

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/ 1318 / (LC-IR)/ 22019/122/2019

Date : 19-11-2025


ORDER

WHEREAS an industrial dispute existed between M/s. Trend Vyapaar Limited (Unit of Kelvin Jute Mill), 25 Park Road, P.O. Talpukur, P.S. Titagarh, North 24 Parganas, Kolkata-700123 and its workman Shri Kailash Prasad, S/o – Sahdeo Prasad, 5/1, Kelvin Line, Room No. – 9, (Near BKP Govt. High School), P.O. – Talpukur, P.S. – Titagarh, Dist – North 24 Parganas, Pin – 700123, regarding the issues, being a matter specified in the second schedule of the Industrial Dispute Act' 1947 (14 of 1947);

AND WHEREAS the 1<sup>st</sup> Industrial Tribunal, Kolkata has submitted to the State Government its Award dated 11.09.2025 in Case No. 11 of 2018 on the said Industrial Dispute Vide e-mail dated 12.09.2025 in compliance of Section 10(2A) of the I.D. Act' 1947.

NOW, THEREFORE, in pursuance of the provisions of Section 17 of the Industrial Dispute Act' 1947 (14 of 1947), the Governor is hereby pleased to publish the said Award in the Labour Department's official website i.e **labour.wb.gov.in**

By order of the Governor,

  
Assistant Secretary

to the Government of West Bengal

No. Labr/ 1318 /1(5)/(LC-IR)/ 22019/122/2019

Date : 19-11-2025

Copy forwarded for information and necessary action to :-

1. Trend Vyapaar Limited (Unit of Kelvin Jute Mill), 25 Park Road, P.O. Talpukur, P.S. Titagarh, North 24 Parganas, Kolkata-700123.
2. Shri Kailash Prasad, S/o – Sahdeo Prasad, 5/1, Kelvin Line, Room No. – 9, (Near BKP Govt. High School), P.O. – Talpukur, P.S. – Titagarh, Dist – North 24 Parganas, Pin – 700123.
3. The Asstt. Labour Commissioner, W.B. In-Charge, Labour Gazette.
4. The OSD & EO Labour Commissioner, W.B., New Secretariat Building, 11<sup>th</sup> Floor, 1, Kiran Sankar Roy Road, Kolkata – 700001.
5. The Deputy Secretary, IT Cell, Labour Department, with request to cast the Award in the Department's website.

  
Assistant Secretary

to the Government of West Bengal

No. Labr/ 1318 /2(3)/(LC-IR)/ 22019/122/2019

Date : 19-11-2025

Copy forwarded for information to :-

1. The Judge, 1<sup>st</sup> Industrial Tribunal, N. S. Building, 1, K.S. Roy Road, Kolkata - 700001 with reference to e-mail dated 12.09.2025.
2. The Joint Labour Commissioner (Statistics), West Bengal, 6, Church Lane, Kolkata - 700001.
3. Office Copy.

  
Assistant Secretary

to the Government of West Bengal

**In the matter of an Industrial Dispute between M/s. Trend Vyapaar Limited (Unit of Kelvin Jute Mill), 25 Park Road, P.O. Talpukur, P.S. Titagarh, North 24 Parganas, Kolkata-700 123 Vs. Their Workman Shri Kailash Prasad, S/o – Sahdeo Prasad, by residing at – 5/1, Kelvin Line, Room No. – 9, (Near BKP Govt. High School,) P.O. – Talpukur, P.S. – Titagarh, Dist – North 24 Parganas, PIN – 700 123.**

**Case No.: 11 of 2018, U/s 10 (1B) (d)**

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**BEFORE THE FIRST INDUSTRIAL TRIBUNAL, KOLKATA, WEST BENGAL**

**P R E S E N T**

**SHRI NANDAN DEB BARMAN, JUDGE, FOURTH INDUSTRIAL TRIBUNAL,  
& IN-CHARGE OF FIRST INDUSTRIAL TRIBUNAL  
KOLKATA.**

**The Workman Sri Kailash Prasad**

Address: 5/1, Kelvin Line, Room No. – 9, (Near BKP Govt. High School) P.O. – Talpukur, P.S. – Titagarh, Dist – North 24 Parganas, PIN – 700 123

..... Applicant/Workman.

**Vs.**

**M/s. Trend Vyapaar Limited (Unit Kelvin Jute Mill)**

Address: 25 Park Road, P.O. Talpukur, P.S. Titagarh, North 24 Parganas, Kolkata-700 123.

..... Opposite Party/Employer.

**A W A R D**

**Dated: 11<sup>th</sup> Day of September 2025.**

**ISSUES TO BE ADJUDICATED**

- 1) Is the application filed by the applicant under Section 10(1B)(d) of the Industrial Disputes Act, 1947 as Amended, maintainable or not?
- 2) Whether the applicant is a lawful permanent workman or ‘Badli’ workman under the provisions of the Industrial Disputes Act or not?
- 3) Had the applicant worked 240 days within the period of 12 (twelve) months preceding the date 02.05.2018? / 13.04.2018?
- 4) Whether the applicant denied entry inside the mill to work at the gate without assigning any valid and lawful reasons?
- 5) Did the applicant given information to the management to present himself on 02.05.2018 for duty?
- 6) Is the applicant is entitled to get relief as prayed for or to any other relief or reliefs?

