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

No. Labr/ 854 /(LC-IR)/11L-44/2017

Date: 12-09-

ORDER

WHEREAS under the Government of West Bengal, Labour Department Order No. Labr/682/(LC-IR)/11L-44/2017 dated 05/07/2017 the Industrial Dispute between M/s. Sontla Tripally Samabay Krishi Unnayan Samiti, Vill. & P.O. – Sontla, Block – Memari-II, Dist. – Purba – Bardhaman, Pin - 713422, and its workmen namely, Sri Bidesh Thakur, Sri Utpal Roy and Soma Das represented by the workman Sri Bidesh Thakur, C/o – Sri Rabilochan Thakur, Vill. & P.O. – Sontla, Block – Memari-II, Dist. – Purba – Bardhaman, Pin - 713422 regarding the issue mentioned in the said order, being a matter specified in the Second / Third Schedule to the Industrial Dispute Act, 1947 (14 of 1947), was referred for adjudication to the Judge, Fifth Industrial Tribunal, West Bengal.

AND WHEREAS the Ninth Industrial Tribunal, West Bengal, has submitted to the State Government its award dated 01/09/2022 on the said Industrial Dispute vide memo no. 71 - I.T. dated - 01/09/2022.

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 Secret

Joint Secretary to the Government of West Bengal

1/219168/2022



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

Date: 12-09-./2022.

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

- M/s. Sontla Tripally Samabay Krishi Unnayan Samiti, Vill. & P.O. Sontla, Block - Memari-II, Dist. - Purba - Bardhaman, Pin - 713422.
- Sri Bidesh Thakur, C/o Sri Rabilochan Thakur, Vill. & P.O. Sontla, Block - Memari-II, Dist. - Purba - Bardhaman, Pin - 713422.
- 3. The Assistant Labour Commissioner, W.B. In-Charge, Labour Gazette.
- 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.

No. Labr/854/2(2)

Date: 12-09-12022.

Copy forwarded for information to:

 The Judge, Ninth Industrial Tribunal, West Bengal with reference to his Memo No. 71- I.T. dated - 01/09/2022.

2. The Joint Labour Commissioner (Statistics), West Bengal, 6, Church Lane, Kolkata -700001.

Joint Secretary

In the matter of an Industrial dispute between Messrs Sontla Tripally Samabay Krishi Unnyan Samiti Ltd., Vill. & P.O— Sontala, Block-Memari-II, Dist.- Purba Bardhaman (erstwhile Bardhaman District), PIN.- 713422 AND group of three workmen namely, Sri Bidesh Thakur, Shri Utpal Roy and Smt. Soma Das represented by the workman Shri Bidesh Thakur, C/o— Sri Rabilochan Thakur, Vill. & P.O— Sontala, Block-Memari-II, Dist.- Purba Bardhaman(erstwhile Bardhaman District), PIN.-713422 referred to this Tribunal vide G.O.No. Labr./682/(LC-IR) dated 05.07.2017.

IR/11L-44/17

Case No.- X-3 of 2017



BEFORE THE 9TH INDUSTRIAL TRIBUNAL,

DURGAPUR, WEST BENGAL, KOLKATA.

PRESENT :- SHRI SUJIT KUMAR MEHROTRA,

JUDGE, 9th INDUSTRIAL TRIBUNAL,

DURGAPUR.

Ld. Advocate for the Workmen: - Mr. Saradindu Kumar Panda.

Ld. Advocate for the O.P./Employer :- Mr. Ramesh Ch.Banejee.

The award dated: - 30th day of August, 2022.

AWARD

The Asstt. Secretary to the Govt. of West Bengal. Labour Department, Kolkata upon noting that an Industrial dispute exists between Messrs Sontla Tripally Samabay Unnayan Samiti Ltd., Vill. & P.O – Sontala, Block-Memari-II, Dist.- Purba Bardhaman (erstwhile Bardhaman District), PIN.- 713 22 AND three workmen namely, Sri Bidesh Thakur, Shri Utpal Roy and Smt. Soma Das by an order dated 05.07.2017 referred such dispute to this Tribunal in exercise of power conferred by Section 10 of the Industrial Disputes Act, 1947 (hereinafter referred as the I D Act, 1947) for determination of the following issues:-

- 1. Whether such termination of three workmen namely, Sri Utpal Roy, Smt.Soma Das & Sri Bidesh Thakur by way of refusal of employment w.e.f 26.09.2014 is justified?
- 2. If not, then to what relief are they entitled?

After received of such reference order this Tribunal entered upon the reference by registering the same as the instant case and put the disputing parties on notice and invited claimed statement and written statement of the parties. In consequence thereof the workmen jointly filed their claimed written

statement and the written statement of defence.

The case of the workmen, as per their claim written statement, may be capsulized in following manners:-

- a) that workmen Sri Utpal Roy, Bidesh Thakur and Smt.Soma Das are the workmen under the Messrs Sontla Tripally Samabay Unnayan Samiti Ltd., and they joined their service in the said Samiti on 21.03.13, 22.03.12 & 23.03.12 in the post of Accountant and Clerk respectively,
- b) that they have been appointed in their service through the written examination as well as by oral test as per the advertisement published by the Messrs Sontla Tripally Samabay Unnayan Samiti Ltd., in the Anandabazar Patrika dated 24.12.2010,
- c) that they used to discharge their unblemished service towards their employer since their date of appointment till their illegal termination,
- d) that after the change of managing committee in the month of May, 2004 through their election process, some of its members especially the Secretary started to show their vindictive attitude towards them,
- e) that ultimately their service has been terminated by the employer illegally without following any principle of natural justice.

 The workmen pray for reinstatement in the service alongwith back wages under I D Act, 1947.

On the other hand, by filing written statement, the O.P./employer/ Messrs Sontla Tripally Samabay Unnayan Samiti Ltd., has denied all the material allegations levelled against it by the workmen.

It is their specific pleading case that the workmen joined in the Samabay Samiti as per appointment letters signed by the then Chairman of the Samiti but there is no records in its office to show that they were selected through any written as well as oral test conducted by it.

Its specific pleading case is that the new management/ committee was elected / formed in the month of May,2014 as per election conducted under the Co-operative Societies Act & Rules. Thereafter, these workmen were asked to submit documents in support of their appointment through the alleged written and oral test but all of them informed in writing that they have no knowledge about procedure of their selection/appointment and they submitted Xerox copies of their appointment letter. Thereafter it came to know that there is no reference number of the Samabay Samiti.

The O.P./employer / Samabay Samiti in its WS took the plea that since the

present committee found that the appointment of the workmen were not made as per W.B.Co-operative Societies Act,2006 & Rules by the then management of the Samabay Samiti, so the workmen are not entitled to get the relief, as prayed for.

