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

No. Labr/1810 /(LC-IR)/11L-24/17 Date : 05/09/ 2021

ORDER

WHEREAS an industrial dispute existed between M/s Hindustan National Glass & Industries Ltd., 2, Panchu Gopal Bhadury Sarani, Rishra, Dist. hooghly and his workman Sri Dilip Rai, Jayashree Textiles, 3, Mosri Nilay, 2nd Building, Rishra, Dist. - Hooghly, regarding the issue, being a matter specified in the second schedule to the Industrial Dispute Act, 1947 (14 of 1947);

AND WHEREAS the workman has filled an application under section 10(1B) (d) of the Industrial Dispute Act, 1947 (14of 1947) to the Third Industrial Tribunal, Kolkata specified for this purpose under this Deptt.'s Notification No. 1085-IR/12L-9/95 dated 25.07.1997.

AND WHEREAS, the said Third Industrial Tribunal, Kolkata heard the parties under section 10(1B)(d) of the I.D. Act, 1947 (14of 1947).

AND WHEREAS the said Third Industrial Tribunal, Kolkata has submitted to the State Government its Award dated 16.04.2021 under section 10(1B)(d) of the I.D. Act, 1947 (14of 1947) on the said Industrial Dispute vide Memo No. 588 - L.T. dated 22.04.2021.

Now, THEREFORE, in pursuance of the provisions of Section 17 of the Industrial Dispute Act, 1947 (14of 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

Ananda (IT Cell)
For n.a.
6/09

: 2 :

No. Labr/ .1610. /1(5)/(LC-IR) Date : 06/09/ 2021

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

1. M/s Hindustan National Glass & Industries Ltd., 2, Panchu Gopal Bhadury Sarani, Rishra, Dist. hooghly.
2. Sri Dilip Rai, Jayashree Textiles, 3, Mosri Nilay, 2nd Building, Rishra, Dist. - Hooghly.
3. The Asstt. Labour Commissioner, W.B. In-Charge, Labour Gazette.
4. The OSD & EO Labour Commissioner, W.B., New Secretariat Buildings, (11th Floor), 1, Kiran Sankar Roy Road, Kolkata – 700001.
5. The Deputy Secretary, IT Cell, Labour Department, with the request to cast the Award in the Department's website.

Deputy Secretary

No. Labr/ . . . . . /2(2)/(LC-IR) Date : … … 2021

Copy forwarded for information to :-

1. The Judge, Third Industrial Tribunal, Kolkata, with respect to his Memo No. 588 - L.T. dated 22.04.2021.
2. The Joint Labour Commissioner (Statistics), West Bengal, 6, Church Lane, Kolkata – 700001.

Deputy Secretary

In the Third Industrial Tribunal, West Bengal

New Secretariat Buildings, Kolkata

Present: Shri Sanjeev Kumar Sharma, Judge,
Third Industrial Tribunal, Kolkata.

CASE NO. 05/2013

Under Section 10(1B) (d) of the Industrial Disputes Act, 1947

Sri Dilip Rai ... Applicant
Jayashree Textiles,
3, Mosri Nilay, 2nd Building, Rishra, Dist.- Hooghly.

-Versus-

M/s. Hindustan National Glass & Industries Ltd. ... OP/Company
2, Panchu Gopal Bhadury Sarani, Rishra,
District-Hooghly.

A W A R D

Dated :- 16-04-2021

The instant application under Section 10(1B)(d) of the Industrial Disputes Act, 1947 has been filed by applicant Sri Dilip Rai challenging the termination of his service by the company with prayers of reinstatement, back wages and consequential benefits. The case of the applicant is that he was employed with the company as driver since June, 1989 and continuously worked till his termination on 27.03.2012. The applicant alleges that the company is a celebrated manufacturer of glass equipment and products and despite earning huge profit is engaged in unfair labour practice having least regards towards the industrial laws. The company did not issue any appointment letter to the applicant nor enrolled his name in its muster roll though he has been working continuously and drawing wages from the company. He further alleges that he worked for twelve hours in a day, but was deprived of overtime. The applicant himself as well as through the glass workers' union raised voice against the anti-labour policy of the company, but to no effect. On 27.03.2012 all of a sudden, the company terminated his service without issuing any termination letter, show-cause or charge-sheet. His residential quarter provided by the company was also locked up and no notice pay or compensation was offered to him. Further case of the applicant is that at the time of

