

3790/2023

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

No. Labr/. 362 / (LC-IR)/11L-86/2013

Date: 11/05/2023.

ORDER

WHEREAS under the Government of West Bengal, Labour Department Order No. Labr/846-IR/I.R./11L-86/13 dated 29.08.2013 the Industrial Dispute between M/s. Dolphin Leathers, Plot No. 107, Zone No. - II, Calcutta Leather Complex, South 24 Parganas, Pin - 743502 and its workmen represented by Calcutta Leather Tannery Workmen's Union, 3/1, 66 Gandhi Colony, Kolkata - 700092 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 10/04/2023 on the said Industrial Dispute vide memo no. 515 - L. T. dated. 27/04/2023.

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,

*sdl*

Assistant Secretary  
to the Government of West Bengal

I/393790/2023

No. Labr/. 362/1(5)/(LC-IR)

Date: 11/05/2023.

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

1. M/s. Dolphin Leathers, Plot No. 107, Zone No. - II, Calcutta Leather Complex, South 24 Parganas, Pin - 743502.
2. Calcutta Leather Tannery Workmen's Union, 3/1, 66 Gandhi Colony, Kolkata - 700092.
3. The Assistant Labour Commissioner, W.B. In-Charge, Labour Gazette.
4. The O.S.D. & E.O. Labour Commissioner, W.B. New Secretariat Building, 1, K. S. Roy Road, 11<sup>th</sup> 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]*

Assistant Secretary

No. Labr/. 362/2(2)/(LC-IR)

Date: 11/05/2023.

Copy forwarded for information to:

1. The Judge, First Industrial Tribunal, West Bengal with reference to his Memo No. 515 - L. T. dated. 27/04/2023.
2. The Joint Labour Commissioner (Statistics), West Bengal, 6, Church Lane, Kolkata -700001.

Assistant Secretary

In the matter of an Industrial Disputes exists between M/s Dolphin Leathers, Plot No. 107, Zone No.- II, Calcutta Leather Complex, South 24 Parganas, Pin - 743502 & their workmen represented by Calcutta Leather Tannery Workmen's Union, 3/1, 66 Gandhi Colony, Kolkata – 700 092.

**G.O. No. 846-I.R./IR/11L-86/2013, dated 29.08.2013**

**BEFORE THE FIRST INDUSTRIAL TRIBUNAL: WEST BENGAL**

**PRESENT**

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



**Date of Order: 10.04.2023**

**Case No.: VIII – 53/2013**

The instant case has been initiated on receipt a copy of Government Order of reference No. 846-I.R./IR/11L-86/2013, dated 29.08.2013 from the Labour Department, Government of West Bengal, referring an Industrial Dispute between M/s Dolphin Leathers, situated at Plot No. 107, Zone No.- II, Calcutta Leather Complex, South 24 Parganas, Pin – 743502 hereinafter be called as Company under reference and their workmen represented by Calcutta Leather Tannery Workmen's Union, situated at 3/1, 66 Gandhi Colony, Kolkata – 700 092 for adjudication of the matter on the issues mentioned herein below and submitting its award to the State Government.

**ISSUE(S)**

- 1) Whether refusal of employment of Shri Upendra Sahani and 11(eleven) others w.e.f. the date mentioned against their names in Annexure-A by the management were justified?
- 2) If not, to what relief are they entitled?

The fact of the case as stated by the Union under reference is in a nutshell that the Union under reference is a trade union having its registration No. 18432 being registered under the Indian Trade Union Act 1926. On the other hand, the Company under reference is a prosperous, stable and reputed leather goods manufacturing industry, which engaged the following workmen Shri Upendra Sahani and 11 (eleven) others for the execution of manufacturing leather, finishing etc being the normal production of the factory long before, but the management of the Company under reference did not extend the ESI benefit to them from their date of joining.

<u>Sl. No.</u>	<u>Name of Worker</u>	<u>Designation</u>	<u>Date of Joining</u>	<u>Date of ESI</u>	<u>Date of refusal of employment</u>
1.	Upendra Sahani	Saving Machine Operator	15.05.2005	01.04.2007	01.06.2011
2.	Anwarul Haque	Skating Machine Operator	01.08.2005	01.04.2007	04.06.2011
3.	Surendra Sahani	Thokai Worker	15.02.2006	01.04.2007	18.06.2011
4.	Dipan Ram	Saving Machine Operator	01.01.2005	01.04.2007	27.05.2011
5.	Suresh Ram	Plate Machine Operator	01.02.2005	01.04.2007	18.06.2011
6.	Mahesh Ram	Thokai Worker	15.02.2006	01.04.2007	23.08.2011
7.	Umesh Ram (I)	Tokel Machine Operator	01.09.2006	01.04.2007	04.07.2011
8.	Ramesh Das	Thokai Worker	01.04.2006	01.04.2007	04.07.2011
9.	Umesh Das	Thokai Worker	01.12.2006	01.04.2008	04.07.2011
10.	Bhagawan Das	Thokai Worker	15.10.2005	01.04.2008	23.08.2011
11.	Umesh Ram (II)	Thokai Worker	15.11.2005	01.04.2007	23.08.2011
12.	Ram Prabesh Ram	Thokai Worker	01.02.2005	01.04.2008	10.10.2011