**Written Statement submitted by Applicant/Workman**

1. That the applicant is the permanent worker of the opposite party Kelvin Jute Mill Ltd., Talpukur, Titagarh, since long in the Spinning Department having E.B. No. 14460 and he was doing his duty peacefully, promptly and honestly.
2. That all on a sudden on 13.04.2018 the Applicant/Workman was denied entry inside the Mill to work at the gate without valid ground and assigning any reason. He was shocked and perplexed with such direction and on 23.04.2018 the Applicant/Workman applied in writing before the Personal Manager of the Mill / Opposite Party requesting them to let him know the reasons for denial of his entry to work. In reply the Personal Manager informed in writing on the said application a flimsy and baseless ground that he encroached the land of the company unauthorizedly. The copy of the application has been attached as Annexure - 'A'
3. The act on the part of the Personal Manager was completely unjustified, illegal and prejudicial to the interest of the Applicant/Workman. Therefore, finding no other way the Applicant/Workman moved to the Ld. Joint Labour Commissioner of Barrackpur, District- North 24 Paraganas and has filed written complaint against the Opposite Party / Employer on 10.05.2018 disclosing all true facts as above for redressal. The copy of the complaint to Labour Commissioner has been attached as Annexure - 'B'.
4. That the Applicant/Workman has send a written reply dated 11.05.2018 to the Personal Manager of the Mill against his note made on the application of the workman dated 23.04.2018. In the said reply the Applicant/Workman has clearly narrated the actual fact against the allegation of encroachment of land of the Mill to prove his innocence and requested him to offer justice and allow him to join his duty forthwith. The copy of the reply to opposite party has been attached as Annexure - 'C'.
5. That finding no reply from the end of the Opposite Party/Company, the Applicant/Workman on 14.05.2018 served a legal notice through the Ld. Advocate to the Manager and Personal Manager of the Mill, in which the actual fact against the allegation of encroachment and unauthorized possession of land of the Mill was narrated to prove his innocence. In the said notice it was informed that the allegations made by them are baseless and bears no legal stand with disallowing the Applicant/Workman from employment. The Manager of the Mill, who has control and management of the company was requested by the said notice to consider and allow the Applicant/Workman to

enter into the Mill to perform his duty, within seven days. The opposite party duly received the said legal notice but neither took any positive step nor sent any reply. The copy of the legal notice served to opposite party has been attached as Annexure - 'D'.

6. That on 23.05.2018 the Assistant Labour Commissioner, Barrackpore on the complaint of the Applicant/Workman dated 10.05.2018 issued a notice to M/s. Trend Vyapaar Ltd. (Unit of Kelvin Jute Mill) coupled with a copy of complaint of the workman for submission of their comments within seven days and to depute competent representative in the office of the Assistant Labour Commissioner on 28.05.2018 for joint conference with the concerned workman. The copy of the notice served to opposite party by Joint Labour Commissioner has been attached herewith as Annexure - 'E'.
7. That on the same day i.e. on 23.05.2018 the Applicant/Workman also made a written appeal before the President (Works) of the Mill for reinstatement and redressal of the dispute as per provision of section 15(a) and 15(b) of Certified Standing Order of the Company, but no action has yet been taken from their end. The copy of the written appeal served to opposite party has been attached as Annexure - 'F'.
8. That the petitioner obtained certified copy of the Note Sheet and Form No. 'S' from the office of the Labour Commissioner at Barrackpore under R.T.I. Act, which shows, that the O.P/Representative of Management neither attended the office of Asst. Labour Commissioner on 28.05.2018 nor sent any intimation. It also shows that notice was again issued to the Mill Management to attend on 08.06.2018. But surprisingly the Management again ignored the same and neither attended nor sent any intimation for which no joint conference could be held. The Applicant/Workman was present in that office on both the dates of joint conference. The Matter has been lying pending next course of action. The copy of the written appeal served to opposite party has been attached as Annexure - 'G'.
9. That in the said Form 'S' under rule 12A (3) it was stated that the conciliation proceeding in respect of the dispute was started but no settlement could be arrived at as yet and in pursuance of the provisions of section 10(1B) of the Industrial Dispute Act, 1947, it was certified that the aforesaid reconciliation proceeding is still pending with the Conciliation Officer.
10. That the conduct on the part of the Opposite Party / Company was unjustified, illegal and prejudicial to the interest of the workman. The O.P. neither issued show cause notice nor held any Domestic Enquiry and by doing such illegal

act the Management has violated the principle of natural justice and infringed the fundamental rights of the Applicant/Workman.

11. That the Applicant/Workman being aggrieved person knocked the possible doors for his relief but did not get any specific relief either from the Company Management or from the Office of the Labour Commissioner of the jurisdiction.
12. That the Applicant/Workman being jobless for about three months passing his days in mental agony and tremendous financial hardship and he has no alternative but to move the Ld. Labour Court for proper adjudication of the dispute.
13. That Applicant/Workman craves leave to present the copies of all the documents as mentioned above along with the list of documents and the matter also will be elaborately dealt with at the time of argument.

