

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

No. Labr/ 1320 /(LC-IR)/ 22015(11)/1/2018

Date : 19-11-2025

ORDER

WHEREAS under Labour Department's Order No. Labr./397/(LC-IR)/IR/4L-01/18 dated 06.06.2018 with reference to the Industrial Dispute between M/s. Balaji Transport, Kantapukur, P.O. & P.S.-Mogra, Dist.-Hooghly, Pin-712504 and its workman Sri Rameswar Singh, Vill.-Raghunathpur, P.O.- Nayasarai, P.S.-Mogra, Dist.-Hooghly, regarding the issues mentioned in the said order, being a matter specified in the Second Schedule of the Industrial Dispute Act' 1947 (14 of 1947), was referred for adjudication to the 3rd Industrial Tribunal, Kolkata.

AND WHEREAS the 3rd Industrial Tribunal, Kolkata, has submitted to the State Government its Award dated 07.11.2025 in Case No. VIII-11/2018 on the said Industrial Dispute Vide e-mail dated 14.11.2025 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/ 1320 /1(5)/(LC-IR)/ 22015(11)/1/2018

Date : 19-11-2025

Copy forwarded for information and necessary action to:

1. M/s. Balaji Transport, Kantapukur, P.O. & P.S.-Mogra, Dist.-Hooghly, Pin-712504.
2. Sri Rameswar Singh, Vill.-Raghunathpur, P.O.- Nayasarai, P.S.-Mogra, Dist.-Hooghly.
3. The Assistant Labour Commissioner, W.B. In-Charge, Labour Gazette.
4. The O.S.D. & E.O. Labour Commissioner, W.B. New Secretariat Building, 1, K. S. Roy Road, 11th Floor, 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/ 1320 /2(3)/(LC-IR)/ 22015(11)/1/2018

Date : 19-11-2025

Copy forwarded for information to :

1. The Judge, 3rd Industrial Tribunal, Kolkata, N.S. Building, 1, K.S. Roy Road, Kolkata-700001 with reference to e-mail dated 14.11.2025.
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 Third Industrial Tribunal, Government of West Bengal
New Secretariat Buildings, Kolkata-700 001

Case No.VIII-11/2018; u/s. 10 of the Industrial Disputes Act, 1947

Present: Sri Mihir Kumar Mondal
Judge, 3rd Industrial Tribunal,
Kolkata

A W A R D

Dated : 07.11.2025

The Labour Department, Government of West Bengal has referred an Industrial Dispute between M/s. Balaji Transport, Kantapukur, P.O. & P.S.-Mogra, Dist.-Hooghly, Pin-712504 and their workman Sri Rameswar Singh, Vill.-Raghunathpur, P.O.-Nayasarai, P.S.-Mogra, Dist.-Hooghly to this Tribunal vide Order No. Labr./397/(LC-IR)/IR/4L-01/18 dated 06.06.2018 on the following issue(s) for adjudication :

I S S U E (S)

- 1) Whether the termination of service by way of refusal of employment of Sri Rameswar Singh, w.e.f. January, 2012 by the Management of M/s. Balaji Transport is justified?
- 2) What relief, if any, the workman is entitled?

Subsequently, the Labour Department, IR Branch, Government of West Bengal, New Secretariat Buildings, 12th Floor, 1, Kiran Sankar Roy Road, Kolkata-700001 **issued a Corrigendum Order** No.Labr./476/(LC-IR)/IR-4L-01/18 dated 24.02.2021 and included the name of principal employer i.e. M/s. Kesoram Rayon of Raghunathpur, P.S.-Mogra, Dist.-Hooghly, Pin-712504 in addition to M/s. Balaji Transport in the Issue No.(1) and the date of termination to be considered as 31.01.2012 instead of January, 2012 in the Issue No.(1) of the Order of Reference No. Labr./397/(LC-IR)/IR/4L-01/18 dated 06.06.2018.

In course of hearing on merit of this case before this Tribunal i.e. during pendency of this case for adjudication and disposal, Ld. Advocate for M/s. Kesoram Rayon filed a copy (downloaded from the website of the High Court, Calcutta) of the order dated 07.12.2023 passed by the Hon'ble High Court, Calcutta in connection with WPA 11569 of 2021 along with a petition on 03.01.2024. The copy of the said order of the Hon'ble High Court, Calcutta was not challenged either by the Ld. Advocate for the workman or by the Ld. Advocate for M/s. Balaji Transport. It is seen from the order dated 07.12.2023 passed by the Hon'ble High Court, Calcutta in connection with WPA 11569 of 2021, that the Hon'ble Court has been pleased to modify the 'Corrigendum' dated 24.02.2021 to the extent of excluding M/s. Kesoram Rayon from the 'Reference' as 'employer'. According to the said order, the Hon'ble High Court, Calcutta has been pleased to hold that the date of termination of the workman in the Corrigendum shall however remain as 31st January, 2012 and the Reference shall proceed with only M/s. Balaji Transport as employer.

