

I/354910/2023

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

No.Labr/ 26 ./ (LC-IR)/22015(12)/34/2019 Date: 09-01-2023.

ORDER

WHEREAS under the Government of West Bengal, Labour Department Order No. Labr/611-IR/I.R./12L-03/2003 dated 24/02/12 the Industrial Dispute between M/s. Kelvin Jute Mills, Park Road, Titagarh, North 24Pgs, and its workman Md. Azam, 5/2 Kelvin Line, P.O. – Talpukur, Kolkata – 700019 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 28/11/2022 on the said Industrial Dispute vide memo no. 1835 – L. T. dated. 14/12/2022.

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,

Joint Secretary
to the Government of West Bengal

Sd/-

I/354910/2023

No. Labr/. 26/1(5)/(LC-IR)

Date: 09/01/2023.

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

1. M/s. Kelvin Jute Mills, Park Road, Titagarh, North 24Pgs.
2. Md. Azam, 5/2 Kelvin Line, P.O. – Talpukur, Kolkata – 700019.
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.

Joint Secretary

Date: 09/01/2023.

No. Labr/. 26/2(2)/(LC-IR)

Copy forwarded for information to:

1. The Judge, First Industrial Tribunal, West Bengal with reference to his Memo No. 1835 – L. T. dated. 14/12/2022.
2. The Joint Labour Commissioner (Statistics), West Bengal, 6, Church Lane, Kolkata -700001.

Joint Secretary

H/A ZTH
9/1/23
Amenda
ko
10.01.2023

In the matter of an Industrial Disputes exists between M/s Kelvin Jute Mills, Park Road, Titagarh, North 24 Parganas and their Workman named Md. Azam of 5/2 Kelvin Line, P.O. – Talpukur, Kolkata – 700 019.

G.O. No. 611-I.R./IR/12L-0312, dated 13.06.2013

BEFORE THE FIRST INDUSTRIAL TRIBUNAL: WEST BENGAL

PRESENT

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

Date of Order: 28.11.2022

Case No.: VIII – 36/2013

The instant case is initiated on receipt of copy of Government Order No. 611-I.R./IR/12L-0312, dated 13.06.2013 from the Labour Department, Government of West Bengal, whereby an industrial dispute between M/s Kelvin Jute Mills, Park Road, Titagarh, North 24 Parganas and their Workman named Md. Azam of 5/2 Kelvin Line, P.O. – Talpukur, Kolkata – 700 019 for adjudication before this Tribunal on the following issues.

ISSUES

- 1) Whether the termination of service of Md. Azam by the management of M/s Kelvin Jute Mills by way of refusal of employment w.e.f. July 2007 is justified?
- 2) If not, what relief he is entitled to?

WORKMAN's CASE

The fact of the Workman's case as evident from the written claimed statement of the Workman to the effect is that the Workman Md. Azam was a regular employee working under the Company under reference as Weaver in Hessian Weaving Section though he was a permanent staff but his designation was Casual Badli enrolled as a member of ESI Corporation w.e.f. 26.12.1980 and he was also a member of Employees Provident Fund.

It is further claimed by the Workman to the effect that he was deprived of getting similar benefits as were getting by other employees of the said Company and therefore, the Workman raised protest for which he was harassed in different ways.

During such employment the Workman was under treatment under ESI doctor from 31.03.2007 and after recovery he went to join on 03.07.2007 with fit certificate issued by the ESI panelled doctor but he was allowed to join as half day pay wages on voucher payment system against which the Workman protested.



Thereafter, the Workman was issued a letter from the Company alleging falsely that he remains absent from his duty from August 2006 against which he protested by appearing himself in person before the manager who insisted him to join his duty with half day pay wages on voucher in spite of repeated requested by the Workman to the manager to allow him to do his normal duty but without any result.

Then the Workman informed such illegal acts of the management to the office of the Labour Commissioner, wherein the management appeared and remained adamant to their unreasonable stand for which the present proceeding has been initiated.