It is further stated that the Union under reference placed the charter of demand before the management who made false allegation before the Park Street Police Station to frustrate the charter of demand along with demolition of the Union against the employees namely Shri Upender Sahani, Anwarul Hoque, Bijoy Kumar and Moin Khan followed by refusal of employment by disallowing them not to enter into the factory premises on the dates mentioned. The entire episode will be evident from the table mentioned above.

Against such refusal of employment the Union under reference at the outset made an oral protest before the management in order to withdraw the verbal order of refusal of aforesaid employees and to reinstate them with full back wages.

The management did not pay any heed to that verbal protest and the concerned workmen were forced to remain unemployed after said refusal of employment. Thereafter, the Union under reference submitted representation in this respect on 12.07.2011 protesting the wrongful refusal of employment of its active members and ultimately raises an industrial dispute with the Labour Commissioner.

It is specific claim of the Union under reference to that effect that the refusal of employment terminating the service of the aforesaid workmen attracts the provision of Section 25 of the Industrial Disputes Act, 1947 and due to non-compliance of said provisions of the Act, 1947 the termination of services of the concerned employees are bad in law and inoperative and therefore the concerned workmen are entitled to reinstate with full back wages along with consequential benefits for the period of forced unemployment in the instant case.



On the other hand, the Company under reference had appeared and contested the case denying all material allegations made by the Union under reference by filing written statement stating inter-alia to the effect that the instant dispute is not maintainable under the Act 1947 as well as under the Trade Union Act 1926 and/or on facts on its present form being barred by the principles of waiver, estoppels, acquiescence and other principles thereto because the claim of the Union is misconceived, frivolous, harassing, mala fide and suffers from distortion and suppression of material facts. The Company under reference has challenged the status of the Union to pursue the instant dispute on behalf of the Workmen on the ground that the Union under reference is not recognised by the Company under reference. And/or not granted that no certificate for recognition is produced by the Registrar of Trade Union and on the ground of other allegation against the office bearers of the Union under reference.

It is also contended by the Company under reference to the effect that the Workmen namely Anwarul Hoque, Bijoy Kumar, Surendera Sahani, Upendra Sahani and Moin Khan had voluntarily left the job and settled in some other establishments after getting full benefits from the Company under reference for which the management refused to employ them, and the said workmen never turned up to their jobs in the establishment of the Company under reference.

It is further claimed that the nature of job of the concerned workmen in the establishment is partly perennial and partly casual nature.

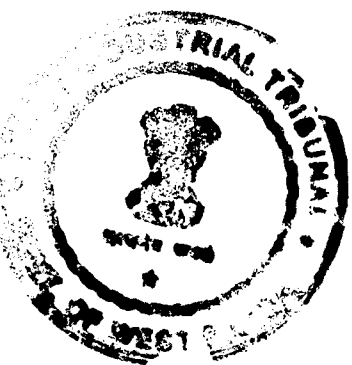
It is denied by the Company under reference that the workmen namely Anwarul Hoque, Bijoy Kumar, Surendra Sahani, Upendra Sahani and Moin Khan were forced to sign resignation letters or their service were terminated by the Company under reference.

The Company under reference also denied in respect of initiating any false criminal case against the concerned workmen as claimed by them.

It is claimed by the Company to the effect that since the Workmen engaged them elsewhere without any intimation to the management, the question of their reinstatement either with full back wages or otherwise cannot and/or does arise.

So, in view of the above facts and circumstances according to the Company under reference the instant reference of the instant matter shall be considered as wholly illegal in respect of referring the matter as Industrial Dispute and is also without application of mind and therefore, the same is liable to be dismissed with exemplary cost.

Being the instant case has been initiated on reference from the Labour Department, Government of West Bengal the issues had already been framed by the authority concerned which were mentioned on earlier occasion. So, I need no repetition of the same.



### Evidence on record

In support of the case the Union under reference has adduced the following oral evidence:

- 1) Shri Upendra Sahani, an employee of the Company under reference as PW-1.
- 2) Anwarul Hoque, an employee of the Company under reference as PW-2.
- 3) Ms. Barnali Mukherjee, Vice President of the Union under reference as PW-3.

