

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

No. Labr/ 1364 / (LC-IR)/ 22015(15)/2/2025

Date : 28-11-2025


ORDER

WHEREAS an industrial dispute existed between M/s. Lagan Engineering Company (P) Ltd., (Erstwhile The Lagan Jute Machinery Company Limited) 14, Dr. Mohd. Ishaque Road (Kyd Street), Kolkata-700016 and its workman Mr. Aparajit Chakraborty, Village-Adisaptagram, P.O. + P.S.-Mogra, District-Hooghly, Pin-712148, regarding the issues, being a matter specified in the second schedule of the Industrial Dispute Act' 1947 (14 of 1947);

AND WHEREAS the 3rd Industrial Tribunal, Kolkata has submitted to the State Government its Award dated 25.11.2025 in Case No. 04/2021 on the said Industrial Dispute Vide e-mail dated 25.11.2025 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/ 1364 /1(5)/(LC-IR)/ 22015(15)/2/2025

Date : 28-11-2025

Copy forwarded for information and necessary action to :-

1. M/s. Lagan Engineering Company (P) Ltd., (Erstwhile The Lagan Jute Machinery Company Limited) 14, Dr. Mohd. Ishaque Road (Kyd Street), Kolkata-700016.
2. Mr. Aparajit Chakraborty, Village-Adisaptagram, P.O. + P.S.-Mogra, District-Hooghly, Pin-712148.
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/ 1364 /2(3)/(LC-IR)/ 22015(15)/2/2025

Date : 28-11-2025

Copy forwarded for information to :-

1. The Judge, 3rd Industrial Tribunal, N. S. Building, 1, K.S. Roy Road, Kolkata – 700001 with reference to e-mail dated 25.11.2025.
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,
New Secretariat Buildings, Kolkata

Case No. 04/2021 u/s. 10(1B)(d)

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

Mr. Aparajit Chakraborty Applicant
Residing at Village-Adisaptagram,
P.O. + P.S.-Mogra, District-Hooghly, PIN-712148.

-Vs.-

M/s. Lagan Engineering Company (P) Ltd.,OP/Company
(Erstwhile The Lagan Jute Machinery Company Limited)
14, Dr. Mohd. Ishaque Road (Kyd Street), Kolkata-700016.

A W A R D

Dated : 25.11.2025

This is a case u/s. 10(1B)(d) of the Industrial Dispute Act, 1947. The instant case was received by this Tribunal on 12.03.2021. However, according to the Order No.1 dated 10.12.2021, the applicant Aparajit Chakraborty filed the application u/s. 10(1B)(d) of the Industrial Disputes Act, 1947 before this Tribunal on 12.03.2021. So, the case was registered on 10.12.2021 although the application u/s. 10(1B)(d) of the Industrial Disputes Act, 1947 was filed on 12.03.2021. The applicant/workman on 12.03.2021 filed an application under Section 10(1B)(d) of the Industrial Disputes Act, 1947 sans Form-S under Rule 12A(3) of the West Bengal Industrial Dispute Rules, 1958.

The instant case has been started on the basis of an application u/s. 10(1B)(d) of the Industrial Dispute Act, 1947 filed by one Aparajit Chakraborty, a resident of Village-Adisaptagram, P.O. & P.S. Mogra, District-Hooghly, West Bengal-712142 against M/s. Lagan Engineering Company (P) Ltd., (Erstwhile The Lagan Jute Machinery Company Limited), 14, Dr. Mohd. Ishaque Road (Kyd Street), Kolkata-700016 raising an industrial dispute. The applicant by filing written statement has stated that he was an employee (bearing Emp. No.4300) of M/s. Lagan Engineering Co. Pvt. Ltd. (Unit:Adisaptagram) and he continuously performed his duty as well as performed the work allotted to him since the date of his appointment on 02.04.2008. It has been stated that he had worked for more than 240 days in a year without any break of service. It has been stated that he received a Show-Cause Notice dated 22.01.2019 from the OP/Company, in which it was alleged that on 16.01.2019 at 9 a.m. he deliberately and intentionally provoked and instigated other general workmen in order to stop their work and thereby they resorted to wildcat strike in a well concerted manner. It has been stated that the workmen in course of wildcat strike created panicky situation, pandemonium and violence inside the factory and thus, the Management alleged that he by such acts violated several provisions of the Certified Standing Orders of the OP/Company. It has been mentioned that the OP/Company made allegations against him on four points, such as – (i) participation in an illegal strike, (ii) participation in strike or a sit down strike or refusal to work without serving fourteen days notice, (iii) commission of acts subversive of the discipline of the OP/Company and (iv) organizing, holding, attending or taking part in any meeting within the factory premises without prior sanction of the Manager. It has been mentioned that in the Show-Cause Notice it was directed to file reply within seven days from the date of receipt of