ARGUMENT FROM THE SIDE OF THE WORKMEN

The ld.lawyer submits that from the WS of the O.P/employer it is an undisputed fact of this case, these workmen were appointed by the O.P/Cooperative Society and their appointment was made by the then Elected Board of the Co-operative Society but the subsequent Elected Board illegally dismissed these workmen from their service without following the mandatory provisions of the I D Act, 1947.

Mr. Panda appearing for the workmen lamented that the illegal dismissal of these workmen from their service is the outcome of the internal disputes between the present Board and the previously elected Board of the O.P./Employer and the same does not give any right to the present Board of the O.P./Employer to terminate the service of the workmen without following the provision as provided by Sec.25F of the ID Act, 1947.

Ld. Counsel further submitted that the plea of not following the procedure in terms of the W. B. Co-operative Societies Act, 2006 with respect to the appointment of these workmen by the then Elected Board does not give any power to the present board to automatically terminate service of these workmen.

The Ld. lawyer in his oral argument as well as in his notes of argument argued that argument from the side of the employer regarding tribunal's lacking jurisdiction to decide the referred disputes is concerned, the same has got no merit as it is the settled proposition of law that the jurisdiction of this tribunal under the ID Act, 1947 is limited to the issues referred to it for adjudication by the appropriate Govt. and it cannot go beyond the terms of the references.

To fortify his such argument he relied upon the case of Pottery Majdoor Panchayat Vs. The Perfect Pottery Co.Ltd. and another, 1977 SCC(3762 and the case of M/S Tata Iron and Steel Co.Ltd. Vs. State of Jharkhand and others (Civil Appeal NO.8246 of 2013).

It was also contended by the Ld. lawyer that the employer since the very inception vociferously tried to suppress material facts from this tribunal only

with an ill intention to establish its WS case that these workmen were not appointed in accordance with the provisions of concerned rules by the then elected Secretary as they intentionally withheld the paper of advertisement as well as concerned resolutions of the O.P /Co-operative Society regarding appointment of these workmen.

In refuting the alleged irregularities in the appointment of these workmen by the then elected committee of the O.P/Co-operative Society, the Ld. lawyer referred to the oral testimony of the then Secretary i.e P.W-2, oral testimony of P.W-3, who is the official witness, and copies of various resolutions of the O.P./Co-operative Society and concluded that these workmen were appointed in a fair manner by the then elected body of the O.P/Co-operative Society with the due approval of the Govt.'s concerned department.

In concluding his argument, the Ld. lawyer contended that as the O.P/Cooperative Society reasonably failed to prove that these workmen were not appointed legally by its the then elected body and their services has illegally been terminated by the present elected body without following the provisions of the I D Act, 1923, so termination orders be set aside and they be reinstated in their service with full back wages.

ARGUMENT FROM THE SIDE OF THE O.P./EMPLOYER

Per contra the ld.lawyer-Mr. Ramesh Chandra Banerjee argued that since the O.P is of Co-operative Society Registered under the WB Co-operative Societies Act,2006, so in view of the Sec. 102 of the Act of 2006 this Tribunal has no jurisdiction to decide the alleged referred dispute between the Co-operative and its employees.

This apart, he further submitted that since the appointment of these 3(three) workmen were made by the then Chairman without following the procedure laid down in the various provisions of the Act, 2006, so it cannot be said that these 3 workmen have accrued any right under the provisions of the I D Act, 1947.

To fortify his such argument he took me through various provisions of the W.B Co-operative Society Act 2006 & Rules of 2011.

Besides that, the ld. lawyer also argued that immediately after detection of such irregularities regarding appointment of these workmen, the present Board issued letters to the workmen directing them to produce their

OVT. OF WEST SENGAL

appointment letters and other documents but they failed to produce any documents regarding their alleged participation in the alleged written examination and oral examination. They not only failed to produce any documents but by giving letters intimated the Secretary that they do not know anything about their recruitment procedure. Their such conduct clearly reveals that their appointment was not made in accordance with the provisions of the W.B. Co-operative societies Act, 2006 by the then Elected Body of O.P/Co-operative Society.

To counter the argument of the ld. lawyer for the workmen regarding not adhering the procedure as laid down in the Act of 1947 for termination of service of workmen under the Act, 1947 by the O.P, it was contended that the same was duly followed by the present Board by issuing letters i.e. Exbt.C (collectively) and accordingly it cannot be said that the O.P / employer violated the provisions of I D Act 1947 and terminated the service of these workmen illegally.

During the course of argument the Ld.Lawyer for the employer/ Cooperative Society also challenges the jurisdiction of this court by referring to Sec.102(Sub-sec.2) of the W.B Co-operative Societies Act,2006 and submitted that since the dispute was / is concerning the Co-operative Society and its former employees, so the same should have been filed before the Registrar for settlement.

DECISION WITH REASONS

Before the starting of discussion in respect of the issues it is to be seen who were examined by the parties and on which documentary the parties have relied on for proving the respective case.

In discharge of their legal obligation to establish their pleading case within the periphery of the I D Act, 1947, the workmen examined one of them namely, Sri Bidesh Thakur as P.W-1 on their behalf, former Chairman of the O.P/Samabay Samiti namely, Naser Ali Mallik as P.W-2 and the Inspector of Co-operative Societies, Memari-II, Dev.Block, Bardhaman – Sri Subrata Das as P.W-3 from their side. This apart, the following documents have also been admitted in evidence from their side: -

- 1) Appointment letters of the workmen Exbt. 1, 1/A, 1/B,
- 2) Letters of interview of the workmen Exbt.2, 2/A, 2/B,
- JUDGE 3) Admit Cards of the workmen Exbt. 3,3/A, 3/B,

- 4) Termination letters all dated 05.09.18 of the workmen Exbt.4, 4/A,4/B,
- 5) Letter dated 07.07.14 jointly written by all the three workmen Exbt.5,
- 6) Another letter dated 21.07.14 jointly written by all the three workmen Exbt. 5/A,
- 7) Letter dated 09.10.14 written by Bidesh Thakur and Soma Das to the ARCS, Bardhaman Range-I Exbt.6,
- 8) Letter dated 02.12.14 written by the workman Soma Das to the ARCS, Bardhaman Range-I Exbt.6/A,
- 9) Letter dated 27.09.14 written by the workman Bidesh Thakur to the ARCS, Bardhaman Range-I Exbt.6/B,
- 10) Letter dated 27.10.14 jointly by all the three workmen to the ARCS, Bardhaman Range-I Exbt.7.