That apart the Union under reference has filed some documents in terms of their list of documents as follows:

- 1) Photocopy of a letter date 14.02.2011 written by Samudra Dutta, the General Secretary of the union addressed to the management of Dolphin Leathers. **Marked as Exhibit-1.**
- 2) Photocopy of another letter date 11.02.2011 issued by the said General Secretary of the Union to the management of Dolphin Leathers. **Marked as Exhibit-2.**
- 3) Photocopies of **four** letters submitted by the said General Secretary of the Union to the Labour Commissioner/A.L.C. on different dates. **Marked as Exhibit-3, 3/1, 3/2 & 3/3.**
- 4) Photocopy of postal receipt. **Marked as Exhibit-4.**
- 5) Photocopy of the ESI identity cards in the name of Umesh Das together with particulars of his family members containing 2 sheets (**collectively**). **Marked as Exhibit-5.**
- 6) Photocopy of ESI identity card in respect of the workman Anwarul Haque. **Marked as Exhibit-6.**
- 7) Photocopy of ESI identity card (now terms as Pahechan card) in respect of Mahesh Kumar. **Marked as Exhibit-7.**
- 8) Photocopy of ESI identity card and particulars of family members in respect of workman Bagaban Das. **Marked as Exhibit-8.**
- 9) Photocopy of Pahechan card in respect of Workman Bagaban Das. **Marked as Exhibit-8/1.**
- 10) Photocopy of a letter dated 10.07.2011 submitted by 4 authorities of the Union including General Secretary to the Officer-in-Charge of KLC P.S. **Marked as Exhibit-9.**



- 11) Photocopy of a letter submitted to the KLC Police Station on 27.02.2012 written by the General Secretary of the union. **Marked as Exhibit-9/1.**
- 12) Photocopy of accident report in respect of workman Anwarul Haque duly signed by one of the partners of the Dolphin Leathers containing 2 sheet (**collectively**). **Marked as Exhibit-10.**
- 13) Photocopy of another letter dated 01.12.2010 submitted to the Labour Commissioner by the General Secretary of the Union. **Marked as Exhibit-11.**
- 14) Photocopy of 4 (four) Notices to show cause issued by the Company to the Workman Dipan Ram on four different dates (**Series**). **Marked as Exhibit-12.**
- 15) Photocopy of reply dated 02.08. 2010 submitted by Dipan Ram to the management of the Company. **Marked as Exhibit-13.**

On the other hand, the Company has adduced the oral evidence of persons as follows:

- 1) Shams Tabrez, Representative and Manager of Dolphin Leathers at Zone No.-II, Plot No.-107, Calcutta Leather Complex, South 24 Pargans Pin – 743 502 as OPW-1.
- 2) Mr. Asitava Mukherjee, Deputy Labour Commissioner (P) and Deputy Registrar of Trade Union of West Bengal, posted at New Secretariat Buildings, 11<sup>th</sup> Floor, No. – 1 Kiron Sankar Roy Road, Kolkata – 700 001 being appeared and adduced on the strength of summons being served by this Tribunal on prayer of the Company under reference as OPW-2

That apart the Company under reference has filed some documents in terms of their list of documents as follows:

- 1) Photocopy of a letter dated 11.02.2011 written by Samudra Dutta addressed to the Management, Dolphin Leathers (3 sheets). **Marked as Exhibit-A.**
- 2) Photocopy of a letter dated 10<sup>th</sup> March, 2011 addressed to the Registrar, Trade Union, New Secretariat Buildings, Kolkata – 700 001. **Marked as Exhibit-B.**
- 3) Photocopy of a letter dated 17<sup>th</sup> March, 2011 from Deputy Registrar of Trade Unions, West Bengal. **Marked as Exhibit-C.**
- 4) Photocopy of a letter dated 18<sup>th</sup> March, 2011 from SPOI & Deputy Labour Commissioner, West Bengal. **Marked as Exhibit-D.**



- 5) Photocopy of the application under Section 156(3) Cr. Pc. and order thereof. **Marked as Exhibit-E.**
- 6) Photocopy of FIR being FIR No. 73, dated 01.04.2011. **Marked as Exhibit-F.**
- 7) Photocopy of the application under Section 438 of Cr. Pc. filed by Samudra Dutta before the Learned Chief City Sessions Court at Calcutta. **Marked as Exhibit-G.**
- 8) Photocopy of certified copy of the order 01.02.2012 passed by the Learned Chief Judge, City Sessions Court at Calcutta in Cri. Misc No. 44/12. **Marked as Exhibit-H.**
- 9) Photocopy of the order passed by their Lordships Hon'ble Justice Kalyan Jyoti Sengupta & Hon'ble Justice Joymalya Bagchi in C.R.M. 2797 of 2012. **Marked as Exhibit-I.**
- 10) Photocopy of undertakings on Rs. 10/- Non-Judicial Stamp paper of Surendra Sahani (2 sheets). **Marked as Exhibit-J.**
- 12) Photocopy of Form 'D' dated 22.02.2012. **Marked as Exhibit-K.**
- 13) Photocopy of reply filed by the employer before the Assistant Labour Commissioner. **Marked as Exhibit-L.**

Now let us scan the evidence on record:

#### **Oral evidences of PWs**

**PW-1** Sri Upendra Sahani claims himself an employee of the Company under reference and one of the members of the union under reference.