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termination of his service his monthly salary was Rs.6,222/-. The applicant pleads that being aggrieved by his wrongful termination he made representation to the company on 04.04.2012, but on receiving no response he referred the matter to the Deputy Labour Commissioner, Serampore through his representation dated 13.09.2012. The matter was taken up for conciliation, but it yielded no result due to adamant attitude of the company. On 01.01.2013 the applicant made application in Form P-4 and after obtaining certificate from the Conciliation Officer he filed the instant application. The applicant further pleaded that his termination is illegal, unjustified and violative of industrial laws and the principles of natural justice. Since his termination, he is unemployed and passing hard days. He also prayed for condonation of delay in filing the instant application within the stipulated period due to his personal difficulties.

The company contested the application by filing written statement. According to the company the application under Section 10(1B)(d) of the I.D. Act is not maintainable after the enactment of Section 2A(2) by the Industrial Disputes (Amendment) Act, 2010 and also because the certificate issued by the Conciliation Officer does not relate to this case. The company further pleaded that there is no existence of any industrial dispute in absence of any employer-employee relationship between the applicant and the company. Since the applicant is not at all a workman of the company the alleged dispute cannot assume character of an industrial dispute. The case of the company is that the applicant is an employee of contractor namely Om Prakash Singh. The applicant not being an employee of the company there arises no question of issuing appointment letter to him and enroll his name in the muster roll of the company. The applicant was in fact employed by the contractor and the company had no supervision or control over the performance and activities of the applicant. In absence of any employer-employee relationship between the applicant and the company the allegation of termination of service of the applicant by the company is imaginary and there arises no question of issuing any termination letter, payment of any notice-pay or compensation. The Conciliation Officer failed in his statutory duty to investigate and satisfy himself as to the existence of any industrial dispute. The company denied all the allegations made by the workman against it and prayed for an award of dismissal of the application.

On the basis of the pleadings of the parties following issues were framed in this case :-

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1. Is the instant application filed by the applicant maintainable in law and in its present form ?

2. Is the applicant (workman) a contract labour under a contractor as per provisions of Contract Labour (Regulation & Abolition) Act, 1970 ?

3. Is the order of termination of the workman issued by the company w.e.f. 27.03.2012 legal and valid ?

4. Is the workman entitled to be reinstated in his service under the company without any break with full back wages along with other consequential benefits accrued thereto ?

5. Is the applicant entitled to get any other relief or reliefs ?

In order to support his case, applicant examined himself as PW-1 and brought into evidence the following documents :

1. Copy of letter written by the applicant to the company as Exhibit-1;
2. Copy of letter written by General Secretary of the union to the company as Exhibit-2;
3. Copy of letter written by the applicant to DLC, Serampore as Exhibit-3;
4. Copy of letter written by company to ALC as Exhibit-4;
5. Copy of Form P-4 as Exhibit-5;
6. Copy of certificate issued by the company as Exhibit-6;
7. Copy of letter of the company in the form of certificate as Exhibit-7; and
8. Copies of accounts slips of EPF for the year 2005-2006, 2006-2007, 2008-2009 and 2009-2010 as Exhibits-8, 8/1, 8/2 and 8/3 respectively.

The OP/Company examined its General Manager (HR) Mr. Mithilesh Kumar Singh as OPW-1 and brought into evidence following documents :-

1. Copy of company's letter to A.L.C., Serampore as Exhibit-A;

2. Copies of Memo. Issued by D.L.C. Serampore to the company dated 30.04.2012, 14.05.2012 and 23.05.2012 as Exhibits-B, B/1 & B/2 respectively;

3. Copy of company's letter dated 14.05.2012 to D.L.C., Serampore as Exhibit-C;

4. Copy of company's letter dated 18.06.2012 to D.L.C., Serampore as Exhibit-D;

5. Copy of letter by Om Prakash Singh to Dilip Rai as Exhibit-E;

6. Copy of certificate of registration issued to the company by Registering Officer under Contract Labour (Regulation & Abolition) Act, 1970, its annexures and list of contractors as Exhibits-F, F/1 & F/2 respectively;

7. Copy of company's letter to Registering Officer under Contract Labour (Regulation & Abolition) Act, 1970 as Exhibit-G;