**Written Statement submitted by the O.P/Employer M/s. Trend Vyapaar Ltd.**

1. That the employer, M/s. Trend Vyapar Ltd. (Unit of Kelvin Jute Mill), abovenamed divides it's Written Statement in three parts. PART - 'A' deals with the Preliminary Objections with regard to the maintainability of the instant case and PART - 'B' deals with the facts of the case whereas as PART - 'C' is the reply of the employer to the various averments, contentions, statements, submissions and allegations raised by the said Shri Kailash Prasad in his Claim Statement filed before this Ld. Tribunal. The averments, submissions, statements, contentions, allegations made in the said Claim Statement by the concerned employee, which are not admitted specifically, shall be deemed to have been disputed and denied by the employer.

**PART - 'A'**

2. That the instant case filed under section 10 (1B) (d) of the Industrial Disputes Act, 1947 is bad, misconceived, erroneous and not maintainable either in facts or in law.
3. That section 10(1B) has been inserted by the Legislators of W.B. in the Industrial Disputes Act, 1947 Amendment vide W.B. Act 33 of 1989 effective from 8<sup>th</sup> December, 1989 whereby the "Industrial Disputes" relating to an Applicant, can be filed directly, without reference by the Government, to the

designated Labour Courts/Industrial Tribunals, whereas the Central Government, vide another Notification dated 18<sup>th</sup> August, 2010, effective from 15<sup>th</sup> September 2010 had inserted identical provisions i.e. section 2A(2) in the Industrial disputes Act, 1947. The Opposite Party submits that the state Act i.e. 10(1B) is repugnant to Central Act i.e. 2A (2) and since the Central Act has received the assent of the President later than the state Act, the Central Act will prevail over the State Act under the provisions of Article 254 of the Constitution of India. Under such circumstances the instant case filed U/s 10(1B) of the Industrial Disputes Act, 1947, by the Applicant is not maintainable and liable to be rejected on this very ground apart from others.

4. That the instant case has been filed on the strength of a defective certificate of pendency of conciliation, issued by the Ld. Conciliation Officer on 5<sup>th</sup> July 2018, when he was not having jurisdiction of issuance such certificate and had already become functious officio in the matter.
5. That even the date of raising of dispute and date of conciliation proceedings are contradictory and no efforts had ever been made by the conciliation officer to serve a valid notice upon the Opposite party and the same was done in hasty manner and in violation of the provisions of Industrial Disputes Act, 1947 and Rules framed thereunder.
6. That the Conciliation Officer was duty bound to initiate conciliation proceedings in terms of the section 12 of the Industrial Disputes Act, 1947 and thereafter to submit its failure report to the appropriate Government, in terms of the provisions contained under sub section (4) of section 12 of the Industrial Disputes Act, which he miserably failed to do and thus abuse the process of law.
7. That the Opposite Party submits that the said Conciliation Officer was in too hurry to issue certificate of pendency that he has forgotten his duty and proceeded ex-parte in the matter without following the procedures of a conciliation proceedings and the entire action of the said conciliation officer is void ab-initio.
8. That the Opposite Party further submits that since the instant case has been filed on the strength of a Certificate of Pendency of Conciliation, which has been issued without jurisdiction and in violation of principles of natural justice, the same is not maintainable and liable to be rejected summarily.
9. That the conciliation initiated in the instant matter without following the established principles of law and the same is not a legal and valid conciliation

proceeding as the Conciliation officer has failed to record his satisfaction of existence of any 'Industrial Dispute', therefore, the purported "Certificate of Pendency of Conciliation" based on which the instant case has been filed is not valid/legal and has no legs to stand to the test of law.

10. That the applicant has suppressed the material facts and procured the certificate in Form-S by submitting false statement in Form-T.
11. That the aforesaid objections are vital and each one goes to the root of the case, touching the jurisdiction of this Ld. Tribunal. It is, therefore, prayed that the Learned Tribunal may graciously be pleased to hear and dispose of the same as Preliminary Issues and if the same go against the Opposite Party, then it will take endeavor to proceed on the merits of the case.

#### **PART – 'B'**

12. Without prejudice to the aforesaid preliminary objections and without waiving the same but relying on each of them the Opposite Party submits the brief facts of the case in following paragraphs.
13. That the Opposite Party is a reputed Jute Mills of North 24 Parganas, which is known for its Jute Bag and allied products. It has goodwill in the market and has very good resources provided to their employees. The Company further submits that it provides best possible facilities to their employees and it follows the certified standing order of Indian Jute Mills Association.
14. It is stated that the concerned Applicant had worked intermittently as a "Badli" and had never completed 240 days of working at a stretch. The applicant has not worked for 240 days within the period of 12 months preceding the purported date of refusal i.e. 02.05.2018 to be eligible for protection on Industrial Disputes Act, 1947.
15. It is found from the record that the said Applicant had not reported to his duty of his own accord on and from 02.05.2018 without even intimation to the opposite party.
16. That the opposite party had not terminated the service of the above-named Applicant since he used to work with the opposite party as a "Badli" worker and a "Badli" worker has no right to employment and it is in the standing order of the opposite party that "Badli" worker can get work only in place of any absent permanent employee and a 'Special 'Badli' worker used to get work of 220 days in a year.