PW-1 stated that he himself and the Workmen have raised this dispute. He has stated the names of the Workmen and their joining dates and date of E.S.I. which according to him goes to show that the management deprived them from getting statutory benefits specially the benefits of E.S.I. excluding other such as getting minimum wages, Provident Fund, H.R.A. etc.

PW-1 further states that the Union filed the charter of demand on 14.02.2011 before the management who refused to solve it. Rather they continued to enforce unfair labour practice such as they forced Anwarul Hoque, Bijoy Kumar and Moin Khan to sign resignation letter and also forced Surendra Sahani to sign on blank paper followed by constant threatening and the Company also forcefully terminated the job of PW-1 in February, 2011. Apart these, Company initiated false case against PW-1 and above other along with Union's representatives Samudra Dutta and P.R. Ghosh to demolish the backbone of the Union as the Company was not at all

interested to settle the demands rather interested to break the unity of the employees as well as of the Union.

PW-1 mentioned the dates of refusal of employment of the employees. Since all attempts of solving the dispute, the union took shelter of Labour Commissioner by raising the present dispute which has been referred to this Tribunal for adjudication by the Labour Department, Government of West Bengal.

PW-1 further claims that the refusal of employment of the concerned Workmen by the management is void-ab-initio due to non-compliance of mandatory provision of Sec.-25F of Industrial Disputes Act coupled with no compliance of payment of Notice pay and retrenchment compensation.

PW-1 also claims that he himself and other employees remained unemployed after refusal of employment resulting termination of service by the management.

PW-1 prays for setting aside the verbal order of termination of the concerned employees and reinstating them with full back wages of the period of forced unemployment together with consequential benefits thereto.

From the cross examination it is revealed that PW-1 candidly has admitted that he has not produced any authorisation letter to depose in this case.

PW-1 denied that the management never terminated him from service.

PW-1 claims that through union he lodged complaint and that was unchanged.

PW-1 denied that he has sufficient income from cultivation.

PW-1 denied that he always created troubles with the management or he left service voluntarily.

**PW-2** Anwarul Haque claims himself an employee of the Company under reference and one of the members of the Union under reference.

PW-2 fully corroborates the statements of PW-1 in every corner.

From the cross examination it is revealed that PW-1 has failed to remember the exact name of the Union and has not produced the authorisation letter to depose in this case.

He denied that he was not terminated from service on 04.06.2021 by the management. He states firmly that he is not working for gain with any concern and that is unchallenged.

PW-3, Ms. Barnali Mukherjee, is the Vice-President of the Union of the Calcutta Leather Tannery Workmen's Union claims the Union under reference is a registered Union under the Trade union Act, 1926 and its registration No. is 18432 and she is well authorized to adduce evidence on behalf of the Union. PW-3 stated the case of Union in details and corroborated the evidence of PW-1 and PW-2.

She finally states that the management verbally terminated the concerned workmen by way of refusal of employment illegally, unjustifiably without showing any reason whatsoever rather they did not allow the workmen to enter into the factory premises. The attitude of the management towards those workmen was of hire and fire policy without comply with any mandatory provisions of the Industrial Disputes Act.

She has produced some documents on behalf of the Union which have been marked as Exhibit-1 to 13 respectively as already stated/mentioned in the column of evidence led by the Union. She claims himself as a full time Trade Unionist and that is unchallenged.

In her cross examination PW-3 denied that she was not legally appointed as the Vice President of the Union.

It is also revealed that there is an agreement with the Union and the Company for the matter of bargaining relating to any dispute between employees working in said Company.

PW-3 states that the present office of the Union is at 3/168, Gandhi Colony, Kolkata – 700 092 and the registered office is same address for the year 1987-1990 and she was elected Vice President in the General Body meeting held in 2016 and prior to that she was one of the members of the Union all along since 2002 and she attends the registered office of the Union on regular course.

#### **Oral evidences of CWs :**

CW-1, Shams Tabrez claims himself an authorised representative and Manager of Dolphin Leathers at Zone No.-II, Kolkata Leather Complex.

He claims that out of 12 Workmen PW-1 and PW-2 have voluntarily resigned from service and joined other establishment and Dipan Ram has left the job without any information to the management for which necessary proceeding was initiated against him.

CW-1 claims that the Company did not violate ESI provision, Minimum Wages Act, HRA provision etc. Including statutory benefits of the workmen.

CW-1 has challenged the validity of G. S. of the Union and President of the Union along with the legal existence of the Union and he alleged that the instant dispute is the result of conspiracy of false G.S. and President with some workmen. He could



not conclude the result of the so-called criminal proceeding being initiated at the behest of the company.

He denied about the placing of charter of demands being allegedly filed by the Union under reference on 14.02.2011 or at any point of time.

He also denied the discussion being allegedly held on 11.02.2011.

He denied the so called act of refusal of employment by the management.

He admitted that the management has taken part in the conciliation proceeding being held before Labour Commissioner.