The Workman further demanded that he used to get wages on monthly basis while the management illegally tried to compel him to accept half day pay wages on signing voucher against which the Workman protested and denied to do the same and resulting his service was terminated illegally by violating the provision of Section 25F of the Industrial Disputes Act.

The Workman was alleged falsely that he would remain unauthorized absent from the duty, doing work under influence of liquor and monthly salary of Rs. 4704/-.

It is further stated since the allegation of unauthorized absent and performing duties by taking liquor are misconduct which was required to be proved by holding the departmental enquiry after giving opportunity of hearing the Workman, which in the instant case the Company did not give such opportunity to the Workman of being heard.

In view of the above facts and circumstances the Workman prayed for declaring the action of the management is illegal and unjustified and also prayed for an award and reinstatement with full back wages including the wages from the month of July to 24th August 2007 and other consequential benefits.

Be it mentioned her that the Workman Md. Azam during pendency of the case died on 26.11.2020 intestate leaving behind his legal heirs who have been substituted and consequently claim has been restricted for getting full back wages and for other consequential benefits from the date of termination till the death of Workman.



COMPANY's CASE

On the other hand, it is the case of the management of the Company that Md. Azam joined the Company on 01.03.1988 and working in the Mill as Weaver in Hessian Weaving Section as a Casual Badli worker not being a permanent worker.

It is alleged the Workman was found very reluctant in doing his allotted job rather he preferred to remain himself absent from his duties.

It is further claimed that since the Workman absented himself from duties as Casual Badli worker since August 2006 without any intimation and /or prior sanction of leave from the management, he was sent a letter as well as notice dated 14.08.2007 by registered with AD post to report to his duty but in spite of the receipt of the said letter/notice he remained absent without assigning any reason therefore and ultimately his name was deleted from the Badli Rolls to make room to other Badlis'.

It is further claimed that Md. Azam was a habitual absentee and during his service period with the Company he never completed 240 days working in a calendar year to get himself entitled for enjoying any statutory leave as per provision of Factory Act 1948.

Company denied that the management refused the Workman for his employment and therefore he is not entitled to protection under the Industrial Disputes Act and mandatory provision of Section 25F of the Industrial Disputes Act since he was a Badli employee and he was absented himself at his own will without informing the company or without taking any prior permission from the Company and without assigning any reason thereof and as such the case shall be liable to be dismissed.

ISSUES

The issues have already been determined by the Government when the case is referred for adjudication and the said issues are as follows:

- 1) Whether the termination of service of Md. Azam by the management of M/s Kelvin Jute Mills by way of refusal of employment w.e.f. July 2007 is justified?
- 2) If not, what relief he is entitled to?



Decision with Reason:

In support of the case the Workman named Md. Azam has been examined himself as PW-1 and the documents being filed by him have been marked as follows:

- 1) Photocopy of Workman's ESI Identity Card. Marked as **Exhibit – 1**.
- 2) Photocopy of ESI treatment papers of the Workman with fit certificate. 8 Pages. Marked as **Exhibit – 2 series**.
- 3) Photocopy of Workman's letters (3 letters containing 4 sheets). Marked as **Exhibit – 3 series**.

- 4) Photocopy of Pay Slips (5 Nos). Marked as **Exhibit – 4 series**.

On the other hand, to defence the case the Company cited the evidence of one Balaram Yadav, Personal Officer of M/s Kelvin Jute Mills as CW-1 and one Anjan Kumar Kar, General Manager of the Company as CW-2 and that apart Company also filed some documents which have been marked as follows.

- 1) The service record cards containing 2 sheets relating to the Workman (xerox) where the first sheet appears to illegible marked as **Exhibit-X** for identification and it will be exhibited properly on production of the original.

Be it mentioned here that Company has failed to produce the original service record of the Workman.