8. Sample copies of bills submitted by Om Prakash Singh to the company on 01.02.2012, 01.03.2012 and 31.03.2012 as Exhibits-H, H/1 & H/2 respectively;

9. Copy of agreement as Exhibit-I; and

10. Copy of muster roll maintained by M/s. O.P. Singh for the period 01.08.2011 to 31.03.2012 as Exhibit-A/8.

Decision with Reasons

Issue No.1 :

Learned Advocate for the company raises the issue of maintainability of the application contending that the application filed by the applicant is not in accordance with the provisions of Section 10(1B)(d) of the Industrial Disputes Act, 1947. He points out that the application was filed after more than ninety days of obtaining the certificate from the Conciliation Officer and there is no provision for condonation of delay. He further submits that there is no document to show that the applicant ever raised dispute through the union. He contends that if the dispute was raised by the union then section 10 (1B) (d) cannot lie and that the law of estoppel is applicable to industrial proceedings. He submits that the instant application is not maintainable in the eye of law.

Learned representative for the applicant on the contrary submits that the application relates to an individual dispute and the delay caused in filing the application is not fatal.

The instant proceeding was started on 09.04.2013 on the basis of the application was filed on 01.04.2013. The record shows that the certificate under Section 10(1B)(b)

was issued by the Conciliation Officer on 02.01.2013. Clause (c) of Section 10(1B) says that the application may be filed before the Tribunal within a period of sixty days from the receipt of certificate under clause (b). Since the clause (c) uses the word 'may' the period of sixty days prescribed therein cannot be taken as mandatory. The Industrial Disputes Act is a welfare legislation. Exhibit-2 is the letter dated 07.02.2011 of the union addressed to the company which ventilates general grievances of the drivers regarding their wages and overtime. Exhibit-1 is the letter dated 04.04.2012 written by the applicant to the company (Service of which is challenged) alleging his termination wrongful and demanding his reinstatement. Exhibit-3 is the letter dated 13.09.2012 written by the applicant to the Dy. Labour Commissioner, Serampore, Hooghly praying for intervention for his reinstatement. Exhibit-5 shows that the applicant prayed for certificate on 01.01.2013. The applicant obtained the certificate on 04.01.2013 and filed the instant application on 01.04.2013. The facts alleged and denied by the parties certainly are subject to proof by evidence. In view of the facts and circumstances and nature of the case, I find that the technical considerations cannot throw out the merits of the case. The dispute is essentially an individual dispute and I find that there is no inordinate delay in filing this case. Thus, the issue of maintainability is answered in affirmative.

Issue No. 2 :

This is the core issue in this case. While the applicant claims to be the worker of the company the company denies the existence of any employer-employee relationship between it and the applicant. Evidently no appointment letter has been produced by the applicant. The applicant mainly relies on Exhibit-6, Exhibit-7 & Exhibit-8 series in support of his case. The version of the company is that the applicant was the employee of the contractor and has never been direct employee of the company.

Learned advocate for the company, while forwarding arguments, submits that there never existed employer-employee relationship between the applicant and the company and onus lies upon the applicant to prove that he was the employee of the company. He further submits that the definition of workman in the Industrial Disputes Act and the Contract Labour (Regulation & Abolition) Act are different. He contends that mere payment of PF contribution by the company does not make the applicant it's direct employee as it is the statutory obligation of the principal employer to pay PF

contribution of its direct employees as well as contract labours. He refers to para 30 of the EPF Scheme 1952. He further submits that Exhibits-A, A8, F series, G and H series amply establish that the applicant was an employee of the contractor and not of the company. Learned advocate refers to the following decisions.

