-Charge and Shri Swapan Ghosh a staff to go to Labour Officer as alleged or at all, rather on asking Surendra Prasad failed to produce any documents to satisfy management regarding his illegal unauthorized absence from 27.03.2016 to 10.04.2016.

The management also denied factum regarding Shri Narad Muni Mishra who became furious of hearing any request from Surendra Prasad and drove him out by saying that he would not be allowed to join ever at the Company. Thus, thereby he was terminated from his service by way of not allowing him to join his duties w.e.f. 10.04.2016 as alleged or at all.

The Company further claims that the alleged union has no locus-standi to raise the instant dispute as that union was not a recognized union by the Company under reference.



Company further claims that the action has been taken against Surendra Prasad is illegal and justified and Company further claims that the concerned Workman has come before this Tribunal by suppressing the material facts with uncleaned hands and as such he is not entitled to any relief as prayed for and the case is deserved to be dismissed in limini.

Company also prays for taking up the preliminary points as raised by the Company in Part-I of its Written Statement first before entering into the merit of the case.

ISSUES

- 1) Whether the termination of service of the Workman by not allowing him to join duty with effect from 10.04.2016 is legal?
- 2) If not, what relief, if any, under the Industrial Disputes Act, 1947 the Workman is entitled to?

Decision with reason

In support of the case the petitioner Workman has examined himself as PW-1 that apart he has cited the following documents:

- 1) Photocopy of ESI Card of the Workman. Marked as **Exhibit -1**.
- 2) Photocopies Identity Card of the Workman, issued by the Company. Marked as **Exhibit -2 & 2/1**.

Exhibit -1, 2 & 2/1 jointly prove that the Workman was the worker in the Company under reference.

- 3) Photocopies of letter dated 03.05.2016 along with postal AD addressed to Additional Labour Commissioner, BKP by President of the Union under reference. Marked as **Exhibit -3**.

It shows that Bengal Jute Shramik Sangha has arose the present dispute on behalf of the Workman Surendra Prasad before the Additional Labour Commissioner on 03.05.2016, wherein it is alleged that an illegal and unfair labour practice used to be done with the Workman Surendra Prasad sine his joining.

- 4) Photocopies of letter dated 06.05.2016 along with postal receipts issued by the G.S. of the Union to C.E. (Works) of the Company. Marked as **Exhibit -4 & 4/1**.

Exhibit – 4 & 4/1 is the proof that Hukum Chand Jute Shramik Sangha informed the Chief Executive (Works) Hooghly Infrastructure Pvt. Ltd., Unit – Hukum Chand Jute Mills, Hazinagar, 24 Pargans (North) whereby the Shramik Sangha requested the management in respect of 2(two) workers Munna Sahu and Surendra Prasad.

- 5) Photocopy of memo dated 26.12.2016 issued by Assistant Labour Commissioner to Hukum Chand Jute Mill. Marked as **Exhibit -5**.
- 6) Photocopy of memo dated 26.04.2017 issued by Assistant Labour Commissioner addressed to the Workman. Marked as **Exhibit -6**.

Exhibit – 5 & 6 prove that Labour Commissioner has been informed about the present dispute to the management of the Company under reference with a request to meet the Assistant Labour Commissioner on the date fixed.

- 7) Photocopy of letter / representation dated 12.05.2017 submitted by the Chief Executive (Works) of the Company before the Assistant Labour Commissioner, Barrackpore. Marked as **Exhibit -7**.

Exhibit -7 is the reply of the Company to the Assistant Labour Commissioner stating their position briefly regarding the dispute to the effect that "Surendra Prasad was granted statutory leave which was issued for the last 2 (two) years i.e. for 2014-2015, leave period was stated from 02.03.2016 and was completed on 27.03.2016 after adding 4 (four) weekly days of and further leave was extended up to 31.03.2016 on his own". They denied the other factum regarding the claim of Workman that he was deliberately refused his employment on and from 05.04.2016 to 10.04.2016 when he was finally terminated impliedly and it is also noted in the reply that as per Clause 9C of the certified Standing order the Workman lost his lien on his appointment since he failed to return to join his duty within 8 (eight) days of the expiry of the leave.