- 2) The photocopy of letter of the Company dated 14.08.2007 addressed to the Workman. Marked as **Exhibit-A**.
- 3) AD Card of the said letter. Marked as **Exhibit-A/1**.
- 4) Photocopy (appears to be illegible) of certified standing order. Marked as **Exhibit-B**.

Now, let us consider the evidence on record led by the Workman.

PW-1 has stated his fact of the case by filing his affidavit in chief.

From cross examination of PW-1 it is revealed that he demanded that his pay slips (**Exhibit-4**) would prove that he was a permanent worker.

PW-1 demanded that he had joined the Company in the year 1980.

He admitted that he got the letter of the Company dated 14.08.2007 (**Exhibit-A**) along with AD Card (marked as **Exhibit-A/1**).

PW-1 also admitted that Company never issued any receipt in respect of the documents being marked as **Exhibit-2 series** though he denied that those **Exhibit-2 series** were not handed over to the Company at any point of time.

PW-1 denied that he did not come to join his duty on 03.07.2007 being armed with medical fit certificate issued by the ESI panelled doctor or he did not raise any protest against offer of half day pay wages in place of to join him on his regular duty.

He denied that he had not been attending his duty since August 2006.

PW-1 demanded that he was never sent any letter disclosing the fact that his service had been terminated.

PW-1 claimed he informed the management in writing that he was under treatment of ESI doctor from 31.03.2007 to 03.07.2007 but he was not issued any receipt thereof by the Company.

PW-1 denied the above statements when it was suggested to him in negative.

PW-1 denied that he was a Badli worker of the Mills nor he voluntarily did not go to join his duties in the mill.

PW-1 denied that he never came in his duty under influence of country spirit or wine and he was not habituated absentee rather he completed 240 days in a calendar year having entitlement to enjoy statutory leave.

PW-1 denied that he was cautioned for remaining absent from duty without information.

PW-1 alleged that one Bholababu demanded Rs. 1000/- (Rupees one thousand) only from him for giving allotment of service.

Now let us scan the documents as filed by the Workman.

Exhibit-1 shows that ESI Corporation made the entry on 26.12.1980, which proves that the Workman joined the Company in the year 1980.

Exhibit-2 ESI medical papers of 31.03.2007 to 10.04.2007.

Exhibit-2/1 is the ESI medical papers dated 06.05.2007 to 08.05.2007.

Exhibit-2/2 is the ESI medical papers dated 16.05.2007 to 23.05.2007.

Exhibit-2/3 is the ESI medical paper dated 19.05.2007.

Exhibit-2/4 is the ESI medical paper dated 09.06.2007.

Exhibit-2/5 is the ESI medical papers dated 09.06.2007 to 12.06.2007.

Exhibit-2/6 is the ESI medical paper dated 01.07.2007.

Exhibit-2/7 is the ESI medical paper dated 24.06.2007.



Out of which **Exhibit-2/6** reflects the final certificate of the employee where it is opined by the medical expert that the Workman will be fit to resume work on 03.07.2007.

Exhibit-3 is the reply of the Company's letter dated 04.07.2011 to Sri Subol Chandra Saha, Assistant Labour Commissioner, Barrackpore submitted his reply that his Identity Card No. was **EB No. 7021** claiming himself a permanent worker and he had been this Company on 26.12.1980 and got membership of Provident Fund Account on 1986.

Exhibit-3/1 is the reply of the letter dated 23.09.2011 of Sri Subol Chandra Saha, Assistant Labour Commissioner, Barrackpore, wherein he made complaint that after completing his ESI medical leave from 31.03.2007 to July 2007 when he went to join his duty he was refused from his employment and knowing that Company permanently sacked him from his service and thereafter on 14.08.2007 the Personnel Manager of the said Mill sent him a letter to join service on voucher system, which he did not agree because he was a permanent employee of the said Mill since long and thereby he prayed the immediate action over the facts.