On the other hand, the Samabay Samiti has examined its Ex-Secretary – Sri Utpal Santra as O.P.W-1 on its behalf. Besides that, the following documents have been admitted in evidence from its side: -

- 1) Resolution Book dated 07.09.14 Exbt.A,
- 2) Resolution Book dated 21.09.14 Exbt.B,
- 3) Resolution Book dated 03.06.15 Exbt.C.
- 4) Letters of the Secretary of the Samiti addressed to the workmen Exbt, D series,
- 5) Copy of the termination letter dated 21.09.14 Exbt.E.

ISSUE NO.1:-

I have meticulously gone through the oral evidence of all the PWs, O.P.W.I and documentary evidence adduced by the parties in the instant case. After scanning the same meticulously, I find that it is the undisputed fact of this case that these 3(three) workmen were appointed by the then Elected Board of the O.P/Co-operative Society and they joined their service on 21.3.2013, 22.3.2013 and 23.3.2013 on different posts in the office of the O.P/Co-operative Society. It is also the undisputed fact that they were terminated from their service by the subsequently Elected Board on and from 26.09.2014.

From my above discussion of the pleading case of the parties with respect to the referred issues, I find that the crux of the employer's case is that since the workmen were not appointed as per provisions of the West Bengal Co-operative Societies Act,2006 and Rules framed thereunder, so the services of the workmen were terminated legally. Another ground is that this Tribunal has no jurisdiction to decide the disputes between the employees and the O.P/Co-operative Society under the I D Act of 1947.

After having considered, the pleading case of the parties as well as the bone of contention of argument of the Ld. lawyers of both the parties, I am of the view that the same may be divided into three parts. Firstly, regarding alleged lack of jurisdiction of this tribunal in adjudicating the referred issues under the ID Act, 1947. Secondly, alleged illegal appointment of these workmen by the then elected body of the O.P./Co-operative Society and/or appointment was not made in accordance with the provisions of the West Bengal Co-operative Society Act, 2006 by the P.W-2. Thirdly, the services of these workmen have been arbitrarily terminated by the newly elected body of the O.P/Co-operative Society in the year 2014.

Now, let us come to the discussion regarding the submission of the parties concerning the jurisdiction of this tribunal to decide the referred issues under the Industrial Disputes Act, 1947.

During the course of argument, the Ld. Sr. Lawyer for the O.P/employer vehemently argued that since the O.P is a co-operative society constituted under the WB Co-operative Society Act,2006, so in view of Sec. 102 of the Act of 2006 the matter of settlement of disputes between the co-operative and its employee should be referred to the register of the co-operative and not to the tribunal by the appropriate Govt. under the Act of 1947.

In my considered view, to consider the merit of such argument on the part of the employer we are to firstly consider ambit of a tribunal under the I D Act, 1947 in adjudicating the Industrial Disputes as the same is somewhat different from the original jurisdiction of the Civil Courts in our country.

I must mention herein that there is no provision under the I D Act, 1947 which empowers it to decide any industrial disputes on being directly approached to it by either of the party. On the contrary, it can only adjudicate upon the issues which have been referred to it U/S 10 of the Act of 1947 by the appropriate Govt. or approached by a workman U/S 2A of the ID Act, 1947. Besides that, by virtue of amended provisions of Sec. 10 (1B)(d) of the West Bengal Amendment, the tribunal can entertain an application of an industrial

dispute from an individual workman when the conciliation proceedings do not reach to any settlement within the period of 60 days from the date of raising of the disputes.

Save and except the above mentioned three modes of approached for settlement of industrial dispute to a tribunal under the I D Act, 1947 there is no other approved mode for approaching the tribunal under the Act of 1947.

Now, we are to come back to our discussion regarding materials of the case in hand.

From the CR it is undisputed fact of this case that this tribunal's jurisdiction under the I D Act, 1947 has been invoked by the Govt. of West Bengal by making reference of the impugned industrial disputes between the workmen and the employer / O.P by virtue of its order dated 05.07.2017 U/S 10 of the I D Act 1947. It is also the undisputed fact of this case that by virtue of such references the Govt. of West Bengal made references for adjudication on the referred issues to this tribunal and not for any other purpose.

From the materials of this case, it is also the undisputed fact that the O.P/Employer Co-operative Society did participate in the conciliation proceedings before the ALC, Memari II, Purba Burdwan, and after failure of such conciliation the matter was referred to the Labour Department of the Govt. of West Bengal for consideration and thereafter the labour deptt. referred the same U/S 10 of the I D Act, 1947 to this tribunal.

It is pertinent to mention herein that the O.P/Employer/Co-operative did not challenge the impugned order of references U/S 10 of the appropriate Govt. before any higher forum. In other words, it never challenged the jurisdiction of the appropriate Govt. under the I D Act, 1947 for entertaining the failure report of the Conciliation Officer as well as making reference to this tribunal U/S 10 of the ID Act, 1947 till this date.

Another important aspect, as evident from the CR is that after making its appearance in this case, the O.P/employer did file a petition on 19.02.2018 challenging the maintainability of the instant case under the I D Act, 1947 on the ground that the O.P/Co-operative Society is not an "industry" as defined U/S 2(j) of the Act of 1947 and also on other grounds and/or that this tribunal has no jurisdiction to entertain the instant case. But its such petition has been

dismissed on merit vide Order No. 14 dated 24.04.2018 and thereafter evidence of both the parties have been recorded by this tribunal.

CR further reveals that the Order No.14 dated 24.04.2018 passed by the then P.O of this tribunal has neither been challenged nor been modified or set aside by any higher forum. Apart from that, during the course of hearing argument this tribunal asked ld. Lawyer for the O.P./Employer whether the O.P/employer ever approached any higher forum for modification of the Order No.14 dated 24.04.2018 or not? He very candidly submitted that no higher forum has ever been approached by the O.P/employer.

In view of such facts and circumstances the said order remains intact and attains its finality character for adjudicating the referred issues in the instant case by this tribunal.

Since, admittedly neither of the party's approached any higher forum against the said order of this tribunal, so in my considered view this tribunal is barred from considering merit of its said order afresh as the same would amounts to put itself on the seat of higher forum against its own order. A tribunal under the Act of 1947 does not have any review power under the I D Act of 1947.

Moreover, such contention of the Ld. Lawyer does not come within the purview of invoking review jurisdiction also, if at all has under the I D Act of 1947. Accordingly, I am of the view that the said issue concerning lack of jurisdiction of this tribunal for reconsidering the matter afresh on the ground that the O.P/Co-operative Society not being an industry under the I D Act, 1947, cannot be reopened by this tribunal itself and/or argument by the Ld. lawyer for the O.P/Employer on that score is also devoid of any merit.