He made question against the reference as made by the Labour Department, Government of West Bengal.

He demanded that the instant dispute is not maintainable and liable to be dismissed with exemplary cost.

Documents as filed by the Company have been marked as Exhibit-A to L respectively(FPDW).

In his cross examination CW-1 admitted that he was appointed by the Company being authorized him on execution of a General Power of Attorney or Special Power of Attorney. But he could not file any authorization of the Company under reference.

He claims that one of the Partners of the Company Mr. Zubair Majid authorized him to depose in this case excluding other two partners. But he could not produce the said authorization.

He is attached with the Company as Manager since 2004/05 but could not file any document for the same. It is revealed that in 2011 there were 25 employees were attached with the Company when no appointment letter was issued to any of them. Some of them were permanent and some of them were temporary.

CW-1 claims that 12 workers under reference were covered under ESI and P.F.

He could not say/remember when the factory renewed their licence last.

CW-1 states that the Company maintains different registers namely of Wages, Salary, Master Role, adult workers and other necessary registers and used to submit return before the appropriate authority/authorities in regular manner and he can file the same, but ultimately he did not file the same or could not make any attempt to justify his claims in this regard.



CW-1 states that the Company used to pay the wages/salary to the workers/employees by making necessary entries in the salary register and also used to give wages to the workman above the ceiling limit of Minimum Wages Act. But no documents have been produced to establish the same, or could attempt to do so.

CW-1 assured that he can produce the salary register and attendance register of the concerned employee for the year 2010-11, if on search those are available, but fails.

CW-1 denied that the Company did not pay the minimum wages to the concerned employees.

CW-1 stated that without perusing the documents he could not say the exact date of joining of each of the 12 workmen.

CW-1 also failed to produce any document to show out of 25 workers who were the permanent and who were the temporary workers.

The Company was formed in 1998 as partnership firm but not registered though it was subsequently registered in 2014/15, but no document has been produced for the same.

CW-1 admits that Company did not issue any formal appointment letter to any of 25 workmen in 2010-11. No reasons were explained, by him for the same by CW-1.

CW-1 cannot say from when the attendance register and wage register relating to the employees were being maintained. So, it is just opposite of his assertion of previous statement being given as CW-1. It ratifies the demand of the Workmen as proved from the table shown in their written statement.

E.S.I. and P.F. started since 01.04.2007 according to CW-1's reply in cross examination.

CW-1 assured that he would produce the resignation letter of Mr. Upendra Sahani. But he could not file the same, during entire proceeding of the case.

CW-1 admitted that he could not state the date on which Dipan Ram left the job and no notice or no communication was made with Mr. Ram when he left the job and he volunteered the false excuse for the same (which ultimate discredited his evidence) by saying that the same was not possible since no postal address with Pin Code was supplied by the employees. Then says address was there with the Company but no Pin Code was supplied.

CW-1 also failed to state the nature of proceed as claimed by him in para -5 of his affidavit-in-chief being initiated against Mr. Ram.



CW-1 once attended in the discussion with the representatives namely Mr. P.R. Ghosh and another of the union under reference. So, it is established that verbal discussion to dissolve the dispute has occurred.

CW-1 claims the existence of another union in their establishment and it was come to his knowledge through those 2 representatives of the union under reference. But no document has been filed in this respect by him or he would attempt for this.

Lastly he admitted that he had no document to show that the workers namely Mr. Haque, Bijoy Kumar, Mr. Sahani, Mr. Upendera Sahani and Mr. Khan had voluntarily left the job of the Company and no notice were served to them for collecting their dues. So, it is established that the factum of voluntarily resignation has not been established also.

CW-1 claimed falsely of his own volition that notice was published on the Notice Board of the factory but he could not filed the copy of the same before this Tribunal or could not say whether the copy of such alleged notice was sent to Labour Commissioner or to the controlling authority under the Payment of Gratuity Act, 1972 or to A.L.C. about the facts of resignation of the employees.

CW-1 admitted that those workmen under reference never tendered any written resignation to the Company and they were covered under ESI and P.F. So, it is established that the factum of wilful resignation was a false and fabricated allegation against the employees by the management or the Company whoever may be.

CW-1 also admitted that he could not say whether the company informed the ESI Authority or P.F. Authority to the effect that no further deposit will be made for those five (5) workmen (being criminally arrested) relating to contribution in P.F. and E.S.I. Since CW-1 was not present in conciliation proceeding he could not say the contention of the Company in conciliation proceeding.

CW-1 could not show the documents/papers regarding payment of all dues of 12 workmen mentioned in the order of reference on their alleged termination by the management.

CW-1 also admitted that he did not mention specifically the names of the workmen who refused to attend their job.

CW-1 failed to show any paper about the proposal of the Company regarding the asking of management to resume those employees their duties at the time of conciliation of the dispute.

CW-1 also admitted that no formal charge was framed against any workman.