Recasting of issues (*in view of Corrigendum Order dated 24.02.2021 and the Order dated 07.12.2023 passed by the Hon'ble High Court, Calcutta in connection with WPA 11569 of 2021*) are made as follows :-

RECAST ISSUE(S)

- 1) Whether the termination of service by way of refusal of employment of Sri Rameswar Singh, w.e.f. 31.01.2012 by the Management of M/s. Balaji Transport is justified?
- 2) What relief, if any, the workman is entitled to ?

On receiving the 'Order' of the appropriate Government containing 'Reference of Industrial Dispute', this Tribunal on 14.06.2018 by its Order No. 1 issued Notice upon both the parties. On receiving notice, both the parties entered their appearance in this case complying the statutory provision. On 04.09.2018 the workman submitted his written statement but it was not pressed by the workman. It is seen that the workman intimated this Tribunal that he had taken steps seeking corrigendum of the Referral Order. This Tribunal in the order dated 15.03.2021 mentioned that Corrigendum Order of the Reference was received. Subsequently, on 13.04.2021 the workman submitted written statement and thus the next date was fixed for filing list of documents by the workman and for filing W.S. by the Company. On 01.09.2021 M/s. Balaji Transport submitted written statement. On 29.10.2021 the principal employer M/s. Kesoram Rayon entered its appearance through Ld. Advocate by filing Vakalatnama. On 30.06.2022 written statement was submitted on behalf of the principal employer M/s. Kesoram Rayon. After completion of all the formalities this Tribunal by Order dated 05.01.2023 fixed 03.02.2023 for evidence of the workman.

The case of the workman, in a nutshell, is that he had been working as a 'Loader Driver' under M/s. Kesoram Rayon (Principal employer) through the contractor (M/s. Balaji Transport) for 20 years continuously (till 31.01.2012 i.e. the date of alleged refusal of employment) and he served under the principal employer M/s. Kesoram Rayon diligently, honestly and sincerely as well as he had no black spot in his service record. It is mentioned that during the period of his service as 'Loader Driver' he was not brought under the coverage of benefits such as ESI and Provident Fund either by his contractor M/s. Balaji Transport or by his principal employer M/s. Kesoram Rayon although he was entitled to get benefits of ESI and Provident Fund. He has alleged that the act of negation of the 'contractor' and 'principal employer' to bring him under the coverage of benefits such as ESI and Provident Fund tantamount to unfair labour practice by his 'contractor' and 'principal employer' and thus he repeatedly approached both of them to bring him under the coverage of those benefits but his approaches were turned down. It is mentioned that his job / activity was controlled and supervised by the 'principal employer' directly, whereas his 'contractor' used to act as a 'puppet' in the hand of 'principal employer'. It is mentioned that as he was sticking with his claim to bring him within the purview of benefits of ESI and Provident Fund, the Management of 'principal employer' instead of redressal, used to put blame upon him with false allegation. It is mentioned that he received the copy of letter dated 18.09.2012 of the then Deputy General Manager (Personnel) addressed to the Officer-in-Charge, Mogra Police Station and found that in the said letter it was falsely alleged that his son, since deceased, entered into the company's staff colony on 16.09.2012 with the intention to meet the company's General Manager (Personnel). It is mentioned that on 31.01.2012 he went to resume his duty as 'Loader Driver' but his 'contractor' under the instruction of 'principal employer' refused him to join his duty and further his 'contractor' forcibly tried to take back the key of quarters from him on the allegation that he was possessing the said key in presence of security guards. He has spelt out that such refusal of his employment on 31.01.2012 was

tantamount to illegal termination from his service although no disciplinary action was taken against him after giving opportunity to him to show cause as well as no retrenchment compensation was paid to him in terms of mandatory provisions of law. It is mentioned that he raised an industrial dispute against his 'contractor' and 'principal employer' before the Deputy Labour Commissioner, Chinsurah, Hooghly and the Assistant Labour Commissioner called several joint conferences to settle the industrial dispute but the 'principal employer' did not attend in any such joint conference although his 'contractor' attended joint conference. It is mentioned that the Conciliation Officer in spite of his best effort, failed to make any settlement of the industrial dispute due to the adamant attitude of the Management of his two employers and thereafter the reference was made by the appropriate Government. He has claimed that still he is unemployed and thus has prayed for his reinstatement in his service with full back wages for the period of his forced unemployment. He has mentioned that his last drawn salary was Rs.10,000/- per month.

