

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

No. Labr/ 1319 / (LC-IR22019/122/2019

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 Banmali Sahu, S/o – Late Mohan Sahu, 3/2, Kelvin Line, Room No. – 29, 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 1st Industrial Tribunal, Kolkata has submitted to the State Government its Award dated 10.09.2025 in Case No. 12/2018/10 (1B) (d) 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/ 1319 /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 Banmali Sahu, S/o – Late Mohan Sahu, 3/2, Kelvin Line, Room No. – 29, 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, 11th 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/ 1319 /2(3)/(LC-IR)/ 22019/122/2019

Date : 19-11-2025

Copy forwarded for information to :-

1. The Judge, 1st 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 Banmali Sahu, S/o – Late Mohan Sahu, by faith – Hindu, by occupation retired, aged about – 61 years, presently residing at – 3/2, Kelvin Line, Room No. – 29, P.O. – Talpukur, P.S. – Titagarh, Dist – North 24 Parganas, PIN – 700 123.

Case No.: 12/2018/10 (1B) (d)

BEFORE THE FIRST INDUSTRIAL TRIBUNAL, KOLKATA, WEST BENGAL

P R E S E N T

**SHRI NANDAN DEB BARMAN, JUDGE, FOURTH INDUSTRIAL TRIBUNAL
& I/C OF FIRST INDUSTRIAL TRIBUNAL
KOLKATA.**

The Workman Sri Banmali Sahu

Address: 3/2, Kelvin Line, Room No. – 29, (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: 10th 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?
- 4) Whether the applicant was denied in 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 on behalf of Applicant/Workman / Employee

1. That the applicant is the permanent worker of the Opposite Party Kelvin Jute Mill Ltd., Talpukur, Titagarh since long in the Beaming Department having E.B. No. 22613 and he was doing his duty peacefully, promptly and honestly.
2. That all on a sudden on 02.05.2018 the applicant was denied in entry inside the Mill to work at the gate without valid ground and assigning any reason.
3. That the applicant immediately wrote an application dated 06.05.2018 to the President (Works) of the Opposite Party/Company with a prayer to look into the matter and provide assistance, so that he can join his job. But the applicant did not get any relief. The copy of the application dated 06.05.2018 has been attached as Annexure – ‘A’.
4. The act on the part of the Opposite Party was completely unjustified, illegal and prejudicial to the interest of the petitioner workman. Therefore, finding no other way the Applicant/Workman moved to the Joint Labour Commissioner of Barrackpur, District North 24 Paraganas on 11.05.2018 and has filed a written complaint against the Opposite Party disclosing all true facts for redressal. The copy of the complaint to Labour Commissioner has been attached as Annexure – ‘B’.
5. That on 23.05.2018 the Assistant Labour Commissioner, Barrackpore on the basis of complaint of the Applicant/Workman dated 10.05.2018 issued notice along with a copy of complaint of the workman upon M/s. Trend Vyapaar Ltd. (Unit: Kelvin Jute Mill) for submission of their written comments within seven days and to depute any 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 was served upon Opposite Party by Joint Labour Commissioner has been attached as Annexure – ‘D’.
6. 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 his reinstatement and redressal of his dispute as per provision of section 15(a) and 15 (b) of Certified Standing Order of the Company, but no action has taken yet from that end. The copy of the written appeal served to the Opposite Party attached as Annexure – ‘E’.

7. That the Applicant/Workman 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 or 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 for joint conference. But surprisingly this time also ignored by the Management and they neither attended nor sent any intimation and the joint conference, thus, was not held. The petitioner workman was present in the office on the both dates. The matter has been lying pending next course of action. The copy of the written appeal was served to the Opposite Party has been attached as Annexure-'F'.
8. That in the said Form-'S' under rule 12A (3) it has been 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.
9. 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 upon the Applicant/Workman nor any Domestic Enquiry was conducted and by doing such illegal act the Management has violated the principle of natural justice and infringed the fundamental rights of the petitioner workman.
10. 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.
- 11) That the Applicant/Workman being jobless for about three months passing his days in mental agony and tremendous financial hardship and he has no other alternative but to move this Ld. Tribunal for proper adjudication of his dispute.
- 12) 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 Vyapaar Ltd. (Unit: Kelvin Jute Mill), above named divides its 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 Sri Banmali Sahu in his Statement of claim, (to be referred hereunder as the ‘said 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 8th 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 18th August, 2010, effective from 15th 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 5th July 2018, when he was not having jurisdiction of issuance such certificate and had already become functus 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 there under.
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 1947, 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 on 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/Workman 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. 1724 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 Banmali Sahu 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/Company and for which the Opposite Party has to institute a criminal proceedings against the said Applicant/Workman Banmali Sahu 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/Workman 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/Company.
- 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., 02.05.2018, the Applicant never went to Mill to resume his duty, on the contrary his 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 Sri Banmali Sahu 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 that “all on a sudden on 02.05.2018 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 Sri Banmali Sahu 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- 19 respectively, which are as follows:

Exhibit- 1	ESI Card being SD No. 20511 in the name of Banmali Sahu issued by ESI Corporation.
Exhibit- 2	Provident Fund Slip for Accounting year 2017-18.
Exhibit- 3	Pay slip dated 15.12.2015.
Exhibit- 4	Photocopy of GDE No. 111/18 dated 02.05.2018 by Banmali Sahu
Exhibit- 5	A letter Dt. 06.05.2018 addressed to the President (Works) of the Company by Banmali Sahu
Exhibit- 6	A photocopy of complaint by Jute Textile Workers Union Trend Vyapaar Ltd. addressed to the JLC Dated 10.05.2018.
Exhibit- 7	A photocopy of complaint by Banmali Sahu dated 11.05.2018 addressed to the Joint Labour Commissioner.
Exhibit- 8	A photocopy of a representation by Banmali Sahu dated 14.05.2018 addressed to the President (Works).
Exhibit- 9	A photocopy of letter by Banmali Sahu dated 23.05.2018 addressed to the President (Works).
Exhibit- 10	A photo copy of notice issued by Joint Labour Commissioner Dated 23.05.2018 upon M/s Trend Vyapaar Ltd. for joint conference
Exhibit- 11	A photocopy of note-sheet along with certified copy issued by the Assistant Labour Commissioner.
Exhibit- 12	Photo copy of Form-P4 along with receipt copy dated 26.06.2018.
Exhibit- 13	Photocopy of Form-S issued by the Conciliation Officer dated 05.07.2018.
Exhibit- 14	Photocopy of intimation of superannuation issued by the Company dated 15.06.201 to Banmali Sahu.
Exhibit- 15	Photocopy of certificate issued by the Company Dated 16.06.2020.
Exhibit- 15	A photocopy of certificate issued by the Company Dated 16.06.2020
Exhibit- 16	A photocopy of ESI Certificate, PF statement issued in the name of Banmali Sahu.
Exhibit- 17	A photocopy of notice issued by the Company Dated 20.07.2021.
Exhibit- 18	A photocopy of letter by Banmali Sahu dated 23.07.2021 addressed to the Personal Manager of the company
Exhibit- 19	A photocopy of complaint to the PF Commissioner by Banmali Sahu against the Company.

On the contrary the O.P/Company M/s. Trend Vyapaar Ltd. (Unit of Kelvin Jute Mill) to establish their case has examined one witness, namely Mr. Manash Chakraborty as C.W-1 and also tried to exhibit two documentary evidences as Exhibit-A and Exhibit-B respectively, in which only Exhibit-A was filed but reportedly no document for Exhibit-B could be filed till 21.12.2022. (N.B: Although it has been recorded by erstwhile Presiding Officer of the 1st Industrial Tribunal, Kolkata, in the evidence of C.W-1 that Photocopy of Service Record of Workman marked as Exhibit-B, but no such type of document is lying available with the record and to that effect there is an endorsement with a question mark of the P.O. in red ink in which it has been mentioned that, “not filed till 21.12.2022”.)

Exhibit –A	Order sheet dated 07.05.2018 passed by the Executive Magistrate Barrackpore in M.P. Case No. 1724/2018 along with copy of application u/s 144(2) Cr.P.C.
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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 O.P / 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 on 02.05.2018 he was restrained by the Security Guard in the gate of the Mill of Company to enter into the Company to perform his duty.

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. It was also his argument that since the Union of Workmen raised the dispute before the Joint Labour Commissioner, and then the individual application by this Applicant/Workman is not maintainable in law.

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 O.P / 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 O.P / 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 and 2005 (2) CLR 59.

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 O.P/Employer fixing two dates for joint conference to resolve the dispute amicably but the O.P/Employer did not turn up before 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 O.P/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, 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 O.P/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 02.05.2018 and at that time no reason was assigned to him either by the Security Guard or by any member of the Management of Company.

The Applicant/Workman tried to meet the Personal Manager of the Company on that date of incident on 02.05.2018 to place his grievance but he was not allowed to go inside the Mill by the Security Guard. As a result of which Applicant/Workman lodged a General Diary before the Titagarh Police Station in the evening on the same day vide G.D.E. No. 111/2018 dated 02.05.2018.