such Notice and he submitted the reply dated 24.01.2019 against the said Show-Cause Notice before the competent authority of the OP/Company denying all the allegations levelled against him alongwith the prayer to withdraw the Show-Cause Notice with immediate effect. It has been stated that although he submitted reply against the Show-Cause Notice and requested to withdraw the 'Notice', the OP/Company framed Charges against him ignoring such 'reply' and his 'request' alleging that – (i) he resorted to an illegal strike without Notice, (ii) he held meeting within the factory premises without obtaining permission of the competent authority and accordingly issued direction upon him to file reply within seven days of the receipt of the copy of 'Charge-Sheet'. It has been stated that on receiving the copy of the Charge-Sheet, he prepared the 'reply' against such Charge-Sheet but failed to submit such reply to the competent authority of the OP/Company because in the meantime the Management of the Company declared 'Temporary suspension of work' on 18.03.2019 and for that reason the gate of the factory premises remained closed. It has been stated that the OP/Company on 31.10.2019 sans conducting Domestic Enquiry by any independent Enquiry Officer, straightway dismissed him from his service illegally and with immediate effect. It has been mentioned that apart from dismissing him from his service, the Management of the Company illegally forfeited all his legitimate dues and claims. It has been claimed that his employer i.e. the OP/Company had no right to terminate him from his service without conducting any Domestic Enquiry as well as without holding any departmental proceedings. He has claimed in his application that the Management of the OP/Company created problems within the factory premises with a view to deprive its employees/workmen from their lawful financial demands. He has claimed in his application that his last drawn wages was Rs.8,856/- per month. He has mentioned that on 19.03.2020 he submitted application before the Deputy Labour Commissioner, Chandannagore, Government of West Bengal seeking redress against the unlawful steps taken by the Management of the Company along with the prayer for reinstatement in his service but ultimately he did not get any relief from such authority and thus, obtained appropriate certificate in Form-S bearing Memo. No.836/DLC under Rule 12A(3) of the West Bengal Industrial Dispute Rules, 1958.

He has prayed for passing an Award with the direction upon the OP/Company to withdraw the notice of illegal termination of service which was served upon him and to reinstate him in his original post as well as for granting full back wages.

The OP/Company i.e. M/s. Lagan Engineering Co. Pvt. Ltd. has contested this case by filing Written Statement. The OP/Company by its Written Statement has denied all the material allegations levelled against it by the applicant/workman. It is seen that the OP/Company has apportioned its Written Statement in two parts i.e. Part-I and Part-II. In Part-I of the Written Statement, the OP/Company has claimed that the application filed by the concerned workman is not maintainable and it has been mentioned that from the office records it was revealed that the applicant Aparajit Chakraborty was an employee of M/s. Lagan Engg. Co. Pvt. Ltd. and he along with other workers provoked and participated in illegal strike without any notice and thus committed activities violating the provisions of Certified Standing Orders of the Company. It has been stated that the 'Company' dismissed Aparajit Chakraborty from his service by issuing dismissal letter dated 03.10.2019. It has been claimed that in view of the submission of the OP/Company in its letter dated 18.02.2020 addressed to the Deputy Labour Commissioner, Government of West Bengal, the 'application' of the workman is bad in law since the workman was dismissed from his service by M/s. Lagan Engg. Co. Pvt. Ltd. on the 'Charge' that he resorted to an illegal strike without notice and also held meeting within the factory premises sans obtaining permission from the competent authority. It has been clarified in the Written Statement that the concerned workman Aparajit Chakraborty had