Before parting with the discussion on this issue, I must mention herein that the jurisdiction of a tribunal under the Act of 1947 to adjudicate issues is very limited, as already discussed herein above by me. Since the appropriate Govt. has referred the instant case U/S 10 of the I D Act ,1947 for adjudication on the issues referred, so this tribunal has no jurisdiction to enlarge the ambit of references save and except to the extend which are incidental for proper and effective adjudication of the referred issues.



In this regard, we may refer the case of Hochtlef Gammon reported in 1964 II LLJ Supreme Court (Civil Appeal No.611 of 1963) as decided by the Hon'ble Supreme Court. In this regard, we may also refer the case of Pottery Majdoor Panchayat (Supra) and M/S Tata Iron & Steel Co.Ltd. (Supra) as relied upon by the workmen wherein the Hon'ble Supreme Court observed that the jurisdiction of the tribunal in Industrial Disputes is limited to the points specially referred for this adjudication and to matters incidental thereto and that the tribunal cannot go beyond the terms of references made of.

Moreover, it is the settled law that tribunal cannot be travelled beyond the order of reference. The judgment of Hon'ble Apex Court reported in 2013 (II) SCALE 467 read as follows:-

"18. The Industrial Tribunal/Labour court constituted under the Industrial Disputes Act is a creature of that statute. It acquires jurisdiction on the basis of reference made to it. The Tribunal has to confine itself within the scope of the subject matter of reference and cannot travel beyond the same.....".

Recently, the Hon'ble Apex court in the case of M/S Oil And Natural Gas Corporation Ltd. Vs. The President Oil Field Employees Association & Ors. Civil Appeal No. 1033 of 2022 reiterated its earlier observation as made in the case of Mukund Ltd. Vs. Mukund Staff and Officers' Association(2004)10 SCC460 by observing that the tribunal could not go beyond the disputes that were referred to it.

From my above discussion on the factual matrix by the case in hand as well as the law pronounced by the Hon'ble Apex Court, I am of the view, that the argument of the Ld. lawyer for the employer on the issue of lack of jurisdiction of this tribunal is completely devoid of any merit.

Now, let us discuss the merit of argument of the Ld. lawyer for the O.P/employer regarding alleged illegality in the appointment of the workmen.

As per pleading case of the workmen the O.P/Co-operative Society made an advertisement in the Bengali Daily Newspaper namely, the Ananda Bazar Patrika on 24.12.2010 inviting applications for appointment in the various posts of its society and in terms of such advertisement they applied in the proper form and after qualifying in the written and oral test they were selected and thereafter they (namely, Utpal Roy, Bidesh Thakur and Smt. Soma Das,) joined their

respective posts of the O.P/ Samabay Samity on 21.03.2013, 22.03.2012 & 23.03.2012 respectively.

On the other hand, the O.P./Co-operative Society in its WS specifically averred that the workmen joined in the O.P./Samabay Samity as per appointment letters signed by the then Chairman but there are no records in its office suggesting that such action of the Chairman were duly ratified/approved by the Board of the O.P./ Samabay Samity as per rules 106(6) of the West Bengal Co-operative Society rules, 2011. It also took the plea that after formation of the new committee/management with effect from May,2014 as no records/documents could be found in the office regarding selection of these workmen, so they were asked to produce all their relevant documents but all of them informed in writing that they have no knowledge about procedure of their selection. Thereafter, the present committee of the O.P./Samiity informed the workmen that their appointment was not made as per W.B. Society Act, 2006 and Rules made there under.

From above mentioned averments of the workmen it is clear that their specific case is that they have been appointed by the then elected committee as per the Rules and after following due process. On the other hand, on perusal of the WS of O.P./Samabay Samiity it is evident that they terminated the service of these workmen only on the ground that no documents/papers regarding their appointment, as made by the then elected committee, could be found in its office and also on the ground that the workmen failed to submit the relevant documents regarding their appointment.

Most surprisingly, the O.P./Samabay Samiity, which is supposed to be custodian of all documents relating to its management, tried to shift burden upon its employee i.e., workmen of this case, by asking them to justify their appointment made in a fair manner by the then its elected body.

In my conspired view, from the averments and trends of the evidence adduced from the side O.P./Samabay Samiity it is apparently clear that there is clear disagreement between the present management and the then elected management of O.P./Samabay Samiity over management of the Samiti/O.P..

Now, let us consider evidence of the parties regarding their respective pleading case.



P.W-1, who is one of the workmen and who adduced evidence for himsely and for and on behalf of other two workmen, in his evidence in-chief on affidavit stated in Para 5 that "That I say that we are the concerned workmen got appointment in the service through the written examination as well as oral test as per the advertisement of the Ananda Bazar Patrika dated 24.12.2010 and we are selected by the employer of the said Samabay Samity and as such we, the concerned workmen namely, Bidesh Thakur (myself) joined as an Accountant and Utpal Roy and Soma Das joined as Clerks in the service". He in his cross-examination also stated that "In the said press advertisement in the post of Accountant and Clerks, required qualification, their gradation and Madhyamik respectively. We received call letters by post. We appeared in the written examination, but I do not know the total number of applicants / candidates appeared in that examination. Our written examination was taken on Santhla Mahis Danga HIgh School............"

He in is cross examination further stated that oral test was held on Santhla Samabay Samity office i.e. O.P's office. He also produced their Interview letters, which have been marked as Exbt.2,2/A &2/B and Admit cards i.e. Exbt.3,3/A,3/B.

From his such oral testimony it is clear that there was an advertisement published in the Ananda Bazar Patrika on 24.12.2010 and in consequence therefore they applied and thereafter they appeared in the written test. Exbt.3, 3/A, 3/B which are the Admit Cards having seal of the office of the O.P./Samabay Samity and signature of the then Secretary also corroborate such oral testimony of the P.W-1. It is also evident from Exbt.2, 2/A, 2/B that on the basis of the written test held on 08.05.2011 they were directed to appear for interview / viva voce and computer proficiency test on 11.03.2012 by the Chairman of the O.P./ Samabay Samiity and duly counter signed by the Inspector of Co-operative Society, Memari-II Block, Paharhati, Bardhaman.

To establish their such pleading case the workmen also examined the then Chairman namely, Naser Ali Mallick as P.W-2 as summoned witness in this case. The said witness i.e P.W-2, in his evidence-in-chief clearly stated that he was Chairman of the Samity & was attached with the O.P./Samity for 18 - 20 years in different posts and the Samity published advertisement for appointment of three staffs in the Ananda Bazar Patrika and it also forwarded the same to the employment exchange. He also stated that as per Board resolution of the Samity

forwarded through the Co-operative Society Inspector, sent to the ARCS/Additional Registrar of Co-operatives society as per his order.