1. ***Kumar Brothers (Biri) Pvt. Ltd. Vs Regional PF Commissioner, Bihar, 1968 Lab. IC 1578.***

2. ***Subir Guhathakurta Vs Johnson & Johnson Ltd., 2006 III CLR 125.***

3. ***Bharat Heavy Electricals Ltd. Vs Mahendra Prasad Jhakmola, 2019 LLR 515.***

4. ***Indian Iron and Steel Co. Ltd. Vs State of W.B., 2011 (5) CHN 164.***

5. ***Ram Singh Vs Union Territory Chandigarh, 2004 LLR 47.***

6. ***Cement Corporation of India Ltd. Vs PO Labour Court Cum Industrial Tribunal, Hisar, 2010 LLR 704.***

7. ***Swapan Das Gupta Vs Ist Labour Court W.B. 1976 Lab IC 202.***

8. ***Workmen of Nilgiri Coop. Marketing Society Ltd. Vs State of T.N. 2004 SCC (L & S) 476.***

9. ***New Delhi General Mazdoor Union Vs Standing Conference of Public Enterprise, 1991 LLR 516*** and

10. ***Haryana State Cooperative Land Development Bank Vs Neelam, (2005) 5 SCC 91.***

11. ***General Manager (OSD), Bengal Nagpur Cotton Mills Vs Bharat Lal, 2011 LLR 113.***

12. ***Deccan Chronicle Vs G. Pedda Reddy, 2004 LLR 809***

Learned representative for the applicant, on the contrary, submits that the appointment of the applicant in 1989 has not been denied by the company while the applicant worked for long years from 1989 to 2012 and at the fag end of his service the company raised the issue of contract labour. He adds that the company did not mention the date of appointment in their written statement and no document regarding payment of salary by the contractor prior to 2011 has been produced. He points that the Exhibit-

F1, Annexure to the Certificate of registration of the company under the Contract Labour (Regulation & Abolition) Act, is dated 06.12.2010 which shows that the contractor Om Prakash Singh had no existence prior to 2010 while the PF slips, Exhibit-8 series relate to the period 2005-2006, 2006-2007, 2007-2008 and 2008-2009. He submits that there is no mention in Exhibit-F2 dated 27.01.2011 that contractor Om Prakash Singh employed the applicant. He also points that Exhibits-G dated 20.04.2012 and Exhibit-I dated 17.09.2012 are post period documents i.e. after termination of the applicant as such those are irrelevant. He submits that the applicant has amply proved the employer-employee relationship through oral as well as documentary evidence as such the decisions cited by the learned advocate for the company on the point that mere payment of contribution of P.F. fund could not establish the employer-employee relationship are not applicable in this case. He further submits that the company has failed to establish that the applicant was a contract labour, therefore, the muster roll of the contractor produced to show that the salary was being paid to the applicant by the contractor for the last few months prior to his termination cannot be relied upon. He adds that the applicant was never explained that the salary was being paid to him by the contractor. He submits that the applicant is entitled to the relief of reinstatement with full back wages. The representative of the applicant cites the following decisions :

1. ***Bank of Baroda vs. Ghemarbhai Harjibhai Rabari, 2005 LLR 443;***

2. ***Workman of FCI vs. FCI, 1985 (II) LLJ* 4;**

3. ***Deepali Gundu Surwase vs. Kranti Junior Adhyapak Mahavidyalaya, 2013 Lab.I.C. 4249;***

4. ***Tapas Kumar Paul vs. BSNL, 2014 (5) Supreme 617;***

5. ***Steel Authority of India Ltd. vs. National Union Waterfront Workers, 2001 – II – LLJ 1087;***

Admittedly, the applicant was employed to drive the vehicle of the company. The question in this case is whether the applicant was employed directly by the company or he was employed by the contractor namely Om Prakash Singh to drive the vehicle of the company. It is the consistent case of the applicant that he has been working in the company as driver since the year 1989. Exhibit-6 is the certificate dated 04.01.1989 issued by vice president (works) of the company which establishes that the applicant has been working as driver and he has also been residing in the factory quarters of the company. Exhibit-8 series

show that the company had been paying PF contribution for the applicant since the year 2005-2006, 2006-2007, 2008-2009 and 2009-2010. Exhibit-7 is a certificate dated 18.12.2002 of Sr. Manager Works of the company which shows that the applicant was working as car driver of the company. In absence of any evidence on that behalf it can safely be inferred that the applicant had been working in the company continuously since 1989.