[04/2021/10(1B)(d)]

his duty in 'G' shift and at around 9:00 a.m. he deliberately/intentionally provoked/instigated other workmen to stop their work and to resort to wildcat strike and thereafter in a well concerted manner, created panic and violent situation inside the factory premises for which the said workman was dismissed from his job. It has been stated that the OP/Company on 22.01.2019 issued Show-Cause Notice against the workman Aparajit Chakraborty explaining the act of misconduct that he allegedly committed in course of working hours violating the provisions of Certified Standing Orders of the Company. Specific acts of misconduct and unlawful acts had been mentioned in the Show-Cause Notice. It has been stated that the OP/Company directed the said employee Aparajit Chakraborty by Show-Cause Notice dated 22.01.2019 to submit his reply and he submitted reply but such reply was found neither satisfactory nor reliable. Apart from that, the workman further threatened the Management to organize a big demonstration roping in many workmen. It has been stated that the OP/Company on 28.01.2019 issued Charge-Sheet against the workman alleging that – (i) he resorted to an illegal strike without Notice, (ii) he held meeting within the factory premises without obtaining permission of the competent authority and accordingly issued direction upon him to file reply within seven days of the receipt of the copy of 'Charge-Sheet' but the workman did not submit any 'reply' inspite of issuance of reminder letter. Thus, the OP/Company issued dismissal order against the workman on 03.10.2019 and consequently the OP/Company forfeited his dues to compensate the losses of the Company which it incurred due to the act of misconduct committed by the workman.

In Part-II of the Written Statement, the OP/Company has put forward its paragraph-wise denials in respect of various allegations and claims made by the workman in his application u/s. 10(1B)(d) of the Industrial Disputes Act, 1947.

It is found that by filing Written Statement the OP/Company has prayed for dismissal of this case on the ground that the concerned workman is not entitled to get any relief as prayed for.

After submission of Written Statements and List of Documents by the parties to this case, exchange of documents took place. Thereafter, the matter was fixed for framing of issues.

On the basis of pleadings of the parties, the following issues were framed in this case by the then Learned Presiding Officer of this Tribunal on 01.06.2022 :

ISSUES

1. *Whether the application under Section 10(1B)(d) of the I. D. Act, 1947 is maintainable ?*
2. *Is the termination of service of the applicant by the Company w.e.f. 3rd October, 2019 justified ?*
3. *What relief, if any, the applicant is entitled to ?*

After framing of the issues, the evidence of this case was started.

During evidence stage, applicant/workman Sri Aparajit Chakraborty examined himself as PW-1.

The OP/Company has adduced one witness namely Manas Kumar Banerjee as OPW-1.

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

[04/2021/10(1B)(d)]

The applicant Sri Aparajit Chakraborty has identified and proved the following documents in course of his examination as witness:-

1. Exbt.-1 series : photocopy of pay slips;
2. Exbt.-2 : photocopy of E-pehchan card;
3. Exbt.-3 : photocopy of show-cause letter dated 22.01.2019;
4. Exbt.-4 : photocopy of charge-sheet dated 28.01.2019;
5. Exbt.-5 : photocopy of dismissal letter dated 03.10.2019;
6. Exbt.-6 : photo copy of the representation dated 26.11.2019;
7. Exbt.-7: photocopy of letter dated 02.12.2019 to the Deputy Labour Commissioner;
8. Exbt.-8 : photocopy of letter dated 19.03.2020 to the conciliation officer;
9. Exbt.-9 : photocopy of letter dated 31.01.2019 to the D.L.C.;
10. Exbt.-12 : Photocopy of Form-S.

In course of examination of witness on behalf of the OP/Company, the following documents were identified and proved. The exhibited documents are as follows:-

1. Exbt.-A: Authorization letter of Manas Kr. Banerjee;
2. Exbt.-B: photocopy of Standing Orders of the Company;
3. Exbt.-C: photocopy of Show-Cause Notice dated 22.01.2019;
4. Exbt.-D : photocopy of Charge-Sheet dated 28.01.2019;
5. Exbt.-E: photocopy of reminder dated 11.02.2019 for reply on charge-sheet;
6. Exbt.-F: photocopy of letter of dismissal dated 03.10.2019 issued by the Personnel Manager of the Company;
7. Exbt.-G: photocopy of letter dated 18.02.2020 to the Deputy Labour Commissioner, Chandannagore, Hooghly written by Manas Banerjee, Personnel Manager of the Company.

After closing the evidence of this case Ld. Advocates of the parties to this case prayed for fixing a date for filing written notes of argument on behalf of the parties to this case. Accordingly, date was fixed for filing written notes of argument by the parties to this case. Ld. Advocates of the parties to this case filed their respective written notes of argument.

Evidence on Record

PW-1 Aparajit Chakraborty in his examination-in-chief on affidavit has practically reproduced his statements as contained in the Written Statement submitted in this case. The PW-1 during his examination-in-chief before the Tribunal on dock proved the documents which he filed along with list of documents.