M/s. Balaji Transport has contested this case by filing Written Statement. M/s. Balaji Transport (hereinafter referred to as the 'contractor') by its Written Statement has denied all the material allegations levelled against it by the Workman. The 'contractor' by his written statement has flatly denied any kind of business and/or job and/or contract with M/s. Kesoram Rayon (principal employer) and thus raised preliminary objection over the maintainability of the 'reference'. The 'contractor' by his written statement has stated that the instant 'reference' is not maintainable as the 'contractor' has been wrongly impleaded as a party and has also claimed that this Tribunal has no jurisdiction to entertain such kind of reference and to adjudicate the 'dispute'. It is claimed that since the reference is not maintainable against the 'contractor', the reference cannot assume the character of industrial dispute. It is mentioned that a 'dispute' between the 'workman' and his 'principal employer' cannot be transformed to an industrial dispute between the 'contractor' and the 'workman'. It is stated that since the relationship of master and servant was not subsisting between the contractor and the workman, the reference is not maintainable. Further it is claimed that in absence of relationship of employer and employee between contractor and the workman, the instant reference is not sustainable in the eye of law. It is claimed by the 'contractor' that the workman never worked under the 'contractor' during the 20 years continuously as mentioned by the workman in his written statement. It is mentioned that as it has been denied that the workman was never deployed nor connected with any work of the 'contractor', there was no question of extending the benefit of ESI and Provident Fund to the workman on the part of the 'contractor' and such claim by the workman is false, fabricated and motivated. It is mentioned that in reality, deployment of the workman in the work of M/s. Kesoram Rayon by the 'contractor' does not arise. It is clarified in the written statement that if any contractual labour is deployed under 'principal employer', it is not supposed that he (contractual labour) be permitted to enjoy / occupy the principal employer's quarters with all facilities. It is claimed that refusal of employment as alleged by the workman is completely a false and fabricated story because at no point of time, the workman was given employment under the 'principal employer'.

The 'contractor' by their written statement has prayed for dismissal of this case and to pass such other order/orders as may be deemed fit and proper by this Tribunal.

After submission of written statements and list of documents by the parties, exchange of documents took place. Thereafter, the matter was fixed for hearing on merit.

During evidence stage, the workman Rameswar Singh filed his examination-in-chief on affidavit and he was examined-in-chief before this Tribunal in continuation of his examination-in-chief on affidavit and thereafter he was cross-examined in full.

Examination-in-chief on affidavit of one Deojee Patel was filed for his examination as OPW-1 on behalf of M/s. Balaji Transport. The witness Deojee Patel was examined-in-chief before this Tribunal in continuation of his examination-in-chief on affidavit as OPW-1 and his cross-examination was started but his cross-examination was deferred on the prayer of the Ld. Advocate for the workman on 17.08.2023 and next date was fixed on 26.09.2023 for further cross-examination of OPW-1. It is found that the said OPW-1 Deojee Patel did not turn up before this Tribunal for his cross-examination on consecutive next dates starting from 26.09.2023. This Tribunal granted more than sufficient adjournments on the prayer of the Ld. Advocate for M/s. Balaji Transport with the hope that OPW-1 Deojee Patel would turn up to face cross-examination but ultimately he did not turn up. This Tribunal, observing persistent absence of OPW-1 Deojee Patel before this Tribunal to face cross-examination starting from 26.09.2023, rejected the adjournment petition filed by M/s. Balaji Transport on 10.12.2024 and compelled to close the evidence of OPW-1. On that date no prayer was submitted on behalf of M/s. Kesoram Rayon with the prayer for granting time for adducing other witness and thus the evidence of this case was closed and the date was fixed for argument hearing.

It is seen from the order dated 03.01.2024 that the Ld. Advocate for M/s. Kesoram Rayon filed a plain copy of an order dated 07.12.2023 passed by the Hon'ble High Court, Calcutta in connection with WPA 11569 of 2021 and submitted that the Hon'ble High Court, Calcutta by order dated 07.12.2023 passed in connection with WPA 11569 of 2021 had been pleased to exclude M/s. Kesoram Rayon from the reference. On that occasion, Ld. Advocates for the workman and M/s. Balaji Transport did not raise any objection either against the plain copy of the order dated 07.12.2023 passed in connection with WPA 11569 of 2021 or against verbal submission of the Ld. Advocate for M/s. Kesoram Rayon.

During argument of this case Ld. Advocates for the workman and M/s. Balaji Transport filed their respective written arguments. This Tribunal by order dated 29.08.2025 relying on the plain copy of the order dated 07.12.2023 passed by the Hon'ble High Court, Calcutta in connection with WPA 11569 of 2021, in absence of any objection either from the Ld. Advocate of the workman or from the Ld. Advocate of M/s. Balaji Transport, found nothing to raise suspicion on the plain copy of the order of the Hon'ble High Court, Calcutta filed before this Tribunal and thus complied the observation of the Hon'ble High Court, Calcutta and **thereby treated M/s. Kesoram Rayon as excluded from the reference.**

In course of evidence, both the parties proved documents during examination of witnesses.