17. That the opposite party is the owner and occupier of several plots of land in Mouza- Chanak and Titagarh either inside the boundary wall of the factory or outside the boundary wall in which the labour quarters, godowns and some vacant lands are situated and on some portions of the land of the Company factory shed is situated and in some parts its various offices and ground the labour quarters certain lands have been left vacant for civic amenities of its staffs and workers as well as for future expansion.
18. That the Applicant tried to make illegal construction with the help of some anti-social elements in front of the Company's 5/1/09/510 on several occasions despite of several warnings and finally the Company has to file a criminal case being M.P. Case no. 1725 of 2018 against the applicant and the same is sub-judice before the Ld. Court of Executive Magistrate at Barrackpore, 24 pgs. (N).
19. That the said Applicant Sri Kailash Prasad has illegally encroached the land of the jute mill of the opposite party and he even tried to construct a permanent structure over the land of the opposite party and for which the opposite party has to institute a criminal proceedings against the said Sri Kailash Prasad and the concerned Applicant is absconding since then in fear of arrest and falsely claiming that his service had been terminated which is totally false, concocted and afterthought.
- 19A. It is stated that the present case has been filed by the Applicant under reference by suppressing all the material facts and in order to get an order after satisfying the Ld. Tribunal for their wrongful gain and for incurring wrongful loss to the opposite party.
- 19B. That the opposite party states that the Applicant is gainfully employed and he has sufficient means of income and the details of his employment will be disclosed at the time of hearing of this case.
20. The opposite party further states that on the alleged date i.e. 23.04.18, the Applicant never went to Mill to resume his duty, on the contrary he is claim that his service has been terminated by the opposite party is totally false, baseless, concocted and imaginary.
21. The Opposite Party further submits that the Applicant was absconding in fear of being arrested by Police in criminal case which has been initiated by the Opposite Party and the said criminal case is still pending where he is a prime accused.

22. The Applicant/Workman illegally obtained the Certificate of Pendency from the Conciliation Officer, which he had no power to issue.

### **PART - 'C'**

23. Save and except what appears from record denying the averments of Shri Kailash Prasad as mentioned in his Claim Statement the Opposite Party/Employer contended inter-alia that the Applicant is put to strict proof thereof. That the Opposite Party further submits that the Applicant was never made permanent and he used to work as a “Badli” worker and never completed 240 days in a year.
24. His allegation of Applicant that “all on a sudden on 13.04.2018 he was denied entry inside the ‘Mill’ to work at the gate without valid ground and assigning any reason” is totally false.

Thus, the prayers of Applicant Shri Kailash Prasad are frivolous and vexatious and therefore, liable to be rejected with exemplary costs.

### **DECISIONS WITH REASONS**

The Applicant/Workman in order to establish his case adduced his oral evidence as PW-1 and also adduced so many documentary evidences, which have been exhibited as Exhibit-1 to Exhibit- 13 respectively, which are as follows:

Exhibit- 1.	ESI Card being SD No. 20511 issued by ESI Corporation in the name of Kailash Prasad
Exhibit- 2	P F Slip in the name of Kailash Prasad for Accounting year 2017-18.
Exhibit- 3	Pay slip in the name of Kailash Prasad dated 31.12.2015.
Exhibit- 4	Workman’s letter dated 23.04.2818 addressed to Personnel Manager, Kelvin Jute Mill.
Exhibit- 5	Workman’s letter addressed to the Joint Labour Commissioner, Barrackpore, North 24 Parganas dated 10.05.2018.
Exhibit- 6	Letter of workman dated 11.05.2018 addressed to the Personnel Manager, Kelvin Jute Mill.
Exhibit- 7	Notice of workman issued through Advocate dated 14.05.2018 addressed to the Personnel Manager, Kelvin Jute Mill.
Exhibit- 8	Workman’s letter dated 23.05.2018 addressed to the President (works) and First Appellate Authority of the Company.
Exhibit- 9	Joint Labour Commissioner, Barrackpore’s letter dated 23.05.2018 to the Company.
Exhibit- 10	Photocopy of Note-sheet of the Assistant Labour Commissioner, Barrackpore.
Exhibit- 11	Form P-4 dated 26.06.2018.
Exhibit- 12	Photocopy of Joining Pass in the name of Kailash Prasad, issued by the Company dated 04.05.2006.
Exhibit- 13	Pay slip in the name of Kailash Prasad dated 30.04.2016.

On the contrary the OP/Company M/s. Trend Vyapaar Ltd. (Unit of Kelvin Jute Mill) to establish their case have examined one witness, namely Mr. Manash Chakraborty as O.P.W.-1 and also exhibited two documentary evidences as Exhibit-A and Exhibit-B respectively, which are as follows: –

Exhibit –A	Order sheet dated 07.05.2018 passed by the Executive Magistrate Barrackpore in M.P. Case No. 1725/2018 along with copy of application u/s 144(2) Cr.P.C.
Exhibit-B	Photo copy of service record of Kailash Prasad.