CW-1 also admitted that he could not state in his affidavit-in-chief in where those so called workmen were gainfully employed and could not able to file any document/paper for the same.

CW-1 admitted with submitting of Exhibit-L with the Conciliation Officer and receipt of Exhibit-K and no date was mentioned in Exhibit-J as to when the same was executed and there is nothing mentioned in Exhibit-J regarding the name of the vendor, date of purchasing stamp paper or in whose name it was purchased but he assured, the original of the same would be produced, but he failed to do so.

CW-1 stated that no Statutory Authority had declared the Charter of Demand of the Union and entire action taken by the Union was illegal.

CW-1 admitted that he could not file any document to show that any retrenchment benefit, notice pay and gratuity had been tendered to the workman/men informed in the instant proceedings and the management did not inform the authority of gratuity in this respect nor the management informed about alleged resignation or afterward gainly employed of those workmen to the ALC (Conciliation Officer).

CW-1 failed to submit about any reply of management against Exhibit-2.

CW-1 denied all other suggestions, put by the other side, as usual without giving any proper reply or putting any defence for those denials.

From close reading the evidence of CW-1 it is well established that the witness is telling a lie and his evidence is based on false, fabricated and imaginary statement and therefore, his evidence could safely be set aside for the adjudication of the instant dispute.

So, from the evidence of PWs from the under reference it is established that they fruitfully succeeded to prove their case except the episode of their forceful signatures of resignations as alleged and they also failed to state the manner by which these were done and on the contrary the Company under reference could not try to disprove the same by filing any oral or documentary evidence except some denials at that point. But cross examination of CW-1 has revealed to the effect that the factum of voluntary resignations of the workmen have no materials to rely upon rather it is disproved that the workmen have ever resigned from their respective jobs voluntarily.

**Now let us see the evidence of CW-2, who in an independent witness of this case.**

CW-2 is the DLC(P) and Deputy Registrar of Trade Union of Govt. of West Bengal on 17.03.2021 when he was examined as CW-2 on the strength of summons. He assured this Tribunal about the union under reference by stating that it is a registered union under this authority. At the relevant point of times Mr. Hossain was



the president, one Sk Mehboob was the General Secretary and Mr. Fero was the Treasurer of the union under reference.

As per last annual return dated 03.05.2018 Smt. Barnali Mukherjee was the president, Mr. Samudra Dutta was the General Secretary and Indra Nath Ghosh was the Treasurer.

Last return of the Union was filed in 1998. He assured that authority could allow the last return at the relevant point of time in 2011.

He admitted from 'H' is to be filed by the Union regarding the office bearers' time and span.

As per annual return of the Union the address for the end of 31-12-2017 Smt. Mukherjee, Mr. Dutta and Mr. Ghosh were in their respective charges and the Unions is situated at 3/166, Gandhi Coloney, Kolkata – 700 097 and address given in the reply of RTI is not same with the address of the Union in 2018. The present office bearers are elected members of the Union.

In his cross examination it is revealed that the Union is still in existence.

CW-2 has admitted that no proceeding was drawn up against the union under reference or against its executive body or member at any point of time and also no show cause notice was issued to the executive of the said union for this office at any point of time.

So, from the evidence of CW-2 it is established that the status of the Union under reference is legal and no question of anything else can be raised.

Ld. Counsel for the Company firstly submitted after being dependent in respect of the following judgements:

- 1) Kashi Nath (Dead) Through Lrs vs Jaganath on 5 November, 2003.
- 2) Privy Council in Siddiqui Mohammad Shah v. Mst. Saran and Ors. (AIR 1930 PC 57).
- 3) M/s Trojan and Co. V. RM. N.N. Nagappa Chetiar (AIR 1953 SC 235)

to the effect "When the evidence is not in line with the pleadings and is at variance with it and as in this case in virtual self-contradiction, adverse inference has to be drawn and the evidence adduced by the union cannot be looked into or relied upon".

Ld. Counsel for the Company has admitted that there is no documents available on record which can be treated as a proof of evidence in view of the observations of the Hon'ble High Court, even then for the sake of the argument after it treated with the documents produced by the Union are admissible under the law the same cannot support the case of the Union.



Ld. Counsel admitted that the Exhibit-13, which was taken granted without objection relating to a case of suspension of the worker Dipan Ram from his service for two weeks by which he claimed that Company has under gone all necessary formalities.

Ld. Counsel for the Company demanded the onus to prove the alleged termination of workers whether illegal or unauthorised lies upon the Union as according to his claim the documents to substantiate such allegations are lying with the Union/Workmen.

In this respect Ld. Counsel has quoted Section 103 of the Indian Evidence Act implies prove of fact which is in existence and by the person who wishes the court to believe in such existence. However, there is exception to this rule if provided otherwise by any law. He has relied in this respect upon the following judgements of Hon'ble Supreme Court.

- 1) Sita Ram & Ors. Vs. Moti Lal Nehru Farmers Training SCC March 2008.