The workman Sri Rameswar Singh has identified and proved the following documents in course of his examination as witness:-

Sl. No.	Document	Exbt. No.
1.	Photocopy of gate pass issued by the OP/Company	Exbt.-1
2.	Photocopy of application of PW-1 in Bengali language submitted to the Deputy Labour Commissioner, Hooghly	Exbt.-2

3.	Photocopy of letter No.Labr./659/(LC-IR)/IR/4L-01/18 dated 05.09.2018	Exbt.-3
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In course of examination of witness Deojee Patel (OPW-1) on behalf of the Company, the following documents were identified, proved and exhibited :-

Sl. No.	Documents	Exbt. No.
1.	Photocopy of PAN Card of M/s. Balaji Transport	Exbt.-A
2.	Photocopy of letter dated 25.05.2016 issued by Kesoram Industries Ltd.	Exbt.-B

In the written argument submitted on behalf of the workman Rameswar Singh, it is contended that the contractor M/s. Balaji Transport in the written statement merely denied the contentions of the workman as described in the written statement of the workman. It is contended that the workman used to work as a ‘loader driver’ under the principal employer through the contractor M/s. Balaji Transport and he had worked for more than 20 years continuously prior to refusal of his employment w.e.f. 30.01.2012 by the principal employer. It is contended that both the employers did not comply the provision of Section 25F of the Industrial Disputes Act, 1947 prior to termination of the workman from his job by way of refusal of employment on and from 30.01.2012. It is contended that there was master and servant relationship between the principal employer and the contractor. It is mentioned that workman’s last drawn salary was Rs.10,000/- per month and after termination of the workman from his job under the guise of refusal of employment, the workman is still unemployed and thus there is no other alternative but to reinstate him in his job with full back wages w.e.f. 31.01.2012 and compensation.

In the written argument Ld. Advocate for the workman has contended that the workman conceded that the Hon’ble High Court, Calcutta by order dated 07.12.2023 passed in connection with WPA 11569 of 2021 had been pleased to exclude the principal employer M/s. Kesoram Rayon from the order of ‘Corrigendum’ dated 24.02.2021, by which the appropriate Government included the name of the principal employer i.e. M/s. Kesoram Rayon in the original Referral Order No.Labr./397/(LC-IR)/IR/4L-01/18 dated 06.06.2018. It is argued that while M/s. Kesoram Rayon was one of the parties to this case, and took part in the evidence of this case and cross-examined the PW-1 Rameswar Singh but due to the effect of order dated 07.12.2023 passed by the Hon’ble High Court, Calcutta in connection with WPA 11569 of 2021 M/s. Kesoram Rayon was excluded from this instant case, and as a result, no witness was examined in this case on behalf of M/s. Kesoram Rayon and thus consequently the workman had got no occasion to cross-examine the witness(es) of M/s. Kesoram Rayon. Thus, it has been prayed for expunging the portion of cross-examination of PW-1, which was done on behalf of M/s. Kesoram Rayon (principal employer).

On perusal of the record it appears to me that Ld. Advocate for the workman has rightly pointed out and prayed for expunging the part of cross-examination of PW-1 which was conducted on behalf of M/s. Kesoram Rayon (principal employer). **So, the portion of cross-examination of PW-1 conducted on behalf of M/s. Kesoram Rayon is thus expunged.**

It is contended that examination-in-chief on affidavit of one witness namely Deojee Patel was filed on behalf of the contractor i.e. M/s. Balaji Transport and the said witness was examined-in-chief before this Tribunal on dock but the workman did not get opportunity to cross-examine him in full in this case as the said witness (OPW-1) literally disappeared rather than face cross-examination and his appearance before this Tribunal could not be procured inspite of granting a series of adjournments sought with the hope that the appearance of the said witness would be procured before this Tribunal for completion of his cross-examination. It is contended that M/s. Balaji Transport was engaged by the principal employer in terms of the Contract Labour (Regulation & Abolition) Act, 1970 but the principal employer did not submit 'Registration Certificate' as per Section 7 of the said Act and the contractor also did not submit 'Licence' as per Section 12 of the said Act although those two provisions are mandatory under the said Act. It is contended that the contractor as per instruction of the principal employer, terminated the service of the workman without holding any domestic enquiry and without giving any opportunity for his self-defence. The workman has prayed for passing order for his reinstatement with full back wages for the period of forced unemployment and suitable compensation against the contractor M/s. Balaji Transport.