Ld. Counsel representing the O.P/Employer has advanced his arguments on different points relating to facts and relevant law and citation of different cases to make it relevant to establish the case of O.P/Employer.

At the very outset Ld. Counsel representing the OP/Employer has argued that there is no case of the Applicant/Workman that he was at all terminated by any notice or order of the Employer, save and except an allegation that he was restrained by the security in the gate of the Mill of Company to enter into the Company to perform his duty. In this regard, the averment of concerned workman is not consistent about the alleged date of incident, whether it was 13.04.18 or 23.04.18.

According to his further argument this case was filed by the Applicant/Workman u/s 10(1B)(d) of Industrial Disputes Act, 1947, as amended is not maintainable as the said provision is not applicable in connection with the alleged facts and circumstances of this case. In this regard he submitted that before filing of this case to this Tribunal the 60 days statutory period either from the date of raising dispute by the Applicant/Workman or from issuing notice by the Conciliation Officer has not been elapsed. Even if, it was an application u/s 2A of the Industrial Disputes Act, 1947 as amended, the Applicant/Workman ought to have filed the case after 45 days of raising dispute to the Conciliation Officer.

According to his further argument the Applicant/Workman was not a permanent worker but he was a ‘Badli’ worker and he was not performed 240 days continuous service in the Company immediate preceding to the date of his alleged termination and in this regard the onus is upon the Applicant/Workman to establish that he was in continuous service for 240 days immediate preceding to the date of his termination. Since the Applicant/Workman failed to discharge the said onus then he is not entitled to get any relief as prayed for. However, there was no refusal of employment of the Applicant/Workman from the end of the OP/Employer, rather the workman remained absent for a long period without taking any leave or otherwise.

Beside his above discussed argument the Ld. Counsel of the OP/Employer also relied upon some decisions of Hon'ble Courts as reported in 2004 (103) FLR 192; 2004 103 FLR 187; 2005 (105) FLR 1067; 2006 108 FLR 193 & 2002 (95) FLR 1058.

The representative of the Applicant/Workmen has filed written arguments on behalf of the Applicant/Workman, contending inter-alia on different points relating to facts and relevant law to make it relevant to establish the case of Applicant/Workman.

At the very outset it was argued by him that the Applicant/Workman preferred his application before this Tribunal 10(1B)(d) of the Industrial Disputes Act, 1947 as amended because the Conciliation Officer, Barackpur took cognizance of the complaint of the workman and issued two notices on two different dates upon the OP/Employer fixing two dates for joint conference to resolve the dispute amicably but the OP / Employer did not turn up to the said Conciliation Officer in response to those notices and accordingly the workman had applied for a certificate of pendency of conciliation proceeding in proper form and manner and the Conciliation Officer also issued the same in favour of the Applicant/Workman.

According to his further argument the Applicant is a lawful permanent workman of the OP / Company and he was insured under the scheme of the ESIC and he was also a subscriber of PF under EPFO, Government of India and he is entitled to enjoy pension under Employees Pension Scheme, 1995. As a permanent worker of the Company, he was allotted with a labour quarter in 5/1 Kelvin Line, Room No. 09 by the Company since his PF membership. He is also entitled to get gratuity as per Payment of Gratuity Act, 1972.

However, since the Applicant/Workman being a permanent worker was allotted with a labour quarter as per Company's Standing Orders' Act 1946, and then the provision of continuous service for 240 days preceding the date of raising dispute to the Conciliation Officer does not arise, because a permanent worker can only have the right to allotted with a labour quarter. The Representative of the Applicant/Workman further argued that the management of the OP/Company illegally terminated the service of the Applicant/Workman by way of refusal of employment by restraining him through the Security Guard to enter into the Mill premises to perform his duty on 13.04.2018. Although at that time no reason was assigned to him either by the Security Guard or by any member of the management of company but subsequently when the Applicant/Workman submitted his

application before the Personal Manager of Kelvin Jute Mill, then the said Personal Manager made his endorsement on the said application of the workman dated 23.04.2018 by explaining the cause that he has been unauthorizedly encroached the company's land near his quarter without any document or written permission from the company.

But no notice with regard to such allegation of unauthorized encroachment of company's land was ever issued upon the Applicant/Workman and no such Domestic Enquiry was conducted against him, even no Charge-Sheet was submitted against him before termination of his service by way of refusal of employment. Hence, the Applicant/Workman as a worker of the OP/Company being illegally terminated from service since 13.04.2018 is entitled to get the relief or reliefs as prayed for in his application.

Having heard the argument of Ld. Counsel of the OP/Company and the Representative of the Applicant/Workman and on perusal of the pleadings of the parties as well as their respective evidences on record admittedly it appears that there is no dispute between the parties that the Applicant/Workman Sri Kailash Prasad being an worker of the OP/Company was allotted with a residential quarter in 5/1 Kelvin Line, Room No. 09 by the OP/Company.