He further deposed on oath that he was the Chairman of the selection committee, co-operative inspector represented the ARCS and the Secretary of the Samity was also the member of the selection committee but subsequently, Secretary resigned from the selection committee as his son was one of the candidate for the examination and in his place Director of the Samity became one of the member of the selection committee.

P.W-2 further states that "At first written examination of the candidates were taken on the question of Barasul Training Centre. On the question paper set by the training centre, the result of written examination was evaluated by the representative of said training centre and published results of selected candidates. Viva / interview thereafter were taken by the member of the selected committee."

The interesting part of his cross-examination is that his such piece of evidence in-chief has neither been denied nor challenged by the O.P./Employer for the reason best known to it. As a consequence of which his oral evidence regarding publication of advertisement in the Bengali Daily Newspaper and formation of the selection committee and holding of written and oral test by the selection committee through which these workmen / petitioners were allowed to have been appointed remains intact.

It also emerges from his cross-examination that a Board resolution was taken regarding requirement of 4(four) staffs for management of daily affair of the O.P./Samabay Samity and accordingly, the Board applied to the ARCS, but ARCS accorded sanction of 3(three) staffs for the O.P./Samabay Samity. His such evidence on oath has duly been corroborated by the inspector of Cooperative Society, Memari –II Development Block, Burdwan, who has been examined as P.W-3 in this case.

He in his evidence-in-chief on oath clearly stated that the recruitment process of 3(three) workmen had been made during his tenure and he was involved in the said recruitment process. P.W-3 further stated on oath that the recruitment process was started before 18.01.2011 and the same was guided by the provisions of W.B. Co-operative Act of 1983 and Rules 1987 & as per Rule 1987 posts were created and a committee was formed by the Deptt. comprising

the then Secretary, Chairman of the O.P./Samity and Inspector Co-operative Societies being a convenor. He also stated on oath that a publication was made in the Ananda Bazar Patrika for the recruitment process.

His further evidence on oath in chief clearly reveals about holding of written examination as well as holding of interview by the said selection committee formed by the Govt. In other words, the said witness in his evidence on oath clearly corroborates the oral evidence of P.W-1 & 2 regarding getting sanctioned of the 3(three) posts for the O.P./Samabay Samity from the concerned Govt Deptt., publication of advertisement in the daily widely circulated Bengali Newspaper and holding of examination by the selection committee formed by the ARCS, Memari Block-II, Burdwan.

It is very much pertinent to mention herein that P.W-3's such piece of oral evidence in chief has neither been denied nor been challenged in his cross examination by the O.P./ Samay Samity. As a result of which there exists no reason for this tribunal not to take the same into consideration while considering merit of the workmen's case.

On the contrary, it is evident from the cross-examination of P.W-3 that the then elected committee of the O.P./Samay Samity approached the ARCS for assessment of vacancy and accordingly, sanction was granted.

During the course of argument it was argued by the ld. lawyer for the O.P./Samity that the evidence of P.W-3 is not to be taken into consideration as he is not supposed to be the part of the alleged selection process but taking into account of the various provisions of the WB Co-operative Societies Act, 1983 and rules made there under I find no merit in such argument. Apart from that, presence of Govt. a representative in the recruitment process of a body constituted under the provisions of Govt. makes the selection process more transparent and impartial.

Next, let us discuss the evidence as adduced from the side of the O.P/employer/Samabay Samity to ascertain how far it has been able to establish its pleading case.

As I have already mentioned herein above that the O.P/employer in its WS took the plea that after taking charge of the affair of the O.P./Samabay Samity by the new elected committee in the month of May, 2014 as it did not find the

documents relating appointment of these workmen by the previously elected body, so it asked these workmen to submit the documents justifying their appointment but as they failed to submit any documents showing due process of their appointment their service was terminated.

O.P/employer examined its ex-Secretary Mr.Utpal Santra as O.P.W-1 on its behalf. After having gone through his entire examination on affidavit-in-chief it is evident that he reiterated the pleading case of the O.P/employer and did not specifically denied the workmen's pleading case or P.W-1's oral evidence on oath, which he could have and should have denied in his examination-in-chief on affidavit.

He produced copies of the resolutions dated 07.09.2014, 27.9.2014 & 03.06.2015 of the O.P./ Samabay Samity which have been marked as A, B & C. It is evident from those resolutions of meetings of the O.P./Samabay Samity that the members had discussion regarding prayer of the workmen for enhancement of their salaries but instead of taking decision on that point the members took the resolutions to ask these workmen to submit documents justifying their appointment in a fair manner by the then committee.

It is further evident from Exbt. C (series) that the workmen were directed to inform in writing about their process of recruitment within 11.00 a.m of 24.06.2014. It is also evident from Exbt. 'D'(series) that the workmen complied with such direction by submitting their copy of the appointment letter and also expressing their inability to enlighten the present elected committee about process of their appointment by the then elected committee of the O.P./Samabay Samity.

In my considered view, such reply on the part of the workmen does not render the entire process of their selection adopted by validly constituted selection committee as illegal as because the candidates are not supposed to be the custodian of the documents of the selection committee. On the other hand, the office of the O.P./Samabay Samity is the legal custodian of its documents regarding all its matters.

The instant case turned around conspicuously after further examination of P.W-1 & 2 on recall on 19.7.2022 and 22.7.2022. P.W-1 in his further examination on recall produced Xerox copy of advertisement published in the Ananda Bazar Patrika dated 24.12.2010 as well as Xerox copies of the

resolutions of meetings dated 03.12.2010, 14.03.2011,13.02.2012 & 13.03.2012 of the O.P./ Samabay Samity. Those documentary evidence have been marked as Exbt. 8 & 9 series (with objection). He also produced Xerox copy of final merit list published by the selection committee and the same has also been marked as Exbt.10 (with objection).

P.W-1 also produced copy of the letter dated 25.06.2014 of the O.P.W.1 addressed to the one of the workmen namely, Smt. Soma Das i.e Exbt.11 (without objection). P.W-1 in his further cross-examination stated that he collected those documents from the then Chairman i.e P.W-2. During his cross-examination by the O.P./Samabay Samity no question regarding authenticity or genuineness of the Exbt.8, 9 (series) and 10 was put to him.

I am really surprised to take note of the fact that ld. lawyer for the O.P./Samabay Samity in his argument also did not make any submission regarding authenticity and genuineness of those documentary evidence. On the contrary, he simply argued that this tribunal cannot take note of those documentary evidence as the workmen could not prove the same in accordance with the provisions of the Indian Evidence Act, 1972.