The contractor M/s. Balaji Transport in its written argument has contended that it had no business and/or job and/or contract with principal employer i.e. M/s. Kesoram Rayon and the workman was neither deployed nor connected with any of the work of M/s. Balaji Transport and thus there was no question of providing the benefits of ESI and Provident Fund to the workman by M/s. Balaji Transport and therefore there was no question of refusal of employment to the workman by M/s. Balaji Transport. It is contended that if for argument sake it is believed that a contractual labour is deployed by the contractor under the principal employer, it is supposed that such workman would not be given permission to occupy and enjoy quarters owned by the principal employer with all facilities. It is contended that the contractor M/s. Balaji Transport has denied the version of the workman that his employment was refused on and from 30.01.2012 on the ground that the said workman was never given employment by M/s. Balaji Transport and consequently there was no question of starting disciplinary proceeding as well as opportunity of being heard and also for granting retrenchment compensation to the workman. It is contended that M/s. Balaji Transport had no occasion to acquire knowledge whether the principal employer stopped allowing gate pass to the workman for entering into the factory premises. It is contended that according to the established principle a Company cannot engage workman from a labour contractor, who has no labour licence and the fact remains that M/s. Balaji Transport never had any contract with the principal employer to supply labour, so the question of giving employment and refusal of employment by M/s. Balaji Transport does not arise at all. It is pointed out that the workman being PW-1 has deposed that M/s. Balaji Transport never issued any appointment letter in his favour. The fact remains that nothing was exhibited as an appointment letter issued by M/s. Balaji Transport on the part of the workman. It is pointed out that the workman (PW-1) has admitted in his evidence that although he used to stay in the quarters No.SL-10, Raghunathpur, P.S. Mogra, which was allotted in the name of Nandikishore Pasi, an employee of Kesoram Rayon and that being so, the allegation of the workman that M/s. Balaji Transport forcibly procured the key of the quarters from the possession of the workman and returned the same to the principal employer becomes meritless. It is contended that the workman never worked under the control, direction and / or supervision of M/s. Balaji Transport and further no employer-employee relationship was subsisted between M/s. Balaji Transport and the workman and thus the reference becomes meritless.

Evidence on Record

The workman being PW-1 filed his examination-in-chief on affidavit before this Tribunal. On perusal of the examination-in-chief on affidavit of the PW-1 it is found that the workman being PW-1 has reproduced his version, as contained in his written statement, in the examination-in-chief on affidavit.

During cross-examination he has admitted that although he was an employee of M/s. Balaji Transport, M/s. Balaji Transport never issued any appointment letter to him and he has no document to show that he was working under M/s. Balaji Transport. He has admitted that although he used to reside in quarters No.SL-10, Raghunathpur, P.S. Mogra, the said quarters was allotted in the name of Nandikishore Pasi, an employee of Kesoram Rayon. He has admitted that the said Nandikishore Pasi allowed him to stay in his quarters. He has admitted that he does not know the Hindi term of 'principal employer' as written in para. 4 of his examination-in-chief on affidavit. He has admitted that he never submitted any application to his employer M/s. Balaji Transport requesting them for admitting him as a member of EPF and ESI Corporation. He has admitted that neither M/s. Balaji Transport nor M/s. Kesoram Rayon ever issued any termination letter to him informing about his termination from the job. He has stated that the Company did not allow him to join in his duty as well as he was not allowed to enter into the factory premises and thus he raised the industrial dispute. He has admitted that M/s. Balaji Transport never issued any appointment letter in his favour and he was working in the factory of M/s. Kesoram Rayon. He has divulged that M/s. Kesoram Rayon issued gate pass (Exbt.-1) in his favour. He has admitted that he has no knowledge whether M/s. Balaji Transport had any Contractor Labour Licence or not as well as M/s. Balaji Transport never terminated him from his job under their concern. He has admitted that he had no enmity with the authority of M/s. Balaji Transport as well as the authority of M/s. Balaji Transport never threatened him. He has divulged that although he was appointed by M/s. Balaji Transport but M/s. Balaji Transport never provided him with any residential quarters. He has admitted that M/s. Kesoram Rayon also never provided him with any residential quarters. He has admitted that he has no document to establish that he used to get Rs.10,000/- per month as salary from M/s. Balaji Transport. He has admitted his lack of knowledge about any agreement between M/s. Balaji Transport and M/s. Kesoram Rayon regarding supply of contract labour.

Deojee Patel, one of the partners of M/s. Balaji Transport filed his examination-in-chief on affidavit as OPW-1. On perusal of the examination-in-chief on affidavit of OPW-1, it appears that the contents of written statement submitted on behalf of M/s. Balaji Transport has been reproduced in the examination-in-chief on affidavit. OPW-1 in his examination-in-chief before this Tribunal produced and proved two documents and those two documents were marked as Exbt.-A and Exbt.-B. The cross-examination of OPW-1 Deojee Patel was started on 17.08.2023 after completion of his examination-in-chief before the Tribunal in continuation of his examination-in-chief on affidavit. During such cross-examination he stated that Rameswar Singh was an employee of M/s. Kesoram Rayon and also divulged that he knew the workman Rameswar Singh.

The cross-examination of OPW-1 Deojee Patel was deferred on 17.08.2023 and thereafter inspite of more than sufficient chances, the said OPW-1 did not turn up before this Tribunal to face cross-examination. It is needless to mention here that Ld. Advocate for M/s. Balaji Transport could not succeed in bringing the OPW-1 before this Tribunal for completion of his cross-examination although the fact remains that OPW-1 Deojee Patel is one of the partners of M/s. Balaji Transport. In view of such negligence on the

part of OPW-1 Deojee Patel to appear before this Tribunal for completion of his cross-examination, this Tribunal by order dated 10.12.2024 was compelled to close the evidence of OPW-1 and further on that date this Tribunal also closed the evidence of this case as there was no prayer on the part of M/s. Balaji Transport for adducing other witness.