In **Kumar Brothers** case, referred for the company, the Hon'ble Patna High Court observed that the definition of workman under E. P. F. Act included a person employed through contractor. In **Indian Iron and Steel company** case, referred for the company, the Hon'ble Calcutta High Court held that payment of bonus itself would not be decisive as to whether the contractual employees were the direct employees of the company or not. In the cases of **Subir Guhathakurta** and **Swapan Das Gupta**, referred to for the company, it is laid down that burden of proof is upon the employee to prove that he is a workman. In **Bharat Heavy Electricals Ltd**. case the Hon'ble Supreme Court referred to the decision in Balwant Rai Saluja Vs Air India Ltd., 2014 (9) SCC 407 and laid down that the relevant factors to be taken into consideration to establish an employer- employee relationship would include, inter alia, (i) who appoints the workers; (ii) who pays the salary/remuneration; (iii) who has the authority to dismiss; (iv) who can take disciplinary action; (v) whether there is continuity of service; and (vi) extent of control and supervision, i.e. whether there exists complete control and supervision. In **General Manager (OSD), Bengal Nagpur Cotton Mills** case the Hon'ble Supreme Court held, "Two of the well-recognized tests to find out whether the contract labour are the direct employees of the principal employer are (i) whether the principal employer pays the salary instead of the contractor; and (ii) whether the principal employer controls and supervises the work of the employee. In this case, the Industrial Court answered both questions in the affirmative and as a consequence held that first respondent is a direct employee of the appellant." **Ram Singh Vs Union Territory, Chandigarh** lays down that normally, the relationship of employer and employee does not exist between an employer and Contractor and servant of an independent Contractor. Where, however, an employer retains or assumes control over the means and method by which the work of a Contractor is to be done it may be said that the relationship between employer and the employee exists between him and the servants of such

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a Contractor. In such a situation the mere fact of formal employment by an independent Contractor will not relieve the master of liability where the servant is, in fact, in his employment. In that event, it may be held that an independent Contractor is created or is operating as a subterfuge and the employee will be regarded as the servant of the principal employer. Where a particular relationship between employer and employee is genuine or a camouflage through the mode of Contractor is essentially a question of fact to be determined on the basis of features of relationship, the written terms of employment (sic) and the actual nature of the employment. The actual nature of relationship concerning a particular employment being essentially a question of fact, it has to be raised and proved before an industrial adjudicator. The Hon'ble Supreme Court in **Workman of Nilgiri Coop. Mkt. Society Ltd.** case held, "The control test and the organization test, therefore, are not the only factors which can be said to decisive. With a view of elicit the answer, the Court is required to consider several factors which would have a bearing on the result : (a) who is appointing authority; (b) who is the pay master; (c) who can dismiss; (d) how long alternative service lasts; (e) the extent of control and supervision; (f) the nature of the job, e.g. whether, it is professional or skilled work; (g) nature of establishment; (h) the right to reject." In **Cement Corporation of India Ltd.** case, the Hon'ble Punjab & Haryana High Court held that mere depositing of PF/ESI contribution, providing medical facilities, shoes and uniform by the principal employer in terms of award of wage board, requirements of the Factories Act and under the directions u/s 33C(2) of the Industrial Disputes Act would not be factors for construing employer-employee relationship between the workers and the principal employer. In **Deccan Chronicle** case, the Hon'ble Andhra Pradesh High Court held that the principal employer is liable to pay contribution to ESI fund for all workman whether contract labour or casual/temporary or permanent employee and such payment does not mean that the principal employer appointed the workman.

Exhibit-I is the agreement dated 07.08.2012 between the company and the contractor. No previous written agreement between the company and the contractor is produced nor the agreement dated 07.08.2012 speaks of any previous agreement by the parties. Evidence of OPW1 also disclose nothing about any previous written agreement between the company and the contractor.