Ld. Counsel for the Company claimed that the Union under reference has got no legal existence to espouse the dispute on behalf of the Workmen as the Union has failed to produce any document/resolution or decision taken by their committee members to show that PW-3 is the Vice President of the union and she was duly authorized to depose on behalf of the Union.

Ld. Counsel for the Company has argued that since the Union has not obtained any certificate of recognition from the establishment and since the union has not obtained due recognition from the Registrar of Trade Union, this Union cannot be acted as bargaining agents.

In this respect Ld. Counsel for the Company has reproduced the Chapter IIIA of the West Bengal Act XLVIII of 1983 The Trade Unions (West Bengal Amendment) Act. 1983, though the instant case has been referred for other reason that is the matter of charter of demand.

As such Ld. Counsel for the Company demanded that the instant dispute being devoid of any merit deserved to be dismissed and the same be dismissed.

On the contrary, Ld. Counsel for the Union has drawn my attention to the Section 2A of the Industrial Disputes Act 1947 and stated that the Government of West Bengal made an amendment in Section 2A by West Bengal Act 33 of 1989 w.e.f. 08.12.1989 and accordingly the refusal of employment has become an industrial dispute and therefore, the present reference being an refusal of employment is an industrial dispute, and it is not the outcome of the charter of demand

Ld. Counsel argued that the Union has locus-standi to raise the dispute on behalf of the Workmen because it is the settled principle of law that refusal of employment and/or termination of service is per-se and industrial dispute whether the said dispute is raised by the Union or not, it is immaterial when the issues referred for adjudication related to refusal of employment.



In this respect Ld. Counsel for the Union has drawn my attention to the evidence of CW-2, which goes to show itself that the Union in question is a registered Union under their authority as per Trade Union Act 1926 and the same still exists.

The Union under reference relies in this respect on the judgements of Hon'ble High Court at Calcutta passed on 27.09.2021 in W.P.A. 1271 of 2020 in M/s. Hindusthan National Glass and Industries Limited vs. The State of West Bengal and Others.

Ld. Counsel has further argued that in the instant case the services of 12 (twelve) Workmen were refused by the management on the date as referred earlier and at the time of refusal of employment, firstly, no show cause or charge sheet was issued to the concerned workmen and no enquiry was held, secondly no ground has been shown for refusal of employment and thirdly at the time of refusal of employment the provisions of the Section 25F of the Industrial Disputes, 1947 was not complied with.

Ld. Counsel for the Union further argued that the contentions made on behalf of the management as made in their pleadings and evidences are self contradictory. The management has tried to project that they have never refused the employment and it is alleged that the workmen refused to attain their jobs of their own will and they have engaged themselves somewhere else. It is denied by the company that the workmen remain unemployed.

In this respect Ld. Counsel for the Union has stated that it was the management which has the burden to prove the alleged allegations being made against the workers but the management has failed miserably to discharge their burden which is established from the plain readings of the oral evidence of CW-1 and CW-2. The documents filed by the Company and the oral evidence of Company witness No.-1 is fully contradictory to each other.

The Union in this respect relies upon the following judgements of the Hon'ble High Courts and Supreme Court.

- 1) State of Gujrat & Anr. Vs. Jitendra M. Raval and Anr. Reported in 2005 II CLR 403 relevant paragraph 6 Page 406 (Gujrat H.C.).
- 2) Sundaran Vs. Dy. Commissioner of Labour (LLJ 2004(iv) (suppl) Pg-273.
- 3) G. T. Lad vs. Chemicals & Fibres Ltd. A.I.R. 1979 S.C. Pg. 582
- 4) Buckingham & Carnatic Co. Ltd. vs. Venkatiah & Anr. AIR 1964 S.C. 1272.
- 5) Rajwant Singh Rewat vs. Dist. Food & Supply 1996(I) LLJ Pg. 637 (P&H HC).
- 6) Rajarama Rama Hargule vs. P.W. Bhuyar 2003 (96) FLR 115 (Bom HC).

Ld. Counsel for the Union under reference has quoted his submission by stating that it is fact there were refusal of employment of the concerned employees by the management without complying the mandatory provision of Section 25F of the Industrial Disputes Act, 1947 and the said refusal of employment / termination of



services are illegal and unjustified. The concerned workmen are entitled to be reinstated with full back-wages together with consequential benefits, thereto.

On careful consideration of the evidences both oral and documentary led by the parties to the case followed by the submission with rulings of the respective counsels I am of firm opinion that Company has to prove in respect of the allegations which the company has assured to the effect that:

- 1) The concerned workmen had voluntarily left the job.
- 2) The Company had given them full benefits, which they earned from the Company under reference.
- 3) The concerned workmen are working gainfully elsewhere.
- 4) The nature of job of the said workmen was partially perennial and partly casual nature.
- 5) The result of so called criminal case being pending against the workmen namely Upendra Sahani, Anwarul Haque, Bijoy Kumar and Moin Khan.