However, taking into consideration of the settled proposition of law that the provisions of Indian Evidence Act, 1972 as well as provisions of Civil Procedure Code 1908 are not applied in strict sense in a proceeding under the ID Act, 1947 I find no merit in said argument of the ld.lawyer for the O.P./Samity. In this regard, we may refer the case of Suresh Chand Sharma Vs. State of U.P Laws (SC)2010 – 575 Civil Appeal No.3086 of 2007 as decided by the Hon'ble Supreme Court of India and the case of Palan Chandra Naskar Vs. Bank of Maharashtra, LAWS (CAL) 2020-1230 as decided by our Hon'ble High Court.

Moreover, as it is not the case of the O.P./Samabay Samity that the Exbt.9 (series) are not the documents relating to its resolutions taken by the then its elected committee, I also find no reason not to take into consideration of the same while considering merit of the pleading case of the parties. P.W-2 in his further cross-examination on 22.07.2022 after further examination of P.W-1, categorically sated that he handed over Exbt.8, 9 (series) and 10 to the P.W-1 and that the original of those documents are lying with the office of the Co-

operative Society Inspector, Memari-II and he collected those documents from the Co-operative Society Inspector.

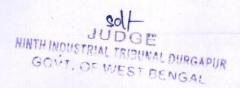
At this juncture, conduct of the O.P./ Samabay Samity for not taking any further steps to rebut such evidence of P.W-2 makes the argument of the ld. lawyer for the workmen more convincing that the O.P./Samabay Samity intentionally do not take such steps as the same would renders its entire case as untrustworthy.

It is evident from Exbt. 8 that the same reveals about publication of advertisement for appointment of one Accountant and two Clerks in its office by the O.P./ Samabay Samity in the Bengali Daily Newspaper namely, Ananda Bazar Patrika dated 24.12.2012. Similarly, Exbt.9 (series) also reveal that the then elected committee of the O.P./Samabay Samity duly discussed the matter regarding taking sanction from the office of the Co-operative Society Inspector, Memari –II and constitution of selection committee for appointment to those three posts and the entire matter regarding entire process of the examination.

As I have already come to the findings that there exists no cogent reason for considering submission of the ld. lawyer for not taking into action of the Exbt.8, 9(series) and 10 for the reason as discussed herein-above, so it cannot be said that the then duly elected body of the O.P./Samabay Samity did not at all follow any process for selection of these workmen.

On the contrary, non-production of those documentary evidence O.P./Samity clearly compels me to draw a strong presumption against it to the effect that from the very beginning it tried to play hide and seek game with this tribunal just only to achieve its goal in proving that the then elected committee under the Chairmanship of P.W-2 did not follow the proper procedure for recruitment of these workmen in its office.

In other words, above discussed conduct of present management of the O.P./ Samabay Samity clearly reveals that it tried utmost to withhold the documentary evidence concerning recruitment process of these workmen conducted by its the then elected body. Its such conduct is highly despicable as it is not expected from the O.P./Samabay Samity, which is a body constituted under the provisions of West Bengal Co-operative Society Act and not being an individual person. Its such conduct compels me to draw an adverse presumption



against it (O.P) regarding genuineness and authenticity of its documentary evidence i.e Exbt.8, 9(series) & 10.

In this regard, we may refer the case of Indian Overseas Bank Vs.P.O (WP No.332 of 2011) of the Hon'ble Punjab and Haryana High Court wherein the same situation arose in favour of the workmen and tribunal drew adverse inference against the employer while relying upon the decision of the Hon'ble Apex Court made in S P Cherugal barza Naidu Vs. Jagannath (1994) 1 SSC 1, as relied upon by the ld. lawyer for the workmen.

The Hon'ble Delhi High court in the case of M/S. Wheel India Vs. S. Nirmal Singh and another (IA No.6889/2006 and IA No.7705 of 2006 in CS(OS) and 1261/2006 especially put stress on concealment of documents and was pleased to hold that if it be a concealment, the court would ask (i) whether it was a relevant fact(it being immaterial whether it would have enabled or disabled the plaintiff in securing the relief), and (ii) whether the plaintiff was in the knowledge of or could have been in the knowledge of such fact. If both the answers be in the affirmative, the plaintiff would be held disentitled. The court would not then enter into the merits of the case.

Taking into account of the pleading case of the parties it is very much clear that documentary evidence in the nature of Exbt. Nos. 8, 9 (series) and 10 are very much relevant for adjudication of the referred issues and also considering my discussion regarding unethical nature of conduct of O.P./Samabay Samity for not producing the original copy of the same, I do not have any sort of hesitation to hold that it (O.P) very much has the knowledge of such fact since the very inception of all the related proceedings giving birth to the case in hand.

On the contrary, I find merit in the submission of the ld. lawyer for the workmen that the famous maxim Nullus Commodum Capere Potest de injuria sua propria (no one can take advantage of his own wrong) is squarely applicable on the conduct of the O.P./Samity as it deliberately tried to withheld relevant documents which goes to the crux of the dispute between the parties.

During the course of argument it is argued by the ld. lawyer for the employer /O.P that as per Sec. 28 and Sec. 43 of the West Bengal Co-operative Society Act,2006 and as per Rule 55 Co-operative Societies Rules 2011 General Body is final and ultimate authority of a Co-operative Society and the Board has

the power to create post of different categories of employer to assist the cooperative society in the performance of his duties and all the acts done by the Chairman or the Vice-Chairman or the Board has to be ratified in the General body meeting of the society.

On perusal of the Exbt. 9 (series), which are the copy of resolutions of the O.P./Samabay Samity, it is evident that the then elected body followed the procedure for appointment of these workmen in accordance with the provisions of the W.B. Co-operative Societies Act, 2006 and Rules made thereunder. Since O.P./Samabay Samity could not able to rebut/controvert that the Exbt. 9 (series) are not the resolutions of its society taken by the then elected body, so I find no cogent reason no to act upon the contents of Exbt. 9 (series) and / or to disbelief the same. Taking into account of such inaction on the part of the employer I do not have any sort of hesitation to hold that the O.P./Samabay Samity did not approach this tribunal with clean hands. So its such undesirable and unethical conduct goes against it and also raises great deal of suspicious on authenticity of the ocular testimony of O.P.W-1.

On a totality of the facts, circumstances and evidence, as discussed herein above, it is clearly established beyond the degree of preponderance of probabilities that the then elected body of the O.P./Samabay Samity followed the due procedure under the various provisions of the W.B. Co-operative Society Act, 2006 and Rules made thereunder regarding appointment of these workmen and at best it can be said that there may be some procedural irregularities not touching the core issue of publication of advertisement in a daily circular newspaper and subsequently holding examination of the applied candidates and the selection procedure under the supervision of the officials of the W.B.Co-operative Society Deptt.