- 8) Photocopy of Pay Slips of the Workman Surendra Prasad issued by the Company. Marked as **Exhibit -8**.
- 9) Photocopy of 3 sheets relating to Provident Fund Account of the Workman Surendra Prasad. Marked as **Exhibit -9**.

On the other hand, to counter the claim of the Workman some oral and documentary evidences have also been adduced by the Company as follows:

- 1) Rajib Kumar Maheswari, Deputy Personnel Manager in the Mill as CW-1.

- 2) Subhas Chandra Thakur, Supervisor in the Preparing Department of Mill No. 2 as CW-2.

That apart Company has filed some copies of documents as per list which have been marked as follows:

- 1) Photocopy of a letter by CW-2 to Personnel Manager dated 08.01.2015. This is marked as **Exhibit-A**.
- 2) Photocopy of a letter by CW-2 to Personnel Manager dated 20.04.2015. This is marked as **Exhibit-B**.
- 3) Photocopy of Identity of CW-2. This is marked as **Exhibit-C**.
- 4) Photocopy of letter of authority issued by the Company's Chief Executive in favour of CW-2 to depose in this case. This is marked as **Exhibit-D**.
- 5) Photocopy of list of new Committee dated 20.06.2017 of the Company under reference. This is marked as **Exhibit-E**. This has been marked with objection.
- 6) Photocopy of Page No. 3 – List of Budlies off from duty on 02.03.2016, where from it is revealed that the Workman Surendra Prasad has his credit 12 (twelve) days Earned Leave for 2014 and 14 (fourteen) days Earned Leave for 2015 and his category mentioned Budli. Marked as **Exhibit -F**.
- 7) Photocopy of series of letters issued by Subhas Chandra Thakur to the Personnel Manager on 08.01.2015, 28.03.2015 & 20.04.2015 complaining before the authority regarding the misconduct of the Workman. This is marked as **Exhibit-G series**.
- 8) Photocopy of series of letters issued by Subhas Chandra Thakur to the Personnel Manager on 05.04.2015 and 09.04.2015 complaining before the authority regarding the misconduct of the Workman. This is marked as **Exhibit-H & Exhibit-H/1**.
- 9) Photocopy of Page No. 9-19, Standing order applicable to the Company. Marked as **Exhibit -I**.
- 10) Photocopy of Page No. 20-21, Bio-metric attendance of Shri Surendra Prasad in respect of Hukum Chand Jute Mill Unit on and from 16.02.2016 to 15.03.2016 and 01.03.2016 to 31.03.2016. These are marked as **Exhibit-J & J/1**.



To prove that Surendra Prasad did not attend his duty from 02.03.2016 to 31.03.2016. It does not prove Surendra Prasad did not work more than half an hour on 10.04.2016 because of the fact the bio-metric attendance from 05.04.2016 to 10.04.2016 has not been filed by the Company to substantiate their allegation against the Workman that Surendra Prasad did not work for more than half an hour on 10.04.2016 from 11:00 AM in B Shift.

- 11) Photocopy of Formal Labour Requisition Part-I(printed form), which is vacant with objection. This is marked as **Exhibit-K**.
- 12) Photocopy of letter issued to Shri Soumyanil Sarkar, ALC, Barrackpore, dated 12.05.2017, 3 (three) sheets regarding consent in reference of Assistant Labour Commissioner, Barrackpore memo No. B/626/51/16-JLC, dated 08.05.2017. This is marked as **Exhibit-L**.

Now let us consider the oral evidences as led by the witness for the parties.

PW-1 has stated his claim of statement through his affidavit-in-chief and exhibited some document from 1-9 as per list.

In his cross examination he said that he did not file any such paper to show that he was appointed as permanent workman in the service of the Company w.e.f. 09.04.1995 though facts is that **Exhibit-1** proves that he was appointed in the Company on 09.04.1995 wherein his employer's code No. has been registered as 3180 but Company did not file any such paper to show that Surendra Prasad was appointed as Badli Worker in the Company except **Exhibit-8 & 9 series**.

In his cross examination he firmly told that Narad Muni Mishra of their Company threatened him to leave the trade union activities otherwise his service will be determined sooner than later though he did not inform the same to their higher authority in black and white but he did it orally.