In this respect Company has relied upon the evidences of CW-1 namely Shams Tabrez, who claims himself an authorized representative and the manager of Dolphin Leathers at Zone No.-II, Calcutta Leather Complex. But CW-1 could not file any document to that effect along with so called authorization, which was claimed by CW-1 being issued by Mr. Zuber Majid, one of the partners of the Company under reference, his statements itself discredited his evidence entirely.

CW-1 admitted that the concerned workers were covered under ESI and PF.

CW-1 claims that the Company maintains several registers such as wages register, salary registers, master role and other necessary register but ultimately he could not file any of the same.

Even CW-1 could not establish his statement that the Company used to pay wages and salaries to the workers by making necessary entries in the salary registers or the company used to give wages to the workmen above the ceiling limit of minimum Wages act.

CW-1 also failed to produce any document regarding the formation and registration of the Company as partnership.

CW-1 admitted that Company did not issued any formal appointment letter to any Workman.

CW-1 though assured but could not produce the negotiation letter of Mr. Upendra Sahani and he also could not state the date on which the worker Dipan Ram left the job including notice or communication allegedly made with that worker.

CW-1 admitted the discussion made with the representative namely P. R. Ghosh and another which goes to show that verbal discussion be dissolved the present dispute was occurred, with representative of the Union under reference against which the



Company claimed that the Union under reference has no locus standi to espouse the dispute on behalf of the workers.

CW-1 though claimed regarding the existing of another Union but could not file any document to establish the same.

CW-1 also admitted that he had no document to show the workers namely Mr. Haque, Bijoy Kumar, Mr. Sahani, Mr. Upendra Sahani and Mr. Khan had voluntarily left the job and he also admitted that no notice was served to them for collecting their dues. So, the factum of the voluntary resignation of the employees or they were given all benefits has not been established by CW-1 i.e. Company under reference in any manner whatsoever.

So, it can be safely opined that the factum of such allegations was false and fabricated allegations being put by the Company towards the Union under reference.

CW-1 also admitted that he has not stated in his affidavit-in-chief to the effect that the concerned workmen were gainfully employed and he could not file any document/paper to prove the same.

If that be so, it is proved that company has failed to establish that the concerned workmen are working gainfully elsewhere.

CW-1 on behalf of the company has also failed to establish that the nature of job of the concerned workmen was partly perennial and partly casual nature.

CW-2 i.e. ALC, who came before this Tribunal on the strength of summons assured this Tribunal by adducing evidence to the effect that the Union under reference is a registered Union under their authority as per Trade Union Act and the said Union is still in existence and the present office bearers are elected members of the Union and in his cross examination he admitted that no proceeding was drawn up against the Union under reference or against the executive body or members at any point of time.

So, from the evidence of CW-2 also it is proved that the status of the Union under reference is legal and no question of anything else can be raised.

Now we should come to the point to the criminal case being pending as per claim of the Company under reference. Since the criminal case has not been disposed the employees cannot be declared as guilty rather the Company under reference had scope to initiate departmental proceeding to fix the liabilities of the employees concerned as departmental proceeding was not barred in this respect. So presumption shall go in favour of the employees.

So, in all cases and manner it is established that the company under reference did not comply the bounden duty to comply the provisions of Section 25 of the Industrial Disputes Act and it will be unwise to rely the claim of Company.

On the other hand, evidences of PWs coupled with their documents, it is clear that the Union under reference has fruitfully succeeded to prove their case in all respects.



In sum, the case succeeds.

Hence it is

**ORDERED**

that the instant case being No. VIII – 53/2013 be and the same is allowed on contest with cost of Rs. 10,000/- (Rupees ten thousand) only to each employee against the Company to be paid to the victim workers who are entitled to be reinstated with full back wages up to the date of their reinstatement in their duty with an interest @ Rs. 9/- per annum on the total sum of full back wages along with all consequential benefits thereto, and the workers namely Upendra Sahani, Anwarul Haque, Surendra Sahani, Dipan Ram, Suresh Ram, Mahesh Ram, Umesh Ram (I), Ramesh Das, Umesh Das, Bhagawan Das, Umesh Ram (II) & Ram Prabesh Ram shall also be compensated with a sum of Rs. 2 lakhs each for their mental agony and forceful expenses being incurred by them since 2013 followed by serious financial crisis being suffered by them during the pendency of the case.

This is my Award.

The Company is directed to comply the above award in its right spirit within 3 months from the date of receipt of this Award, in default the Union under reference on behalf of the Workmen shall have the liberty to put the Award in execution as per provision of law being enforced in this respect.

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

Sd/-

(Uttam Kumar Nandy)  
Judge  
First Industrial Tribunal  
Kolkata

Dictated & corrected by me

Sd/-

(Uttam Kumar Nandy)  
Judge

Uttam Kumar Nandy  
Judge  
First Industrial Tribunal  
Kolkata