Decisions with reasons

Issue Nos. : 1 & 2

For the brevity and for the sake of convenience both the issues are taken together for discussion.

The workman by his written statement represented himself to be an employee of M/s. Kesoram Rayon; however, upon further disclosure, he stated that his engagement under M/s. Kesoram Rayon was in fact through his contractor, M/s. Balaji Transport. He in his written statement described M/s. Kesoram Rayon as 'principal employer' and mentioned that he was working as a 'Loader Driver' under his principal employer and at the same time he has admitted that he started job under his principal employer through his contractor M/s. Balaji Transport and had worked as 'Loader Driver' for 20 years continuously. The workman by his written statement has specifically mentioned that his job was controlled and supervised by the principal employer directly whereas his 'contractor' used to act as a puppet of the principal employer. The contractor i.e. M/s. Balaji Transport by his written statement has sharply denied about existence of any kind of business, and/or job, and/or contract with principal employer M/s. Kesoram Rayon. Further, M/s. Balaji Transport has sharply denied about existence of master and servant relationship between the workman and it and therefore, it raised the point of non-maintainability of the 'reference'. Such denials on the part of M/s. Balaji Transport speaks a lot against the claim of the workman that he started job as a 'Loader Driver' under principal employer M/s. Kesoram Rayon through his contractor M/s. Balaji Transport. M/s. Balaji Transport by his written statement in so many words has mentioned that the workman never worked under M/s. Balaji Transport and thus it had no duty towards ESI and Provident Fund of the alleged workman Rameswar Singh. Further, M/s. Balaji Transport in its written statement has raised a question about the trustworthiness of the claim of the workman that his 'contractor' forcibly tried to take back the key of his quarters from his possession with the contention that it is not supposed that any principal employer would give permission to a contractual labour to enjoy and occupy the quarters owned by it with all facilities. It appears to me that it is evident from the written statement of M/s. Balaji Transport that it has sharply denied all the claims and contentions of the workman as presented before this Tribunal by way of written statement.

It is surfaced from the written statement of the workman that he was supplied to M/s. Kesoram Rayon for 'job' by the contractor M/s. Balaji Transport, who procured him as contract labourer but it is evident from the written statement of M/s. Balaji Transport that it has denied the claim and version of the workman Rameswar Singh.

At this juncture, it is to mention here that the Hon'ble High Court, Calcutta by order dated 07.12.2023 passed in connection with WPA 11569 of 2021 has been pleased to exclude M/s. Kesoram Rayon from the instant 'Reference' and also has been pleased to direct that the 'Reference' shall proceed with only M/s. Balaji Transport as an 'employer'.

In my considered opinion, such exclusion of M/s. Kesoram Rayon (which was 'claimed' by the workman as his Principal Employer) from the instant 'Reference' by the solemn order of the Hon'ble High Court, Calcutta makes the 'claim' futile and consequently he has been estopped from claiming M/s. Kesoram Rayon as his 'principal employer'. At the same time, by the effect of the said solemn order of the Hon'ble High Court, Calcutta, as mentioned above, rendered the claim of the workman Rameswar Singh that he was working as Loader Driver under M/s. Kesoram Rayon for last 20 years continuously as, worthless.

Undoubtedly the matter of exclusion of M/s. Kesoram Rayon from the Reference is a subsequent development in this case and it is supposed that the workman Rameswar Singh naturally had no intuition or anticipation that M/s. Kesoram Rayon would get relief from the instant 'Reference' by the order of the Hon'ble High Court, Calcutta. It is relevant to mention here that the appropriate Government i.e. the Labour Department of the Government of West Bengal issued a corrigendum order in respect of the original 'Reference' of the industrial dispute and inserted M/s. Kesoram Rayon as the 'principal employer' in the said 'Reference'. The said corrigendum was issued under the request of the Ld. Advocate of the workman.

Considering the entire 'scenario' as emerged from the written statements filed in this case, particularly from the written statement of the workman, it can be reasonably supposed that the workman was eager / enthusiastic to implead / entangle M/s. Kesoram Rayon in the instant 'Reference' with the hope of fulfilling his greater interest and/or to protect his interest as he had clear knowledge that M/s. Kesoram Rayon is an established company having large business.

Thus, with the effect of the solemn order, as mentioned above, of the Hon'ble High Court, Calcutta, the instant Reference has become confined between the workman Rameswar Singh and his contractor M/s. Balaji Transport.