Apart from that, if for the sake of argument I do accept the argument of the ld. lawyer for the O.P./ Samabay Samity that the resolutions of the society regarding appointment of these workmen have not been ratified by the General Body of the society, then too, such non-compliance would only amounts to irregularities in the appointment procedure and would not render the entire process as void ab initio.

Now, the question arises whether any irregularities in appointment of the employee/workman gives right to the employer not to follow the procedure for

his/her retrenchment/termination from service as laid down in section 25F of the ID Act, 1947 or not.

It is pertinent to mention herein that the Ld. lawyer failed to produce the copy of concerned journal as well as the said judgement could not be traced out on the website. The Hon'ble Supreme Court in the case reportedly 2009 ASCW 942 held as follows:-

"4. Courts should not place reliance on decisions without discussing as to how the factual situation fits in which the facts situation of the decision on which reliance is placed. Observations of courts are neither to be read as Euclid's theorems nor as provisions of the statute and that too out of their contest. These observations must be read in the contest in which they appear to have been stated. Judgements of courts are not to be construed as statutes".

Keeping such dictum of the Hon'ble Apex Court in mind as well as considering the fact that the ld.lawyer failed to place the copy of the said referred judgement of the Hon'ble Kerala High Court, no reliance could be placed upon those mentioned printing lines of the referred book.

Moreover, as this tribunal has already come to the finding that the then elected body of the O.P./Samity more or less followed the provisions of the W.B.Co-operative Societies Act, 2006 in making appointment of these workmen, so such findings of the Kerala High Court has got no application on the factual

However, recently, Hon'ble Supreme Court in the case of K.V.Anil Mithra & Anr. Vs. Sree Sankarcharya University of Sanskrit & Anr. (Civil Appeal No.9067 of 2014 decided on October,27,2021) had the occasion to deal with the same question of law that if the appointment of the workmen are not being made in accordance with the procedure prescribed by law then whether such workmen are entitled to get protection of the I D Act,1947 or not. The Hon'ble Apex Court ultimately came to the findings that the workmen are entitled to the protection of Sec. 25F and other provisions related thereto of the I D Act,1947 even if their appointment was irregular.

In other words, the mandate of the Hon'ble Apex Court is that it is not upon to the tribunal to examine the manner of appointment of the workmen unless the same is referred to it by the appropriate Govt. U/S -10 of the I D Act, 1947 and if the workmen have been in continuous service for more than 240 days in the preceding 12 months before the alleged dated of termination as contemplated U/S 25B, the employer is under an obligation to comply with the requirement of section 25F of the ID Act.

It is the pleading case of the workmen that after taking charge of the affair of the O.P./Samabay Samity in the month of May, 2014, the elected body started showing vindictive attitude towards them and ultimately illegally issued termination letters which is nothing but retrenchment under the ID Act, 1947.

On other hand, the O.P./Samabay Samity/employer in its WS took the plea as the workmen were not appointed as per the provisions of the W.B.Co-operative Societies Act, 2006 and Rules made thereunder by the then committee, so the present management terminated their service. O.P./Employer in its WS nowhere stated that before terminating the service of these workmen it followed the procedure as laid down in the section 25F and other related sections of W.B.Co-operative Societies Act, 2006 and Rules made thereunder. In other words, indisputably, the service of these workmen were terminated by the O.P./Employer simply by issuing the letters of termination (Exbt.4 series) and not after following the process as laid down under the relevant provisions of the ID Act, 1947.

O.P.W-1, who was the Secretary at the relevant point of time of the O.P./Society, in his affidavit-in-chief also stated in the same wave length as that of the pleading case of the O.P/employer. He also produced his letter dated

21.09.2014 sent to the workmen i.e. Exbt.E. It evident from Exbt.E that the managing committee in its meeting dated 21.09.2014 considered matters regarding the appointment procedure of these workmen and as they did not find any paper/document suggesting due compliance of the provisions of the law regarding their appointment by the then selection committee, so it has been resolved that the appointment of these workmen would be terminated.

Exbt.4 (series) i.e termination letters of these workmen are nothing but the reflexion of Exbt.E and of no other matter. In other words, Exbt. E and 4 (series) do not reveal about any compliance of above discussed mandatory provisions of the I D Act, 1947 by the O.P./Employer before termination of service of these workmen.

Now, let us discuss the relevant provisions of law under the I D Act, 1947 concerning retrenchment / termination of employee under the I D Act of 1947. Section 2(00) of the ID Act, 1947 defines the term retrenchment in the following manners:

- 1[(00) "retrenchment" means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action bu7t does not include
 - a) voluntary retirement of the workman; or
 - b) retrenchment of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf, or
 - 2[(bb) termination of the service of the workman as a result of the non-renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein; or]
 - c) termination of the service of a workman on the ground of continued ill-health;].

WEST BENGAL

In clause (00)-

- i) after the words "termination by the employer" the words "by notice or otherwise" shall be inserted.
- ii) Sub-clause (c) shall be omitted [vide West Bengal Act No.57 of 1980] (w.e.f. 30.11.1981)].

On perusal of the above definition of retrenchment I am of the view that the term "retrenchment" leaves no manner of doubt that the termination of the workman for any reason whatsoever, otherwise than as punishment inflicted by way of disciplinary actions are being termed as retrenchment with certain exception and it is not dependent upon the nature of employment and the procedure pursuant to which the workman has entered into service.

So far as the procedure to be adopted for retrenchment of workman under the I D Act, 1947 is concerned, we are to look at the provisions of section 25B and 25F of the Act of 1947.

Section 25 B provides definition of continuous service:- For the purpose of this Chapter:-

- (1) A workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service; including service which may be interrupted on account of sickness of authorised leave or an accident or as strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;
- (2) Where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer
 - a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for nor less than
 - i) one hundred and ninety days in the case of a workman employed below ground in a mane, and
 - ii) two hundred and forty days, in any other case;
 - b) for a period of six months, if, the workman, during a period of six calendar months preceding the date with reference to which calculations to be made, has actually worked under the employer for not less than
 - i) ninety-five days, in the case of workman employed below ground in a mine, and
 - ii) one and twenty days, in any other case.

Explanation – For the purposes of clause (2) the number of days on which a workman has actually worked under an employer shall include the days on

- i) he has been laid-off under an agreement or as permitted by standing order made under the Industrial Employment (Standing Orders) Act, 1946 (20 of 1946), or under the Act or under any other law applicable to the industrial establishment;
- ii) he has been on leave with full wages, earned in the previous years;
- iii) he has been absent due to temporary disablement caused by accident arising out of and in the course of his employment, and
- iv) in the case of a female, she has been on maternity leave, so, however, that the total period of such maternity leave does not exceed twelve weeks.]