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In his evidence OPW1 did not deny that the applicant had been working as driver in the company since 1989 but his consistent evidence is that he was employed by the contractor and not the company. Exhibit-F is the duplicate copy of the registration certificate dated 23.12.1974 in the name of the company issued by the Registering Authority under the CLRA Act 1970. The annexure to the registration (Exhibit-A1) mentions the name of the contractor Om Prakash Singh among the other contractors. Different nature of works, including transportation, for employment of contract labour are mentioned. The other annexures (Exhibit-F2) are brought in by subsequent amendments dated 27.01.2011 and 17.11.2011 and the name of the contractor Om Prakash Singh is found in all the annexures. Exhibit-G is another amendment in the certificate of registration of the company dated 03.09.2012 which is after the alleged date of termination of the applicant and therefore is irrelevant. In his written statement the applicant pleaded that he has been working in the company since last June 1989 but in his evidence he stated that he has been working in the company as driver since 1989 and Exhibit-6 is found dated 04.01.1989. Evidently no letter of appointment issued by the company has been filed by the applicant. Therefore the exact date from which the applicant has been working in the company is not clear. Exhibit-4 corresponding to Exhibit-A is the letter dated 19.10.2012 of the company addressed to the Dy. Labour Commissioner, Serampore, Hooghly, wherein the company asserted that the applicant was an employee of contractor and not of the company. The applicant in his letter dated 13.09.2012 addressed to the Dy. Labour Commissioner admitted the existence of contractor and alleged that the contractor was mere stooge of the management to deprive direct employment but surprisingly he did not raise such plea in his written statement. Section 12 of the CLRA Act 1970 lays down that no contractor shall undertake or execute any work through contract labour except under and in accordance with a license issued in that behalf by the licensing officer. In this case no license of the contractor has been produced. During arguments learned advocate for the company submits that when number of workers employed is less than 10 no license is required but we find from Exhibit-F2 that the contractor was enlisted to supply maximum 99 workers. In ***New Delhi General Mazdoor Union*** case the Division Bench of the Hon'ble Delhi Court held that when the principal employer is not registered and or the contractor is not licensed under the CLRA Act the

workman employed as contractor labour would not become the employees of the principal employer. This view has been approved by the Hon'ble Supreme Court in **Denanath Vs National Fertilizers Ltd.** reported in **AIR 1992 SC 457**.

Payment of PF contribution is no doubt statutory liability of the principal employer under Section 8A of the EPF and Miscellaneous Provisions Act 1952 and Para 30 of the EPF Scheme 1952. The principal employer is liable to pay contribution in respect of the employees employed through the contractor also. Thus, mere payment of PF contribution by the company for the applicant is not enough to conclude that the applicant is the direct employee of the company in view of the decisions in **Cement Corporation of India Ltd.** and **Deccan Chronicle** cases.

The company's plea in their written statement that the applicant was employed through contractor Om Prakash Singh is not denied by him in is examination-in-chief on affidavit but in his cross-examination he denied the suggestion that he was employed through the contractor though he admitted that Om Prakash Singh was an enlisted contractor of the company.

Now, there is nothing in the evidence of the applicant that he worked fully under the control and supervision of the company. He did not even whisper about the nature of his duties as driver, who used to allot duties to him. He did not state whether he used to sign the attendance register of the company or not. It is not clear that whether the applicant used to drive passenger vehicle or goods vehicle or both. The applicant did not disclose that in which mode and manner he used to get salary. Nothing to that effect is found in his evidence. On the other hand the applicant in his evidence admits his signatures (Exhibits-A/1 to A/7) on the register of wages cum muster roll of the contractor. He admits that he signed on the documents after receiving salary for those months from the cashier concerned. It is no case of the applicant that he received salary from the office of the company. The names of his co-workers mentioned by the applicant in his cross-examination dated 02.02.2017 as the persons who along with him had gone to the union to raise objection in their service mater are found in the register of wages cum muster roll of the contractor.

It is not a case of regularization of the contract labourers. There is no Govt. notification of abolition of contract labour in the company. Contract labour system can be abolished by the Government only and the Tribunal has no

jurisdiction to abolish the same. The applicant being a driver the nature of his job is certainly professional. In view of the nature of job of the applicant, the quarter provided to him by the company cannot be said to establish that he was a direct employee of the company. In **Steel Authority of India Vs National Union Water Front Workers**, referred to for the applicant, the Hon'ble Supreme Court held, "Thus on issuance of prohibition notification under S.10(1) of the CLRA Act prohibiting employment of contract labour or otherwise, in an industrial dispute brought before it by any contract in regard to conditions of service, the industrial adjudicator will have to consider the question whether the contractor has been interposed either on the ground of having undertaken to produce any given result for the establishment or for supply of contract labour for work of the establishment under a genuine contract or is a mere ruse/camouflage to evade compliance of various beneficial legislations so as to deprive the workers of the benefit thereunder." In this case no such prohibition notice has been issued by the Government. In **Bank of Baroda** case, referred for the applicant, the Hon'ble Supreme Court observed that while there is no doubt in law that the burden of proof that a claimant was in the employment of a Management, primarily lies on the workman who claims to be a workman. The degree of such proof so required, would vary from case to case. In the instant case, the workman has established the fact which, of course, has not been denied by the bank, that he did work as a driver of the car belonging to the bank during the relevant period which come to more than 240 days of work. He has produced 3 vouchers which showed that he had been paid certain sums of money towards his wages and the said amount has been debited to the account of the bank. As against this, as found by the fora below, no evidence whatsoever has been adduced by the bank to rebut even this piece of evidence produced by the workman. It remained contended by filing a written statement wherein it denied the claim of the workman and took up a plea that the employment of such drivers was under a scheme by which they are, in reality, the employee of the Executive concerned and not that of the bank; none was examined to prove the scheme. No evidence was led to establish that the vouchers produced by the workman were either not genuine or did not pertain to the wages paid to the workman. No explanation by way of evidence was produced to show for what purpose the workman's signatures were taken in the Register maintained by the bank. In this factual background, the question of workman