Exhibit-3/2 is the letter dated 10.02.2011 addressed to Deputy Labour Commissioner, Barrackpore informing him by the applicant that he was not given work even being a permanent worker of the Mill from the month of July 2007 rather he was asked to do work as half day wage on voucher system and thereby he prayed for immediate action over the facts.

Exhibit-4 series are the Pay Slips of the Workman for the year 2005, 2006-2007. Pay Slips prove that the employee was given salary even for the month of April 2007. So, it cannot be proved that the employee was remained absent without information from August 2006 for which he may be terminated ignoring his statutory ESI medical leave on the strength of medical certificates on and from 31.03.2007 to 03.07.2007.

Let us consider the evidence of the Company:

CW-1 Shri Balaram Yadav, Personal Officer of the management stated that Workman Md. Azam used to work as Badli in Waving Department. He was all lone attached with the said Mill as Badli and he was never made permanent and he remain used absent from duties frequently without notice.

CW-1 further states that on 14.08.2007 the Chief Personal Manager of the Mill issued a letter to the Workman intimating him as to his unauthorized absence asking him to report for the duties and the said letter has been marked as **Exhibit-A** and AD card has been marked as **Exhibit-A/1** respectively.

On receipt of such notices the Workman did not join his duties. It is fact that a letter was sent to the Workman on 14.08.2007 after the instant case has been referred to this Tribunal and the same has been admitted by PW-1.

CW-1 filed some documents on behalf of the Company and among them one is service record card of the Workman which has been marked as **Exhibit-X** and failed to produce the original one and for which reason this document cannot be considered in the evidence.

He also filed the illegible certified standing order of the Company for the reason best known to him because of the fact that according to Company's case as per their written statement Md. Azam was a Casual Badli Worker while from the evidence of CW-1 it is revealed that he was always a Badli Worker.

CW-1 denied that the Company refused the Workman to join his duty as claimed by him in the Written Statement and evidence.

He further states that Company is still ready and eager to allow the Workman to join his duty but he fails to state in which category he would be considered.

From the cross examination of CW-1 it is revealed that Md. Azam was registered Badli for which Company maintains the service record card as per standing order but CW-1 admitted that Company did not file any such employment book in respect of the Workman Md. Azam or anyone.

CW-1 admitted that attendance register is maintained for the Badli Workers and registered Badli Workers but he could not produce any such register.

He also admits that record card for the Workman namely Badli and Registered Badli is maintained but he could not produce any such original record card of the Workman where the documents of record card has been filed by the Company which has been marked as **Exhibit-X** for identification which got no value to consider.

He admits that if any workman remains on leave on medical ground and treated in the ESI Hospital, he gets some benefits from the ESI authority. He failed to state whether any attempt for conciliation was held before the Additional Labour Commissioner, Barrackpore.

CW-1 has filed a letter dated 03.04.2012 addressed to the Additional Labour Commissioner, Barrackpore submitted by Personal Manager of the Company which has been marked as **Exhibit-5** (2 sheets).



CW-2, Sri Anjan Kumar Kar working as General Manager (P&A) in the Company has stated that Workman Md. Azam joined the Mill on 01.03.1988 and working as Weaver in Hessian Weaving Section as a Badli worker and Md. Azam was never a permanent worker.

Like CW-1 he states that the Workman was found very reluctant in doing his allotted job and he used to remain absent on frequently mood. He was absent from duties since August 2006 without any intimation or prior sanction of leave from the management.

He claims that the Workman was advised in numerous occasions to report to his duty both verbally as well as through various notices but to no effect and thereafter, Company sent a letter on 14.08.2007 by registered post with AD (**Exhibit-A, A/1**) to report to his duty but in spite of receipt of the said letter/notices he continued to remain absent from duty without any intimation to the management and since he was an unauthorized absentee his name was deleted from the Badli Rolls on 27.09.2007 to make room to other Badlies.

CW-2 liked CW-1 claims that the Workman during his tenure of service he never completed 24 days working in a calendar year to entitle himself for enjoying statutory leave as per provision of Factories Act 1948.