The workman Rameswar Singh has pleaded that M/s. Balaji Transport was his contractor and he got job under M/s. Kesoram Rayon through his 'contractor'. The workman being PW-1 has reiterated his statements, as contained in the written statement, in his examination-in-chief on affidavit. During his evidence, he produced and proved a photocopy of 'Gate Pass' issued by M/s. Kesoram Rayon and the said document was marked as Exbt.-1. While the said document was admitted in evidence, no objection was raised on the part of M/s. Balaji Transport. The Exbt.-1 shows that Rameswar Singh was allowed to go inside the factory / colony as 'Loader Driver – M/s. Balaji Transporter'. The Exbt.-1, which is an undisputed document, helps to become doubtless that Rameswar Singh was originally a person of M/s. Balaji Transporter and for that reason he became qualified to get the 'Gate Pass' to enter inside the factory / colony of M/s. Kesoram Rayon – Tribeni as a 'Loader Driver'.

The PW-1 Rameswar Singh was thoroughly cross-examined on behalf of M/s. Balaji Transport. It is noticed that the PW-1 during his cross-examination has divulged that he was an employee under M/s. Balaji Transport. Such statement of PW-1 is required to be considered with due importance because such statement was extracted from the PW-1 by M/s. Balaji Transport while cross-examining him. The fact remains that the PW-1 during his cross-examination, being asked by the Ld. Advocate for M/s. Balaji Transport, has repeatedly divulged that M/s. Balaji Transport never issued any appointment letter in his favour. In spite of such clear disclosure from the PW-1, in course of cross-examination being questioned by the Ld. Advocate for M/s. Balaji Transport, the PW-1 has clearly divulged that he was appointed by M/s. Balaji Transport. Apart from

that during cross-examination the PW-1 has divulged that M/s. Balaji Transport **never terminated** him from his job under their concern. It is fact that all such statements have been extracted from PW-1 by M/s. Balaji Transport by way of cross-examining him. The PW-1 in course of his cross-examination admitted that he has no document to establish that he used to get Rs.10,000/- as salary from M/s. Balaji Transport.

The case of the workman Rameswar Singh, as it is mentioned in his written statement and subsequently corroborated such statements in his examination-in-chief on affidavit, is that he started to work as 'Loader Driver' under M/s. Kesoram Rayon, principal employer, being supplied by his 'contractor' M/s. Balaji Transport. The workman has also pleaded that while he was working under the principal employer M/s. Kesoram Rayon, he approached repeatedly both his contractor and principal employer to bring him under the coverage and benefit of ESI and P.F. respectively. He has also pleaded that his contractor forcibly tried to take back the key of the Quarters, where he had been living and which originally belonged to the principal employer M/s. Kesoram Rayon, after he was denied from joining his service on 31.01.2012. Moreover, admittedly the workman raised formal industrial dispute against both the contractor and the principal employer. At the cost of repetition it is to note here that the workman being PW-1 has reiterated all his statements, as contained in the written statement, in his examination-in-chief on affidavit. Thus, it can be spelt out from the above discussion that the workman Rameswar Singh was originally a 'Loader Driver' (workman) under M/s. Balaji Transport and he was engaged by M/s. Balaji Transport for work with M/s. Kesoram Rayon and he was constantly connected with M/s. Balaji Transport as its employee. This opinion assumes the character of irresistible conclusion in view of the fact that the Hon'ble High Court, Calcutta has been pleased to exonerate the so called principal employer M/s. Kesoram Rayon from any kind of liability in the instant reference.

It is found from the evidence of PW-1 that M/s. Balaji Transport while cross-examining the PW-1, extracted some statements from the PW-1 which are obviously not favourable to it, rather those statements are evidently adverse to its case and interest. M/s. Balaji Transport by filing written statement has flatly denied the claim of the workman that it was his 'contractor' and he got the job as 'Loader Driver' under M/s. Kesoram Rayon through his contractor M/s. Balaji Transport. Apart from that, M/s. Balaji Transport has denied all the material allegations levelled against it as well as tried to thwart every claim pushed against M/s. Kesoram Rayon and also tried to establish that claims of the workman were unjustifiable. Although M/s. Balaji Transport denied all the claims and allegations of the workman in its written statement, but unfortunately M/s. Balaji Transport has failed to refute / discard the statements of the workman which he made in his cross-examination as well as in his examination-in-chief on affidavit. It is found that M/s. Balaji Transport has become unsuccessful in assailing the evidence of the workman (PW-1) by which he has lent support to his case. Moreover, it is found that M/s. Balaji Transport in course of cross-examination of PW-1 has extracted some statements from PW-1 which are obviously against the case of M/s. Balaji Transport.

It is found that Deojee Patel, one of the partners of M/s. Balaji Transport appeared before this Tribunal to depose for M/s. Balaji Transport and he filed his examination-in-chief on affidavit but he evaded facing cross-examination by the workman Rameswar Singh. The witness of M/s. Balaji Transport had opportunity to controvert the claims of the workman, as he put forward by his written statement and his evidence before this Tribunal, and to support the case of M/s. Balaji Transport by completing his evidence. The fact remains that since the OPW-1 Deojee Patel evaded facing cross-examination, the workman certainly got deprived of his right to cross-examine the OPW-1 for the

purpose of assailing him and to make his (OPW-1) statements unbelievable in the eye of this Tribunal and also to demolish the case of M/s. Balaji Transport. Apart from that, M/s. Balaji Transport did not adduce any other witness with a view to garnering support of the case of M/s. Balaji Transport as well as to controvert the statements of the PW-1 (workman) which he divulged in his evidence, particularly during his cross-examination and also those statements of PW-1 which have palpably caused dent to the case of M/s. Balaji Transport. It is to mention here that since the workman has got no opportunity to cross-examine the OPW-1 just for the fault / negligence of OPW-1, the statements of OPW-1, as contained in his examination-in-chief on affidavit, becomes unworthy in the context of evidential value.