He candidly admitted that he could not informed the management about his absence on 01.04.2016 for medical emergency in writing but he informed the same over telephone to their time-keeper name Labkush.

He demands that he met with Rambabu, the Labour Officer and his immediate officer on and from 05.04.2016 to 09.04.2016.

He candidly admitted that he did not make any complaint in writing before the management about the facts that he was driven out by Narad Muni Mishra on 10.04.2016. He made complaint before the management about the matter after 15-20 days in writing.

He denied all other suggestions.

On the other hand, Company's witness named Rajiv Kumar Maheswari CW-1 who has stated that the Workman Surendra Prasad was a Badli worker working in the Preparing Department and never a permanent worker.

CW-1 claimed that Workman was very much negligent in performing his duty and habitual absentee.

CW-1 further claimed that bio-metric attendance, wage slips filed by the Company would substantiate his claim that the Workman was Badli worker.

CW-1 claimed that Workman was granted statutory leave on and from 02.03.2016 to 26.03.2016 and denied all other facts after 26.03.2016 to 10.04.2016 as adduced by the Workman.

CW-1 claimed Clause-9C of the Standing Order should apply in the case of Surendra Prasad.

CW-1 also claimed that Surendra Prasad has been gainfully employed elsewhere but could not say the name of the said places.

He filed some documents which has been marked as **Exhibit- E – Exhibit- L**.

CW-1 in his cross examination admits that he does not function as in-charge of Preparing Department of the Mill but he demands that he looks after the over all work of the Mill regarding labour trouble only.

He further admits that Workman had been working in their Mill from 09.04.21995 and he has only filed the attendance register, Badli Register, bio-metric attendance register of the Workman for the year 2016 but he did not file any attendance register of the Workman whether it is manual or bio-metric before 2016 and on and from 09.04.1995.

CW-1 admits **Exhibit-J & J/1** do not bear any seal and signature of any authority of the Company or himself and he does not file any supporting documents of bio-metric attendance of the Workman including bio-metric machine.

CW-1 also admits **Exhibit-J** proves that Workman worked 8 (eight) hours per day on and from 16.02.2016 to 01.03.2016 except the day 20.02.2016.

CW-1 also admits that **Exhibit-A, B, G, H & H/1** were never sent to the Workman Surendra Prasad.

CW-1 also admits that Company does not file any document to show that **Exhibit-1** was ever issued to the Workman Surendra Prasad and Company does not produce

any Badli register on and from 09.04.1995 to 2016 and **Exhibit-F** is related to a single day and it bears no date when it was prepared.

CW-2 Subhas Chandra Thakur, Supervisor in the Preparing Department of Mill No. – 2 where Surendra Prasad used to work, he also supports the deposition of CW-1. He has filed some documents which have been marked as **Exhibit-A, B, C, D**.

- 1) Photocopy of letter by CW-2 to Personnel Manager dated 08.01.2015. Marked as **Exhibit-A**.
- 2) Photocopy of letter by CW-2 to Personnel Manager dated 20.04.2015. Marked as **Exhibit-B**.
- 3) Photocopy of identity proof of CW-2. Marked as **Exhibit-C**.
- 4) Photocopy of letter of authority issued by the Company's Chief Executive in favour of CW-2 to depose in this case. Marked as **Exhibit-D**.

CW-2 states in his cross examination that he is acquainted with the contents of the Written Statement filed by the Company.

CW-2 could not say whether any show-cause or charge-sheet or departmental proceeding was initiated against Surendra Prasad regarding his allegation made in his affidavit-in-chief. He could not show anything better than CW-1 to demolish the evidence of PW-1.

Now let us see the argument being placed by the Ld. Counsel for the Company.

Ld. Counsel for the Company has argued that Surendra Prasad was a Badli Worker and after exhausting his sanctioned leave he did not join and as such there arise no question of any show cause, charge-sheet or domestic enquiry and he is not entitled to protection of Industrial Disputes Act 1947.

Ld. Counsel for the Company claimed that the documents produced by the Company prove that the Workman was a Badli employee and never made permanent during his tenure of work in the Company.