CW-2 like CW-1 relies on all the documents submitted by the Company before this Tribunal which shall prove such conduct of Md. Azam.

He also claims that Company has never refused the employment of Md. Azam. He is at his liberty to join and work as Badli Weaver with Mill, so Md. Azam is not entitled to any benefit as prayed for.

CW-2 has stated that he has submitted the original service record of Md. Azam which has been marked as **Exhibit-C** (objected to regarding the page of the yellow sheet and the first page of the print sheet).

From the cross examination of CW-2 it is revealed that he has no paper to show that he was working as General Manager (P&A) of the Company and he has no 'Letter of Authority' issued by the Company to depose in this case on behalf of the Company.

CW-2 claims in his cross examination that the management of the Mill maintains a register of attendance of all classes of employees/workmen working in the Mill and the management has filed such attendance register of Md. Azam to corroborate the entries in the **Exhibit-C**.

CW-2 also claims in his cross examination that the management maintains a leave register but could not say whether the management has produced the said leave register in respect of Md. Azam.

CW-2 further claims that Md. Azam falls within the category of 'Casual Badli' of the Mill but in the Standing Order (**Exhibit-B**) nothing is mentioned about any post of Casual Badli.

CW-2 further claims Md. Azam was issued warning letter for his conduct in respect of duties and absenteeism. He fails to make any comment regarding the leave of the Workman during the period from 31.03.2007 to 02.07.2007 due to his treatment under ESI hospital, whether Md. Azam joined the Mill on 03.07.2007 by submitting his medical fitness certificate.

CW-2 also could not remember whether Md. Azam joined his duty in the Mill after getting medical fitness certificate on half day wages on voucher system or due to protest raised by Md. Azam the Mill management terminated his service w.e.f. 27.09.2007.

CW-2 admits that entries made in **Exhibit-C** that the name of Md. Azam was struck off on 3 (three) occasions and first such entry was made on 10.08.1989. The second such entry was made on 17.04.1999 and in the third entry made in **Exhibit-C** in that regard made in red ink and there is no signature of any officer while there are 2(two) signatures in respect of above 2(two) entries.

Lastly CW-2 admits that he has deposed in this case on the basis of his knowledge gathered from office records.

CW-2 denied that Company did not produce attendance register, leave register of the Workman purposely.

CW-2 denied that the management did not maintain the format given in the Standing Order relating to the register for attendance and leave of the employees.

CW-2 also denied that during the pendency of the case Md. Azam had been to the Mill to resume his duty and he was not allowed to join on the plea that the same has not possible during the pendency of the case.

CW-2 also denied that the Mill management illegally terminated the service of Md. Azam by way of refusing him to join his duties.

Now let us consider the arguments placed by Ld. Counsels for the parties.

Ld. Counsel for the Company argued by stating inter-alia that Md. Azam was a Casual Badli worker, not a permanent worker being joined the Company on 01.03.1988 (without producing any document for the same).

Ld. Counsel for the Company argued that Md. Azam was very reluctant in doing his allotted job rather he preferred to remain absent, though no departmental enquiry or proceeding was ever initiated against the Workman.

It is further argued by Ld. Counsel for the Company that since August 2006 without any intimation the Workman Md. Azam was absent intentionally in spite of having received letter dated 14.08.2007 and thereby he claims that the name of Md. Azam was deleted from the Badli Rolls to make room to other Badlies.

Ld. Counsel further argues that the evidences of the parties established that the Workman himself refused to take employment and the Company never refused him from employment.

In support of his argument Ld. Counsel for the Company has cited the following case laws:

- 1) **2005 Vol-I L.L.N. 1095 S.C.**
Karnataka State Road Transport Corporation and Another vs S. G. Kotturappa and Another.

In this case the Supreme Court held that "Badli work does not acquite any legal right to continue in service - he is not entitled to protection under Industrial Dispute Act - Mandatory requirements of Section 25F of the Industrial Disputes Act are not required to be complied with in respect of him before terminating his service".