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further proving his case does not arise because there was no challenge at all to his evidence by way of rebuttal by the bank. In the case before us no documentary or oral evidence has been adduced by the applicant to establish that he was paid salary by the company at any point of time.

In Workmen of FCI case, referred by the applicant, the FCI had initially engaged contractor to handle storage and transit of food grains but afterwards the contract system was abolished and the handling labourers were paid wages by FCI directly and thereafter the FCI discontinued direct payment system and reintroduced contract system. In those facts the Hon'ble Supreme Court held that the 464 workmen had become workmen of FCI. In the instant case there is no evidence to the effect that the company ever paid wages to the applicant directly.

The applicant did not produce any documentary evidence nor he examined any witness in support of his plea that his service was terminated by the company w.e.f. 27.03.2012 verbally. On the other hand, Exhibit-E shows that the applicant was directed by the contractor to report for duty through letter by registered post addressed to him. A postal receipt is also affixed at the top of the letter. The applicant has denied the service of the letter but the fact remains that his signatures appear on the register of wages cum muster roll of the contractor and the it is found that the applicant drew wages for the month of March 2012 also by putting signature on the register. It is no case of the applicant that he was forced to sign the register or his signatures thereon were taken by fraud. Though no written agreement prior to the agreement dated 07.08.2012 between the company and the contractor has been produced, it is found that the contractor was enlisted with the company since the year 1974. Despite admitting the existence of contractor in his letter to the Conciliation officer (Exhibit-3) and alleging that the contractor was a mere stooge to deprive him from direct employment the applicant did not raise the plea that the contractor was a mere camouflage in the application under section 10 (1B) (d) of the I. D. Act. Exhibits-6 and 7 can hardly be said to be appointment letters. The certificates can be mere authorizations to drive vehicles as required under section 197 of the Motor Vehicles Act.

Having regard to the facts and circumstances and the evidence and materials on record, we find that the applicant could not meet the tests laid down in the cases of **Bharat Heavy Electricals Ltd., General Manager (OSD),**

Contd.....

Bengal Nagpur Cotton Mills, Ram Singh Vs Union Territory Chandigarh, Workman of Nilgiri Coop. Mkt. Society Ltd. in order to establish that he was a direct employee of the company. I am therefore constrained to hold that the applicant is not a direct employee of the company and preponderance of probabilities in the case show that he is a contract labour under the CLRA Act 1970.

Issue No. 3, 4 and 5

Since, the applicant is not found to be an employee of the company, there arises no question of his termination by the company and consequently he is not entitled to get any relief in this case. His relief lies against the contractor who is not a party to this case. As the applicant is not entitled to any relief in this case the question of awarding back wages does not arise. Thus, the decisions in the cases of **Deepali Gundu Surwase** and **Tapas Kumar Paul,** referred to by the applicant are of no help to him. The issues are answered accordingly.

All the issues are disposed of.

In result, the case merits dismissal.

Hence,

it is,

ordered

that the application under section 10 (1B) (d) of the Industrial Disputes Act is dismissed on contest but without any cost.

This is my award.

Let the copies of the Award be sent to the Labour Department, Government of West Bengal in accordance with the usual rules and norms.

Dictated & corrected by me

sd/-
Judge

sd/-
(Sanjeev Kumar Sharma)
Judge,
Third Industrial Tribunal,
Kolkata
16/04/2021