Ld. Counsel for the Company further claimed that the name of Surendra Prasad has been deleted as per provision of 9C of the certified Standing Order of the Company (**Exhibit-1**) and his name is kept in the list of Badlies and he may join at any time.

Ld. Counsel for the Company argues that evidence of parties specially by Workman does not prove that he was a Badli Worker and he cannot claim any reinstatement or regularization and therefore this Workman is not entitled to any relief as prayed for.



In support of his argument Ld. Counsel for the Company has filed some citations as follows:

- 1) Karnataka State Road Transport Corporation vs. S. G. Kotturappa-2005(1) LIN 1095C.
- 2) Bangalore Metropolitan Transport Corpn. vs. T. V. Anandappa 2009 LLR 659.
- 3) Prakash Cotton Mills vs. Rastriya Mill Mazdoor Sangh SACIC 1980-90 Vol-I P 342.
- 4) Secretary, State of Karnataka vs. Uma Devi 2006 (109) FLR 826.
- 5) Ranbir Singh vs. Executive Engineer PWD 2021 CLR 474.
- 6) 2002, Lab IC, Page 987, SC, The Range Forest Officer vs. S. T. Hadimani.
- 7) 1990(V2) CLR Page-1 Punjab Land Development vs. P.O. Labours Court, Punjab, SC.
- 8) 2006, Vol.-I, CLR, Page-39, SC. UP Brassware Corporation Ltd. vs. Udaynarayan Pundey.
- 9) 2009, Vol-3, CLR, Page-01, SC, Metropolitan Transport Corpn vs. V. Ventatesan.

Now let us consider the argument led by the Ld. Counsel for the Workman.

Ld. Counsel for the Workman has argued that the Workman deliberately was not allowed to join his normal duty on and from 05.04.2016 to 10.04.2016 rather the Company has failed to prove the factum as adduced by the Workman in relation to the facts on and from 05.04.2016 to 10.04.2016 is false or fabricated rather the evidence of PW-1 in this regard is legal and he is entitled to relief as prayed for.

Ld. Counsel for the Workman further argues the letter sent by the Company to the Labour Commissioner which has been marked as **Exhibit-7** proves that the Workman was extended his leave upto 31.03.2016.

Ld. Counsel for the Workman argues the Workman had been working in the Company from 1995 to 2016 even then his nomenclature has been pronounced or mentioned by the Company a Badli Worker which is against the dictum of Hon'ble Supreme Court supported by 5th Schedule Clause-10 of the Industrial Dispute Acts.



So, it should be presumed that the Workman was not a Badli Worker. On the relevant point of time his status should be considered as regular employee or permanent employee and since the Company has given a number of chances to ask the vital witnesses namely Rambabu, Narad Muni Mishra, Swapan Kumar Ghosh to prove the factum relating to the refusal of employment of the Workman on and from 05.04.2016 to 10.04.2016 it should also be presumed that the Workman has deposed with all fairness and his evidence could not be demolished by the evidence of the Company and as such Surendra Prasad is entitled to the relief as prayed for.

In support of his case Ld. Counsel for the Workman has filed some citations as follows:

- 1) Mohonlal vs. Bharat Electronic Limited - Labour Journal 1981 Vol-II Supreme Court, Page-70.
- 2) Deepali Gundu, Surwase vs. Kranti Junior Adhyapak and Ors [2013(139 FLR 541 Supreme Court)].

Findings:

On careful perusal of the pleadings of the parties as well as the evidences both oral and documentary filed by the parties and considering the submission led by the Ld. Counsels for the parties it is revealed that Company under reference has admitted that Surendra Prasad is an employee being worked in the category of Badli Worker since his joining in the year 1995 to 2016 when he was refused employment in the Company under reference and therefore, Surendra Prasad can not get any relief as prayed for or he cannot be protected under any provision of the Industrial Disputes Act.