- 2) **2009 L.L.R. Page 659 S.C.**
Refusal employment - letter issued by the Company on 14.08.2007. (**Exhibit - A & A/1**)

- 3) **2005 Vol-II 123 HC (HIM)**
Relevant paras 10 & 11.
Nagar Parishad Bilaspur vs Bone Ram and Another.

In this case the Workman remained absent from work for more than 2 (two) years without leave or any communication to the employer, the Court held the conduct of the Workman is that he abandoned his job and his service stood automatically terminated in law and therefore, it would not fall within the definition of retrenchment.



- 4) 2009 L.L.R. Page 113 S.C.
Relevant paras 19 & 20.
Novartis India Ltd. vs State of West Bengal and Others regarding back wages.

It was held the Workman cannot automatically be granted back wages; onus lies upon the Workman.

- 5) 2002 L.A.B IC Page 927 S.C.
Argument to prove that he has worked for 240 days in a year.

- 6) 2009 (CHN) 57
Relevant paras 13 & 15.

- 7) 2006 L.L.R. Delhi HC 1043
Troilokinath vs Dharampal Arora and Another's

Employee to prove that he was not a permanent employee. Wage slip is not sufficient to prove the same.

On the other hand, Ld. Counsel for the Workman argued stating inter-alia that the Workman Md. Azam was a regular employee working as Weaver in Hessian Weaving Section.

He claims that though the Workman was a permanent staff he was shown as casual Budli worker which is not mentioned in the standing order of the Company which has been marked as **Exhibit-B**.

Ld. Counsel demanded that the worker was under ESI Corporation w.e.f. 26.12.1980 and also became the member of the Employees Provident Fund.

He further argued that the employee was not remained absent from duty from August 2006 rather he was on ESI Leave from 31.03.2007 to 02.07.2007 and when he went to join his duty on 03.07.2007 he was allowed to join as half day pay wages on voucher system against which he protested and ultimately, he was terminated illegally.

He further argues that the Workman used to get wages on monthly basis but the management tries their level best to compel him to accept half day pay wages on voucher system which the Workman denied for which the Workman was victimised and ultimately, his service was terminated.

He further argued that the allegations against the Workman in respect of unauthorized absence, doing work under influence of liquor, monthly salary of Rs. 4704/- etc are false and imaginary and management has failed to prove by producing any cogent documents or giving any opportunity of being heard to the allegations without holding any departmental enquiry in this regard.

He further argued that the management specifically pleaded in their written statement that Workman was a Casual Badli worker and never completed 240 working days continuously in any year in which the Company has produced 2 (two) unauthenticated documents which has been marked for **Exhibit-X** for identification and ultimately, they failed to produce any original documents to establish the same.

He further argued that as per incomplete standing order **Exhibit-B** and from the evidences of the Company it has come that Company shall maintain a register of service record cards on which there shall be entry regarding the nature of the work done by the worker and the days on which he worked in the establishment.

And though it is not proved that the Workman was a Casual or Badli Workman even the Company has failed to produce any such document and that apart the Company has also failed to produce the attendance register and leave register of the Workman and since the service record as produced for identification is incomplete and unauthenticated it cannot be accepted in court of law.

He further argued that complete standing order was not produced and it is suppressed to avoid to show that the Workman since deceased was in continuous service and the management failed to discharge their burden of proof to show that the Workman has not worked 240 days continuous service in the preceding year.

On the other hand, Workman whatever documents are in his possession, he produced the same and gave oral evidence to prove that he worked 240 days continuous in every year and thereby he discharged his onus and now it was the burden on the part of the management to prove in the negative which can Company miserably failed to establish.

He further argued that it was the allegation against the Workman that he was remained absent for long time and he used to come to his duties under influence of liquor which are serious mis-conduct but even then, in the instant case where the Workman denied all the allegations, the Company has not dared to hold any enquiry but unfortunately the Workman's service has been terminated summarily without giving any opportunity of being heard or enquiry.