Subsequently on 03.05.2018 although a complaint was made by the Union of Workmen to the Personal Manager of the Company but the Applicant/Workman at his own also informed the incident to the President (Works) of the Company on 06.05.2018. Thereafter, on 10.05.2018 the Union of Workmen made a complaint to the Joint Labour Commissioner, Barrackpore and the Applicant/Workman himself also made a complaint to the said Joint Labour Commission on 11.05.2018 over the incident of 02.05.2018, in which he was refused from employment by the O.P/Company.

The Applicant/Workman again made an appeal under Section 14(e) and 15(a)&(b) of Certified Standing Order before the President (Works) and Appellate Authority, Kelvin Jute Mill on 14.05.2018. Another reminder also served by the Applicant/Workman to the said President (Works) on 23.05.2018 making appeal in relation to his earlier letters dated 06.05.2018 & 14.05.2018, but no response was received from the end of the Management or Appellate Authority of the O.P/Company.

No notice with regard to allegation, if any, against the Applicant/Workman 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 O.P/Company being illegally terminated from service since 02.05.2018 is entitled to get the relief or reliefs as prayed for in his application.

Having heard the argument of Ld. Counsel of the O.P/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 Banmali Sahu being an worker of the O.P/Company was allotted with a residential quarter in 5/1 Kelvin Line, by the O.P/Company.

According to the case of the Applicant/Workman he is a permanent worker of the O.P/Company for which O.P/Company allotted him with the aforesaid residential quarter but contradicting the applicant's claim the O.P/Company submitted that the Applicant /Workman Sri Banmali Sahu is not a permanent worker but he was a '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 02.05.2018.

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 one Pay Slips in his name issued by the O.P/Company as Exhibit-3 respectively.

The Applicant/Workman in order to establish his claim that he is an employee of the O.P/Company 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, one Pay Slip in his name issued by the O.P/Company as Exhibit-3 and photocopy of G.D.E. No. 111/2018 dated 02.05.2018 lodged by him to Titagarh Police Station as Exhibit-4 respectively.

The Applicant/Workman also exhibited some other documents, which have been marked as Exhibit-14 to Exhibit-17 respectively. From Exhibit-14 it appears that on 15.06.2019 this document was issued by the Chief Personal Manager of the

O.P/Company, in which it was intimated to the Applicant/Workman Sri Banmali Sahu, that he will attend the age of superannuation on 30.06.2019. It was stated in the said document that it is also a two week notice before superannuation, which will be counted from 16.06.2019 to 30.06.2029 and thereafter his work will be treated as purely casual work. In this document it was further certified that the Applicant/Workman Sri Banmali Sahu was very sincere and honest in rendering service to the company for such a long period is appreciated highly by the company. So, from this document i.e., Exhibit-14 and another document Exhibit-15, which is a certificate, certifying Sri Banmali Sahu, an employee of Mill was working at 'Beaming Department' was superannuated from the company's service as on 01.07.2019, coupled with other two documents i.e., Exhibit-16 & Exhibit-17 clearly goes to show that there was no whisper that at any point of time the Applicant/Workman Sri Banmali Sahu was a 'Badli' worker, rather it is established beyond doubt that he was a permanent employee reached the age of superannuation on 30.06.2019 after long period of appreciated and honest service. This document also clearly established that the work of the said superannuated employee after the date of his superannuation will be treated as purely casual work but not before the date of his superannuation.

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 Banmali Sahu 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 Banmali Sahu was duly incorporated in ESI Corporation with date of entry on 09.03.1980 and he was a regular subscriber of **P.F.** with P.F. joining date 11.06.1988.

Denying the above status of the Applicant/Workman, since the O.P/Company claimed that the Applicant/Workman Sri Banmali Sahu was a 'Badli' worker then the burden is upon the O.P/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 O.P/Company. If the Applicant/Workman was at all a 'Badli' worker then the O.P/Company certainly ought to have relevant Register/Duty Roster, Payment Register lying with their custody, but no such type of cogent evidence could be adduced from their end to establish their said claim.

The O.P/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 O.P/Company has exhibited the order sheet dated 07.05.2018 passed by the Executive Magistrate, Barrackpore in M.P. Case No. 1724/2018 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 O.P/Company on 07.05.2018 when the alleged incident of restraining the Applicant/Workman in the Mill gate took place on 02.05.2018. Again, in order to mislead the adjudication of the instant industrial dispute the O.P/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 O.P/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. He also argued that since the Union of Workmen raised the dispute before the Joint Labour Commissioner, then the individual application by this Applicant/Workman is not maintainable in law.