According to the case of the Applicant/Workman he is a permanent worker of the OP/Company for which OP/Company allotted him with the aforesaid residential quarter but contradicting the applicant's claim the OP/Company submitted that the Applicant/Workman Sri Kailash Prasad is not a permanent worker but he was 'Badli' worker and he was not in service for continuous 240 days immediate preceding to the date of raising dispute before the Conciliation Officer on 23.04.2018.

The Applicant/Workman in order to establish his claim has exhibited Identity Card in his name issued by ESI Corporation as Exhibit-1, one employee's PF Slip for the Accounting year 2017-2018 in his name as Exhibit-2 and two Pay Slips in his name issued by the OP/Company as Exhibit – 3 & Exhibit-13 respectively.

Keeping in mind the argument of the Representative of the Applicant/Workman admittedly it appears from the said Exhibit-3, Pay Slip that the Applicant/Workman Sri Kailash Prasad used to get salary with Basic, D.A. and H.R.A etc. and from the other two documents i.e. Exhibit-1 & Exhibit-2 admittedly

it appears that the Applicant/Workman's name as Kailash Prasad was duly incorporated in ESI Corporation with date of entry on 01.04.2005 and he was a regular subscriber of **P.F.** with P.F. joining date 01.06.2010.

Denying the above status of the Applicant/Workman, since the OP/Company claimed that the Applicant/Workman Sri Kailash Prasad was a 'Badli' worker then the burden is upon the OP/Company to establish that the applicant was a 'Badli' worker. But to discharge their said burden no satisfactory or convincing relevant evidence could be adduced by the OP/Company. If the Applicant/Workman was at all a 'Badli' worker then the OP/Company certainly ought to have relevant Register/Duty Roster, Payment Register lying with their office but no such type of cogent evidence could be adduced from their end to establish their said claim. Although a document has been exhibited from the end of the Applicant/Workman as Exhibit-12 as a Joining Pass, which goes to show that the occupation of Sri Kailash Prasad has been mentioned as a 'Special Badli' but it was issued on 04.05.2006 i.e. long before the date of issuing of the said P.F. Slip (Exhibit-2) and those two Pay Slips i.e. Exhibit-3 & Exhibit-13 respectively. It is not necessary to presume a worker as a 'Special Badli' as shown in his Joining Pass dated 04.05.2006 to be continued with the same status till the alleged date of his termination on 13.04.2018, rather it can reasonably be held from the aforesaid other documents i.e. Exhibit-1, 2, 3 & 13 that the concerned workman became a permanent employee under the OP/Company having his name registered with ESI Corporation, P.F. and having paid salary with Basic, D.A., H.R.A. etc., which are usually getting by a permanent employee of the company but not by any 'Badli' worker.

However, it is also established from the Exhibit-4, that the Applicant/Workman was a permanent worker of the OP/Company, where the workman Sri Kailash Prasad wrote a letter on 23.04.2018 to the Personal Manager of the OP/Company to let him know the cause of restraining him in his entry in the Mill Gate for duty, in which it was replied by making endorsement in writing by the said Personal Officer of the company that since the applicant being an worker working in the company, he was allotted with an accommodation in company's land but he was unauthorizedly encroached the company's land near his quarter without any document or written permission from the company.

The OP/Company also made a peculiar pleading in their written statement by saying that the Applicant/Workman was absconding in fear of being arrested by Police in criminal case which has been initiated by the Opposite Party and the said criminal case is still pending where he is a prime accused. In this regard the

OP/Company has exhibited the order sheet dated 07.05.2018 passed by the Executive Magistrate, Barrackpore in M.P. Case No. 1725/2018 along with copy of application u/s 144(2) Cr.P.C. as Exhibit-A, but having perusal of the said documents and keeping in mind the provision of section 144(2) Cr.P.C., it can easily be held that it was an afterthought proceeding preferred by the OP/Company on 07.05.2018 when the alleged incident of restraining the Applicant/Workman in the Mill gate took place on 13.04.2018. Again in order to mislead the adjudication of the instant industrial dispute the OP/Company made such erroneous pleadings. Any proceeding u/s 144(2) Cr.P.C. cannot be termed as a criminal case and such proceeding pending against any person cannot also be said to be an accused liable to be arrested. A proceeding u/s 144(2) Cr.P.C is nothing but a measure for having preventive order from the Executive Magistrate to protect a locality from apprehension of breach of peace and tranquility. However, this pleading was not repeated in the affidavit-in-chief of C.W-1, i.e., witness of the O.P/Company. So, mere production of a copy of order and application cannot be a ground to rely upon the allegations of O.P/Company.

It was argued by the Ld. Counsel of the OP/Company that this case is not maintainable as the provision of Section 10(1B)(d) under which the applicant preferred his application is not applicable in this case as because it was filed before the 60 days statutory period from the date of raising dispute or from issuing notice by the Conciliation Officer.

It was also argued by him that in case of filing an application under Section 2A of the Act it should be filed after 45 days of raising dispute before the Conciliation Officer.