Ld. Counsel further stated that at the time of evidence CW-1 during cross examination has stated that he had not produce any document to substantiate his contention that Md. Azam used to work as Registered Badli though it is admitted by



CW-1 that the Company has maintained attendance register for Badli Workers and Registered Badli Workers and thereby Company suppressed the fact that Workman was not a Badli Worker or Registered Badli Worker but a regular employee of the Company.

He further claimed the management though claimed that the Workman was a Badli Workman has no legal right to claim employment as a matter of right and to prove the same management has taken totally conflicting and contradictory stand and cited some decisions of Casual Badli etc. etc. which are not applicable in this case rather burden of proving gainfully employed elsewhere is on the employer, which they failed to discharge.

He further argued the allegation of absence from duties from 2006 has not been proved by the Company by producing any record of service.

On the other hand, the Workman was sick and was under treatment of ESI panelled doctor and all certificates issued by them has been produced by the Workman from time to time.

He further argued that it is well settled that the burden of proving gainfully employment is on the employer which CW-2 demanded in his evidence and the onus shifted to the employer by giving oral evidence as held in case reference **1982 LIC page 973** and if not proved gainful employment, the Workman is entitled to get full back wages as it is held in a case being referred **1978 (II) LLJ 474**.

Lastly Ld. Counsel for the Workman since deceased has submitted that the heirs of the present applicant have been substituted as per law and they are entitled to get full back wages and other consequential benefits from the date of termination of the deceased Worker till the death of the Workman.

I have carefully gone through the pleadings of the parties.

I have carefully perused the evidences both oral and documentary adduced by the parties.

After consideration of pleadings, evidences on record and the submission along with the citations of advance by the Ld. Counsel for the parties, it is revealed that it is the specific demand of the Company that Md. Azam joined the Company and he was in the employment of the Company till 03.07.2007 and during the tenure of his work no disciplinary proceeding was taken against him for the reason best known to the Company. So, the evidence as come out from the mouth of CW-1 and CW-2 to the effect that the Workman Md. Azam was a habitual absentee, did misconduct to the superior authority or he was still Badli Worker in Weaving Department form the date of his joining is not convincing.



On the other hand, it is the specific demand of the Workman Md. Azam that he was a permanent staff but his designation was Casual Badli, depriving him of getting similar benefits as well getting by the other regular employees of the said Company.

From the evidences of Company as stated by CW-1 and CW-2 it is revealed that they could not satisfy this Tribunal in respect of the category in which the Workman Md. Azam used to work. So, the Company's stand that the Workman was working in the Mill either Badli or Casual Badli cannot be tenable as unfounded by any document or proof in cogent manner.

It is also established that the Workman was on ESI medical leave from 31.03.2007 to 02.07.2007. So, it is not tenable the claim of the Company that the Workman was absent from August 2006.

Service Record Card has not been marked as per rule of evidence and it does not prove that the Workman was a Casual/Badli Workman.

It is the admitted position as per evidences of CW-1 and CW-2 that Company maintains attendance register and leave register of the employees and in absence proceeding the same presumption shall be favoured with the Workman not the management.

It is also established that after 2007 there are many occasions when conciliation proceeding was going on between the parties at all level and thereafter, the Government has been forced to refer this case before this Tribunal for adjudication.

So, admitted position of the case in this regard is that the Workman Md. Azam had been working in the Company from 1980 to 2007 and still he was/is being considered a Badli Worker in that Company without having any proven facts regarding any misconduct, undisciplined behaviour or anything like that. It has been taken by the Company against him and according to the dictum of the Hon'ble Supreme Court in number of cases it has been well established that this type of labour practice should be called and considered as unfair labour practice (5th Schedule, Clause 10 of ID act also is very much clear in this respect). If that be so, an adverse presumption shall be inferred in respect of the nature and character employee whether he is a Badli Worker all along during his tenure in the Company or he is a permanent atleast a regular employee who is entitled to get the benefits which were given to the similar regular/permanent employees.