Section 25F speaks about conditions precedent to retrenchment of workmen:-

No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

- a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and and the period of notice has expired or the workman has been paid in lieu of such notice, wages for the period of the notice;
- b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay [for every completed year of continuous service] or any part thereof in excess of six months; and
- c) notice in the prescribed manner is served on the appropriate Government [for such authority as may be specified by the appropriate Government by notification in the Official Gazette].

From above mentioned provisions of law it is clear that the condition precedent for retrenchment has been defined U/S 25F of the Act of 1947 which postulates that workman employed in any nature who has been in continuous service for not less than one year can be retrenched by the employer after clause(a) & (b) of section 25 have been complied with and not otherwise.

The Hon'ble Supreme Court in catena of its decision and recently in the case of K.V. Anil Mithra (Supra) observed that "The scheme of the Act of 1947 contemplates that the workman employed even as a daily wager or in any

capacity, if has worked for more than 240 days in the preceding 12 months from the alleged date of termination and if the employer wants to terminate the services of such a workman, his services could be terminated after due compliance of twin clauses (a) & (b) of section 25F of the Act 1947 and to its non-observance held the termination to be void ab initio bad and so far as the consequential effect of non-observance of the provisions of section 25F of the Act 1947, may lead to grant of relief of reinstatement with full back wages and continuity of service in favour of retrenched workman, the same would not mean that the relief would be granted automatically but the workman is entitled for appropriate relief for non-observance of the mandatory requirement of section 25F of the Act, 1947 in the facts and circumstances of each case".

Adverting back to the undisputed facts and circumstances of this case, I am not mentioned herein that these workmen were in continuous employment for more than 2(two) & half years in the service of the O.P/Samabay Society before their retrenchment / termination vide Exbt.4 (series), and the O.P/Employer did not comply with the mandatory clause (a) & (b) of section 25F of the Act, 1947. Consequently, in terms of above discussed settled proposition of law I do not have any sort of hesitation to come to the finding that their termination with effect from 26.09.2014 vide Exbt. E by the O.P/employer/society was not in accordance with the provisions of law under the I D Act, 1947 and /or the same is void ab initio. Thus I decide the referred issue no.1 in favour of the workmen.

ISSUE NO.2:-

This issue relates to entitlement of relief to the workmen under the I D Act 1947.

Workmen in their WS prayed for their reinstatement alongwith full back wages for their illegal manner of termination. But they nowhere pleaded that after their such termination they are not gainfully employed and /or still unemployed. Similarly, the O.P/employer in its WS did not take the plea that these workmen are engaged in any other profession or employment. Accordingly, there is no specific plea of any of the parties on that issue.

Recently, the Hon'ble Apex Court in the case of Allahabad Bank & Ors. Vs. Avtar Bhushan Bhartiya, Special Leave Petition (Civil) No. 32554 of 2018 relying upon the case of Deepali Gundu Surwase Vs. Kranti Junior Adhyapak CM Mahavidyalaya (D.ED.) & Ors., (2013) 10 SCC 324 observed that "An

employee or workman whose services are terminated and who is desirous of getting back wages is required to either plead or at least make a statement before the adjudicating authority or the court of the first instance that he/she was not gainfully employed or was employed on lesser wages. In the first instance, there is an obligation on the part of the employee to plead that he is not gainfully employed. It is only then the burden would shift upon the employer to make an assertion and establish the same.'

Coming back to discussion on the fact of this case I must mention herein that the workmen nowhere pleaded that that are not gainfully employed. Besides that, P.W-1, who adduced evidence for himself and other workmen, in his entire affidavit-in-chief nowhere stated that after they were being terminated from service by the O.P/employer/society either of them is not gainfully employed till this date and /or all of them are sitting idle/unemployed since the date of their termination. So, in absence of any pleading on that point by the workmen question of shifting burden upon the O.P./employer to make an assertion and establish the same does not arise at all.

I have already mentioned herein above the Hon'ble Apex Court in the case of K.V.Anil Mithra and another (Supra) clearly observed that consequential effect of non-observance of the provisions of section 25F of the Act, 1947, may lead to grant of relief of reinstatement with full back wages and continuity of service in favour of the retrenched workman, the same would not mean that the relief would be granted automatically and the workman is entitled for appropriate relief for non-observance of the mandatory requirement of section 25F of the Act of 1947 in the facts and circumstances of each case, so while granting relief the tribunal has taken into consideration the entire facts and circumstances of the case in hand, so while granting the relief the same is to be decided facts and circumstances are to be taken into consideration.

It is undisputed fact of this case that these workmen were in service for only 2(two) and half years and that the O.P/employer is a society associated with the work for the development agriculture produce and activities for the benefits of the farmers and not any manufacturing unit or any profit making organisation, so the said fact is also to be taken into consideration while deciding the nature of relief.

Having regard to the above settled proposition of the law as well as the facts and circumstances of the case in hand, I am of the view that the workmen/employees are entitled to get the relief of reinstatement in their service for non-observance of mandatory provisions of the I D Act, 1947 by the O.P./Samabay Samity/Employer with some amount of compensation but are not entitled to get the relief of any part of back wages. Thus, the referred issue No.2 is disposed of accordingly.

Thus, both the referred issues are disposed of accordingly.

The instant proceeding succeeds on contest.

Hence, it is

ORDERED

that the proceeding U/S 10 of the I D Act,1947 succeeds on contest against the O.P / Messrs Sontla Tripally Samabay Krishi Unnyan Samiti Ltd.,but without cost and the order of termination of service of the workmen namely, Sri Bidesh Thakur, Shri Utpal Roy and Smt. Soma Das vide letters all dated 25.09.2014 is hereby set aside.

O.P / Messrs Sontla Tripally Samabay Krishi Unnyan Samiti Ltd.is directed to reinstate, the workmen namely, Sri Bidesh Thakur, Shri Utpal Roy and Smt. Soma Das to their regular post and it shall also pay compensation of Rs.1,00,000/- (Rupees one lakh) to each of them within one month from this award. Period in between their termination / retrenchment of service and reinstatement shall be considered as continuity of their service for any statutory benefit, if any, under any Govt. statute. Accordingly, an award is passed to that effect.

Send copy of this order to the Principal Secretary, Labour Department, Govt. of West Bengal for doing the needful.

NTH INDUST

Furnish copy of this order to the parties free of cost.

D/C by me, Sdf-Judge,

JUDGE NINTH INDUSTRIAL TRIBUNAL DURGAPUR GOVT, OF WEST BENGAL Judge, Sd (Sujit Kumar Mehrotra) Industrial Tribunal, Durgapur.