Having perusal of the materials and evidences on record it appears that the Applicant/Workman was allegedly refused from employment on 13.04.2018 for which he wrote his letter to the Personal Manger on 23.04.2018 and also sought redressal of the dispute by serving letters to the Joint Labour Commissioner, Barrackpore on 10.05.2018 (Exhibit-5), to the Personal Manager on 11.05.2018 (Exhibit-6), to the Manager & Personal Manager on 14.05.2018 (Exhibit-7) and to the President (Works) & First Appellate Authority, Trend Vyapaar Limited on 23.05.2018 (Exhibit-8). The record also goes to show that in response to the said complaint of the workman dated 10.05.2018 (Exhibit-5) the Assistant Labour Commissioner taking cognizance on the said complaint dated 10.05.2018, issued notice upon the OP/Company asking them to submit their written comments within 7 days from the date of receipt of the notice and to depute a competent representative

before him on 28.05.2018 (Exhibit-9). The note-sheet of the said Assistant Labour Commissioner which has been exhibited as Exhibit-10, also goes to show that none was present on behalf of the management for joint conference before the said Conciliation Officer either on 28.05.2018 or any subsequent fixed dates on 08.06.2018 and ultimately without having any representation from the end of the OP/Company, Form-S dated 02.07.2018 was issued in favour of the Applicant/Workman Sri Kailash Prasad.

It has been provided in Section 10(1B)(a) of Industrial Dispute Act, 1947 as amended that an individual workman may apply to the Conciliation Officer for a certificate about the pendency of the conciliation proceedings, where in a conciliation proceeding of an industrial dispute relating to an individual workman, no settlement is arrived at within a period of 60 days from the date of raising of the dispute. It was also provided in the said provision in Clause (b), (c) & (d) as to how and when the Conciliation Officer shall issue such certificate and the party on receipt or without receipt of said certificate can file application before the Labour Court or Tribunal and after receipt of such application how and when such Labour Court or Tribunal can adjudicate the alleged industrial dispute.

May be there is a criteria of observing 60 days period to apply before the Conciliation Officer for having a certificate about the pendency of conciliation proceedings but there is no express provision mentioned in the said provision of Section 10(1B) that in case one of the party in the said conciliation proceeding, particularly the OP/Company inspite of having repeated notices for joint conference issued from the end of the Conciliation Officer neglected or refused to appear or make any written statement before him then how long the said conciliation proceeding be kept pending for conciliation by way of joint conference. However, after coming into force of the provision of Section 2A of Industrial Dispute Act 1947 as amended, it became easier to a workman subject of discharge, dismissal, retrenchment or termination to make an application direct to the Labour Court or Tribunal for adjudication of the dispute referred to therein after the expiry of 45 days from the date he has made the application to the Conciliation Officer of the appropriate government for conciliation of the dispute. In the said provision the Labour Court and the Tribunal also empowered with the jurisdiction to adjudicate upon the said dispute on receipt of such application, as if it were a dispute referred to it by the appropriate government in accordance with the provisions of this Act and all the provisions of this Act shall apply in relation to such adjudication as they apply in relation to an industrial dispute referred to it by the appropriate government.

In this case the Applicant/Workman made his application to the Conciliation Officer on 10.05.2018 and he has filed this application before this Tribunal for adjudication on 02.08.2018 after having certificate of pendency of conciliation proceeding dated 02.07.2018.

So far the provision of Section 2A of Industrial Dispute Act 1947 as amended is concerned the Applicant/Workman Sri Kailash Prasad could have file his application for adjudication of the industrial dispute before this Tribunal under the aforesaid provision of Section 2A of the Industrial Dispute Act 1947 as amended in place of provision of Section 10(1B) of the Act as it is clear from the said documentary evidence that he has filed this application before this Tribunal on 02.08.2018 i.e., after expiry of 45 days from the date (10.05.2018) he has made application to the Conciliation Officer. It is the settled principle of law that mere putting of improper or inaccurate provision of law in making application before the Court or Tribunal cannot be a ground to discard or to reject such application on such minor error on the part of the applicant. So, keeping in mind the above discussed provision of law and facts and circumstances I find nothing convincing to discard or refuse the application of the Applicant/Workman on the ground that it was filed mentioning the provision of Section 10(1B)(d) in place of Section 2A of Industrial Dispute Act 1947 as amended.

Hence, I am of the considered view that the application filed by the Applicant/Workman irrespective of any provision as mentioned therein is maintainable for adjudication.

Accordingly, the Issue Nos. 1 & 2 are decided in favour of the Applicant/Workman.

As regard the Issue No. 3, when it has already been decided that the applicant was not at all 'Badli' worker, then the provision of working 240 days continuously preceding to the date of his termination is not relevant in connection with this case. However, in this aspect onus is upon the OP/Company to prove that the Applicant/Workman was not working 240 days continuously preceding to the date of his termination, but the OP/Company has failed to prove the same by adducing any relevant cogent evidence. The OP/Company although exhibited a purported service record of Applicant/Workman as Exhibit- B, but nothing could be legible from the said, document to determine that the Applicant/Workman was not working 240 days continuously preceding to the date of his termination. Accordingly, this Issue No. 3 is also decided in favour of the Applicant/Workman.

All other three issues i.e. Issue Nos. 4, 5 & 6 are taken up together for discussion and adjudication as the same are related to each other with regard to the facts and circumstances and provision of law in connection with this case.