So, in view of the above discussion it cannot be said that Md. Azam was a Badli Worker and he cannot get any protection under the available provisions of the Industrial Disputes Act.



Now let us considered the termination of service of Workman by not allowing him to join his regular duties even after earned with fit certificate issued by the ESI panelled doctor on 03.07.2007 as revealed from the evidences and submissions of the Ld. Counsels led by both the parties. The Company specifically demanded that the Workman remained absent from his duty from August 2006 where the record goes to show that he was very much in employment up to 02.07.2007 when he was not allowed to join his normal duties on 03.07.2007 by offering him to join his duty with half day pay wages on voucher system instead of allow him to do his normal duty without any reasonable ground rather he was terminated from his service w.e.f. July 2007.

That apart PW-1 has already stated that after armed with fit certificate when he went to join duties of the Company on 05.07.2007 he was offered half day pay wages for which he fought against the Company by moving door to door till the case is filed before the Labour Department of the Government of West Bengal. So, it does not matter whether he received the Company's letter dated 14.08.2007 or he admitted the same or not.

The witnesses of the Company have categorically stated that Company has attendance register, Badli register and the original service record but the Company has failed to produce them before this Tribunal to substantiate their demand that the Workman Md. Azam was a habitual absentee or he had been working in the Mill as Badli Worker or Casual Badli Worker in the Mill during his tenure in the Company.

Practically the Company has failed to prove any charge or allegation against the Workman Md. Azam in any manner whatsoever. So, in this statute I am constraint to hold that the termination of service of Md. Azam by the management of M/s Kelvin Jute Mills by way of refusal of employment w.e.f. July 2007 is illegal and unjustified and therefore, he is entitled to relief as prayed for.

It is also revealed from the record that during pendency of the instant case, the Workman Md. Azam died on 26.11.2020 leaving behind his legal heirs namely 1) Asma Khatun, w/o Late Md. Azam, 2) Sahajadi Mishra (Banu) daughter of Md. Azam, 3) Ladly Banu, 4) Neha Banu (Mallick), 5) Rushi Khatun – all are daughters of Late Md. Azam and 6) Asrat Azam son of Late Md. Azam, who have been lawfully substituted and consequently the instant claim of the case has been restricted only for getting full back wages and for other consequential benefits from the date of termination till the date of death of the Workman.

In our case the date of termination shall be considered on and from 03.07.2007 and date of death has been mentioned as 26.11.2020.

In view of the above discussion coupled with the judgements or citations led by the Ld. Counsel for the Company are not applicable in the instant case because of the fact the Workman Md. Azam could not be considered as Badli Worker all along



during his tenure in the Company. He was a victim of refusal of employment and it cannot be said that he raised the dispute beyond the stipulated time as demanded by the Company without any proof and therefore, the Workman cannot automatically be refused himself for employment and argument to prove that he was worked for 240 days in the preceding year does not arise.

In sum, the instant case succeeds and the Workman is entitled to the reliefs as prayed for.

Hence, it is

AWARDED

That the instant case being No. VIII – 36/2013 be and the same is allowed on contest with cost of Rs. 10,000/- (Rupees ten thousand) only. The petitioners / substituted heirs of the Workman are entitled to full back wages along with other consequential benefits from the date of termination i.e. on and from 03.07.2007 to the date of the death of the Workman i.e. 26.11.2020 and the present petitioners i.e. heirs of Md. Azam are also entitled to get a compensation to the tune of Rs. 1,00,000/- (Rupees one lakh) only for facing mental agony, unnecessary harassment and facing acute financial crisis.

The Company is also directed to execute the order of this Tribunal and to pay the lawful dues as ordered by this Tribunal within 3(three) months from the date of receipt of this order in default the concerned petitioners i.e. heirs of deceased Md. Azam are at liberty to take the shelter of the law for execution of this 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