Having perusal of the materials and evidences on record it appears that the Applicant/Workman was allegedly refused from employment on 02.05.2018 for which he lodged a G.D.E. to the Titagarh Police Station on the self same day of incident on 02.05.2018 (Exhibit-4) and wrote different letters to the President

(Works) of the Company on 06.05.2018 (Exhibit-5), 14.05.2018(Exhibit-8) and on 23.05.2018 (Exhibit-9) seeking redressal of the dispute. He also wrote letters to the Joint Labour Commissioner, Barrackpore on 11.05.2018 (Exhibit-7), seeking redressal of the Industrial Dispute. Besides his aforesaid letters and complaint, the Jute Textile Workers' Union Trend Vyapaar Limited also wrote a complaint to the Joint Labour Commissioner, Barrackpore about the whimsical act of management of the Company against their member Sri Banmali Sahu (Exhibit-6).

The record also goes to show that in response to the said complaint of the workman dated 11.05.2018 (Exhibit-7) the Assistant Labour Commissioner taking cognizance on the said complaint dated 11.05.2018, issued notice upon the O.P/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-10). The note-sheet of the said Assistant Labour Commissioner which has been exhibited as Exhibit-11, also goes to show that none was present on behalf of the management of the O.P/Company for joint conference before the said Conciliation Officer either on 28.05.2018 or subsequently fixed date on 08.06.2018 and ultimately without having any representation from the end of the O.P/Company, Form-S dated 05.07.2018 was issued in favour of the Applicant/Workman Sri Banmali Sahu.

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 O.P/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 comments 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 11.05.2018 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. It is pertinent to mention here that although a complaint was made by the Jute Textile Workers' Union Trend Vyapaar Limited to the Joint Labour Commissioner with regard to the dispute of the workman Sri Banmali Sahu on 10.05.2018 but the fact remains that on the next day i.e., on 11.05.2018 the said workman Sri Banmali Sahu also at his won individually made a complaint before the said Joint Labour Commissioner, Barrackpore seeking redressal of his aforesaid dispute. So, there is no illegality in entertaining this case on the basis of individual application of the workman Sri Banmali Sahu, even though the aforesaid Union made a complaint to the Labour Commissioner with regard to his dispute.

So far the provision of Section 2A of Industrial Dispute Act 1947 as amended, is concerned, the Applicant/Workman Sri Banmali Sahu 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 (11.05.2018) 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 by 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 O.P/Company to prove that the Applicant/Workman was not working 240 days continuously preceeding to the date of his termination, but the O.P/Company has failed to prove the same by adducing any relevant cogent evidence. The O.P/Company issued the documents in favour of the Applicant/Workman Sri Banmali Sahu i.e., Exhibit-14 and Exhibit-15 itself goes to show that the Applicant/Workman was continuously working sincerely and honestly and rendered services to the company for such a long period which is appreciated highly by the Company. 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.

Subsequent correspondences of the Applicant/Workman to the management of the O.P/Company, including the First Appellate Authority i.e., Exhibit – 5, 8 & 9 also goes to show that although the Applicant/Workman alleged that he was restrained from entry in the Mill on 02.05.2018 without assigning any reason, but there was no other explanation from the end of the O.P/Company in response to

those letters as to the cause of denial of entry of the Applicant/Workman inside the Mill to work on 02.05.2018.

So, considering such facts and circumstances and evidences on record it can safely be held that on 02.05.2018 the Applicant/Workman was denied by the O.P/Company in his entry inside the Mill to perform his duty without assigning any reason.

Admittedly, there is no case that any such notice was issued by the O.P/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 O.P/Company before denial his entry inside the Mill to work on 02.05.2018 and subsequent thereto till the date of his superannuation.

There is no case from the end of the O.P/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 O.P/Company whimsically terminated the service of Applicant/Workman since 02.05.2018 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 O.P/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 O.P/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 Banmali Sahu.

There is no iota of evidence on record to show that the Applicant/Workman Sri Banmali Sahu gainfully worked in any other establishment during the period from the aforesaid date of his termination from service i.e., 02.05.2018 till the date of his retirement on superannuation on 30.06.2019.

As a result of which the Applicant/Workman Sri Banmali Sahu is entitled to get full back wages for the period w.e.f. from the aforesaid date of his termination from service i.e., 02.05.2018 till the date of his retirement on superannuation on 30.06.2019 with compensation and other retirement benefits from the O.P/Company.

Hence, it is

ORDERED

that all the six issues are adjudicated in favour of the Applicant/Workman Sri Banmali Sahu by holding that “his termination of service by way of refusal of employment w.e.f. 02.05.2018 was not justified.”

The O.P/Company M/s. Trend Vyapaar Limited (Unit Kelvin Jute Mill) is accordingly directed to pay full back wages along with interest @ 6% per annum to the Applicant/Workman Sri Banmali Sahu for the period from the aforesaid date of his termination from service i.e., 02.05.2018 till the date of his retirement on superannuation on 30.06.2019 and to pay compensation of Rs.30,000/-(rupees Thirty Thousand) and other retirement benefits within two months from the date of this 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.
10.09.2025.