This case has been started on the basis of industrial dispute raised by the workman Rameswar Singh against his employer M/s. Balaji Transport and he attributed himself as a workman working in the capacity of 'Loader Driver'. The workman in his written statement has specifically mentioned that his last drawn salary was Rs.10,000/- per month. The workman deposed in this case as PW-1 in support of his case. The PW-1 in his examination-in-chief on affidavit has reiterated that his last drawn salary was Rs.10,000/-. So, the PW-1 in his evidence has corroborated his earlier version regarding his last drawn salary / wages. During cross-examination PW-1 has admitted that he has no document to establish that he used to get Rs.10,000/- as salary from M/s. Balaji Transport. The fact remains that no suggestion was given to PW-1 denying his statement that he used to get Rs.10,000/- as salary and his last drawn salary was Rs.10,000/-. Moreover, it is to mention here that no suggestion was given by M/s. Balaji Transport to the PW-1 during his cross-examination denying his claim that he was a workman in the category of 'Loader Driver' under M/s. Balaji Transport. Moreover, it is found that no evidence has come from M/s. Balaji Transport controverting the claim of the workman (PW-1) that he used to get Rs.10,000/- as salary and his last drawn salary was Rs.10,000/-.

After churning out the version of the workman, as contained in his written statement and duly corroborated by him by his evidence, and the evidence on record (only the evidence of PW-1 because the evidence of OPW-1 has failed to be qualified for consideration for the purpose of adjudication of this case as the OPW-1 evaded his cross-examination by the workman) it is surfaced that the workman Rameswar Singh claimed himself as the 'Loader Driver' under M/s. Balaji Transport and as per his version he was engaged for work as Loader Driver to another 'concern' by his labour contractor M/s. Balaji Transport. The workman has adduced evidence, both oral and documentary with a view to prove his claim in the present adjudication of the industrial dispute. From the above discussion it is found that the workman Rameswar Singh has succeeded in establishing his claim by adducing cogent, convincing and trustworthy evidence, whereas M/s. Balaji Transport has neglectfully dealt with its case in the present adjudication of the industrial dispute. It has been observed that M/s. Balaji Transport has not been able to disprove the case of the workman in this adjudication of the industrial dispute.

In view of the above observation, I am of the opinion that there is no need of further discussion to hold that the Issue No.1 is decided in negative. So, in view of the decision of the Issue No.1 it is clarified that refusal of employment of Rameswar Singh by the Management of M/s. Balaji Transport took place w.e.f. 31.01.2012 and certainly such refusal of employment was not justified.

So, the Issue No.1 is decided in negative but in favour of the workman.

In view of the decision of Issue No.1 the natural consequence is that the workman Rameswar Singh is entitled to get back his job under M/s. Balaji Transport i.e. he is entitled to be reinstated in service by his employer and as it has been held that the action i.e. termination of service by way of refusal of employment w.e.f. 31.01.2012 taken against the workman Rameswar Singh by the Management of M/s. Balaji Transport is unjustified, the workman is entitled to get his back wages from the date the Management of M/s. Balaji Transport stopped payment of his wages and benefits till the date of his reinstatement in service by the Management of M/s. Balaji Transport. Thus, the Issue No.2 is decided accordingly in favour of the workman.

Hence,

it is,

Ordered

that the Order of Reference is adjudicated by way of making decision on the Issue No.1 and the Issue No.2 in favour of the workman Sri Rameswar Singh. In view of the decision made in the present adjudication, M/s. Balaji Transport is directed to reinstate the workman Sri Rameswar Singh to his original post of 'Loader Driver' with full back wages from the date the Management of the Company stopped payment of his wages and benefits till the date of his reinstatement in the service. Further, M/s. Balaji Transport is directed to provide other consequential benefits in accordance with law within 60 (sixty) days from the date of publication of this Award.

This is the Award of this Industrial Tribunal in this case.

In view of letter No.Labr./944(3)/(LC-IR)/22016/7/2024 dated 13.09.2024 of the Assistant Secretary, Labour Department, I.R. Branch, Government of West Bengal, New Secretariat Buildings, 12th Floor, the PDF copy of the Award be sent to the Labour Department, Government of West Bengal through e-mail ID(wblabourcourt@gmail.com) for information.

Dictated and corrected

sd/-
Judge

sd/-

(Mihir Kumar Mondal)
Judge
Third Industrial Tribunal
Kolkata
07.11.2025