On the other hand, it is revealed from the argument of the Ld. Counsel for the Workman whereby it has been claimed that Surendra Prasad was a permanent worker in the Company under reference. He was enjoying statutory leave on and from 02.03.2016 to 26.03.2016 and the same was allowed to be extended up to 31.03.2016 but due to medical emergency at home he could not join his service on 01.04.2016 and when he came to join on 05.04.2016 he was not allowed to join his duty firstly by one Rambabu. Thereafter he came to join his duties after a few days as per instruction of his immediate officer i.e. on 09.04.2016 when Rambabu issued the appropriate Gate Pass entitling him to join his duties from 10.04.2016 and on that day one Subhas Thakur, Department-in-Charge and one Swapan Ghosh, a staff of the Company asked him to go to the Labour Office and when he went to the Labour Office he was tersely told by Shri Narad Muni Mishra, Personnel Manager that he was late in joining his duty and according to Standing order he cannot join his duty. Thus, the Workman was terminated from his service on and from 10.04.2016.

Now let us see what has come from the evidences of record.

From the evidence on record, it is revealed that the Company could not prove that Surendra Prasad was a Badli Worker all along i.e. during his tenure in the Company from 1995 to 2016.

Similarly, the Workman could not prove that he was a permanent Worker at any point of time in the Company during his tenure in the Company.

But facts remain the Workman Surendra Prasad have been working in the Company from 1995 to 2016 with unblemished character and still he was/is being considered a Budli Worker in that Company without having any proven facts regarding any misconduct, undisciplined behaviour or anything like that being taken by the Company against him and according to the dictum of the Hon'ble Apex Court in number of cases it has been held that this type of labour practice should be called as "unfair labour practice" (5th Schedule, Clause 10 also is very much clear in this respect). So, I am constraint to hold that the employment of the Workman Surendra Prasad can safely be presumed and considered as of regular employment in the Company during his tenure in the Company not a Casula Badli Worker

It is fact that the Workman Surendra Prasad was on statutory leave from 02.03.2016 to 26.03.2016 but the same was allowed to be extended up to 31.03.2016 but due to medical emergency he could not join on 01.04.2016 and he came to join on 05.04.2016 from which day he was deburred by all means to join his regular duty without assigning any reasonable ground and in this factum some of the names of the staffs of the Company have been came out during evidence and they should be produced before this Tribunal during trial and Ld. Counsel for the Company has tried his level best to present them before this Tribunal but failed for the reason best known to the Company. So, it is fact Company has withheld the best evidence to rebut the claim or evidence of the Workman. So, in this case also an adverse presumption should be inferred and if that be so we can safely conclude to the effect that the Workman Surendra Prasad was terminated illegally by not allowing him to join his duty on and from 05.04.2016 to 10.04.2016.

In view of the above discussions with reasons it is proved that the termination of service of the Workman Surendra Prasad by not allowing him to join his duty w.e.f. 10.04.2016 is illegal and unjustified and it violates all rules of principles of natural justice.

It is also revealed from the argument led by the Ld. Counsel for the Workman that Company even after specific order of this Tribunal has flouted to execute the order passed on 11.01.2022 in respect of disposing the petition under Section 15 (2)(b) of the Industrial Disputes Act filed by the petitioner which was allowed on contest but without any cost.



In sum the case succeeds. The petitioner Workman Surendra Prasad is entitled to the relief as prayed for.

Hence it is

AWARDED

That the instant case being No. VIII-20/2017 be and same is allowed on contest with cost of Rs. 20,000/- (Rupees twenty thousand) only.

The Company is hereby directed to reinstate the concerned Workman Surendra Prasad with full back wages along with other consequential benefits.

The Workman Surendra Prasad is also entitled to get a compensation to the tune of Rs. 2,00,000/- (Rupees two lakhs) only from the Company for facing unnecessary harassment, mental agony and also for facing tremendous economical crisis during his unemployment followed by refusal of employment by the Company.

The Company is therefore, directed to execute the order and pay the statutory dues along with cost and compensation to the Workman Surendra Prasad within 3(three) months from the date of receipt of this order, in default the concerned Workman is at liberty to take the shelter of the law for execution of the Award

This is my Award.

Let the Award be sent to the Government of West Bengal.

Sd/-

Dictated & corrected by me

Sd/-

(Uttam Kumar Nandy)
Judge

JUDGE
FIRST INDUSTRIAL TRIBUNAL
WEST BENGAL

(Uttam Kumar Nandy)
Judge
First Industrial Tribunal
Kolkata

JUDGE
FIRST INDUSTRIAL TRIBUNAL
WEST BENGAL