Although it was claimed by the OP/Company in their pleadings and evidences that at no point of time the applicant was denied in entry inside the Mill to work without assigning any valid and lawful reasons but having perusal of Exhibit-4, it is clear that when the Applicant/Workman wrote a letter to the Personal Manager of the OP/Company on 23.04.2018 to let him know the cause of denial of his entry inside the Mill to work on 13.04.2018, in reply to the said letter it was explained by the Personal Officer of the OP/Company by making endorsement on the self same letter of the workman as to the cause that, “the worker has unauthorizedly encroached the company’s land near his quarter without having any document or written permission from the company”.

Subsequent correspondences of the Applicant/Workman to the management of the OP/Company, including the First Appellate Authority i.e., Exhibit – 6, 7 & 8 also goes to show that although the Applicant/Workman alleged that he was restrained from entry in the Mill on 13.04.2018, but there was no other explanation from the end of the OP/Company in response to those letters as to the cause of denial of entry of the Applicant/Workman inside the Mill to work since 13.04.2018.

So, considering such facts and circumstances and evidences on record it can safely be held that on 13.04.2018 the Applicant/Workman was denied by the OP/Company in his entry inside the Mill to perform his duty on one and only ground that he has unauthorizedly encroached the company’s land near his quarter without any document or written permission from the company.

Admittedly, there is no case that any such notice was issued by the OP/Company upon the Applicant/Workman for his alleged encroachment of land of the company or any such Domestic Enquiry was conducted against him or any Charge-Sheet was submitted against him by the OP/Company before denial his entry inside the Mill to work on 13.04.2018 and subsequent thereto till date.

There is no case from the end of the OP/Company that any wage benefit was provided to the concerned workman before or after denial of his entry inside the Mill, which is one form of termination of service by way of refusal of employment.

From the above discussion when it is established that without due process of law i.e., without proper notice, domestic enquiry or charge-sheet the OP/Company terminated the service of Applicant/Workman since 13.04.2018 by way of refusal of his employment, then without any hesitation it can reasonably be held that the Applicant/Workman was unlawfully and illegally terminated from his service by way of refusal of employment by the management of OP/Company for which the Applicant/Workman is entitled to get the relief or reliefs as prayed for. Whatever may be the citations referred by the Ld. Counsel of the OP/Company during his argument are not closely relevant to rely upon, so far, the facts and circumstances and the materials of this case are concerned.

Accordingly, all these three issues i.e. Issue Nos. 4 to 6 are also decided in favour of the Applicant/Workman Sri Kailash Prasad.

There is no a pleading or iota of evidence on record to show that the Applicant/Workman Sri Kailash Prasad gainfully worked in any other establishment during the period from the aforesaid date of his termination from service i.e., 13.04.2018 till the date of this award.

As a result of which the Applicant/Workman Sri Kailash Prasad is entitled to be reinstated in his employment with full back wages for the period from the aforesaid date of his termination from service i.e., 13.04.2018 till the date of his reinstatement, if he has not already reached the age of retirement on superannuation. In case he has already reached the age of retirement on superannuation by the passage of time, then the Applicant/Workman Sri Kailash Prasad is entitled to get the full back wages for the period from the aforesaid date of his termination from service till the date of his retirement on superannuation with compensation and other retirement benefits from the OP/Company.

Hence, it is

### **ORDERED**

that all the six issues are adjudicated in favour of the Applicant/Workman Sri Kailash Prasad by holding that “his termination of service by way of refusal of employment w.e.f. 13.04.2018 was not justified.”

The OP/Company M/s. Trend Vyapaar Limited (Unit Kelvin Jute Mill) is accordingly directed to reinstate the Applicant/Workman Sri Kailash Prasad in his employment within one month from the date of this Award, if he has not already reached the age of retirement on superannuation.

The OP/Company M/s. Trend Vyapaar Limited (Unit Kelvin Jute Mill) is also directed to pay full back wages along with interest @ 6% per annum to the Applicant/Workman Sri Kailash Prasad for the period from the aforesaid date of his termination from service i.e., 13.04.2018 till the date of his reinstatement or till the date of his retirement on superannuation, if he has already reached the age of retirement on superannuation.

In case the Applicant/Workman Sri Kailash Prasad has already reached the age of retirement on superannuation by the passage of time, then the OP/Company M/s. Trend Vyapaar Limited (Unit Kelvin Jute Mill) is directed to pay him full back wages along with interest @ 6% per annum for the period from the aforesaid date of termination from service till the date of his retirement on superannuation and to pay compensation of Rs.50,000/-(rupees Fifty Thousand) and other retirement benefits within two months from this date of Award.

This is my award.

Let a copy of this order be sent on line in PDF form to the Secretary, Labour Department, Government of West Bengal, N.S. Buildings through the dedicated e-mail for information and doing subsequent action as per provision of law.

Dictated & Corrected by me

**Sd/-**  
Judge

**Sd/-**  
Judge  
Fourth Industrial Tribunal  
& i/c of First Industrial Tribunal  
Kolkata.  
11.09.2025