During cross-examination, he has divulged that he joined in the service of the company in the year 2008 and his last drawn salary was about Rs.8,300/- per month. *[The applicant in the application u/s. 10(1B)(d) mentioned that his last drawn wages was Rs.8,856/- per month. The PW-1 proved some documents during his evidence. According to Exbt.-5 dismissal letter was issued on 03.10.2019. Exbt.-1 (series) are some pay slips of some months of the year 2018. No pay slip for the month of September, 2019 in respect*

of the workman Aparjit Chakraborty has been exhibited. If pay slip for the month of September, 2019 was filed, it might reflect the last drawn wages of Aparajit Chakraborty prior to his dismissal w.e.f. 03.10.2019.] He has admitted that he has no document to show that he was appointed by the company on 02.04.2008 but some pay slips, which have been filed by him, go to show that 'Employee No.4300' was allotted to him. The PW-1 by his voluntary disclosure has made it clear that in the year 2008 he was engaged for work in the 'company' by the then management of the contractor B.S. Basuri as the said contractor was running the company but in the month of October, 2012 Lagan Engineering Co. Ltd. absorbed him as a workman under their pay roll. He has divulged that from Exbt.-1 (series) i.e. some pay slips issued in his name by the OP/Company go to show that he had worked for 240 days in a year uninterruptedly just preceding to his termination from job by the OP/Company. He has admitted that it is not possible for him to show from Exbt.-1 (series) i.e. from some pay slips which he has filed that he had worked for 240 days in a calendar year uninterruptedly just preceding to his termination. He has admitted that he has no idea about several provisions of the 'Certified Standing Orders' which he has mentioned in his examination-in-chief. He has admitted that in this case he has not filed his 'Reply' dated 24.01.2019 (*supposedly*) submitted by him to the show-cause notice dated 22.01.2019. He has admitted that the OP/Company issued a charge-sheet against him and seven days time was given to him for submission of his reply in writing but he cannot recollect whether he submitted written submission / reply against such charge-sheet or not. *[In the para. No.8 of the application u/s. 10(1B)(d) of the Industrial Disputes Act, 1947, the applicant Aparajit Chakraborty mentioned that he failed to submit his reply against charge-sheet because the OP/Company declared temporary suspension of work on 18.03.2019 and for that reason office of the concerned officer remained closed.]* He has admitted that he has no idea about the provision of Section 25F of the Industrial Disputes Act, 1947. He has divulged that with a view to establishing that his last drawn salary was Rs.8856/- per month, he has filed pay slip for the month of September, 2018. He has divulged that presently he is not working under any concern and his livelihood is going on the basis of donation of others. He has divulged that he was a permanent worker of the OP/Company and with a view to establishing that he was a permanent worker of the OP/Company, he has filed his pay slips and ESI card. He has denied the suggestion of the OP/Company that he did not work for 240 days in every calendar year just preceding to his termination. He has denied the suggestion of the OP/Company that he was engaged as a 'badli' worker under the OP/Company.

OPW-1 Manas Kr. Banerjee brought an authorization issued by the competent authority of Lagan Engineering Co. Ltd. to establish his competence to depose on behalf of the OP/Company. The OPW-1 in his examination-in-chief on affidavit has stated that the alleged workman was working in Grade-C, semi-skilled category and the said workman never worked continuously for 240 days during his working period as the applicant/workman had worked only occasionally under the OP/Company. He has stated that the applicant along with other workmen, provoked and participated in an illegal strike without any notice and acted against the provisions of the Certified Standing Orders of the company. It is seen from the examination-in-chief on affidavit of OPW-1 that the statement of facts contained in the company's written statement has been reproduced therein. The OPW-1 in course of preparation of his examination-in-chief on affidavit proved the documents filed by the OP/Company along with list of documents and those documents have been marked as exhibited documents.

During cross-examination he has admitted that there is no signature of any 'authority' as a measure of certifying the 'Standing Orders' of the OP/Company as well as 'date of effect' of the Standing Orders (Exbt.-B) of the OP/Company is not mentioned

in the same. He has admitted that it is not specifically mentioned either in the written statement or in his examination-in-chief on affidavit in which year the workman Aparajit Chakraborty worked for how many days. He has divulged that Aparajit Chakraborty is a permanent workman under the OP/Company. He has admitted that he has not filed any document in support of his statement that the workman never worked continuously for 240 days during his (workman) working period. He has admitted that he has not mentioned the name of 'other workman' along with whom he (workman) participated in illegal strike. He has admitted that he has not mentioned the names of the workmen who were provoked by the applicant and 'other workman'. He has admitted that there was no CCTV coverage in the factory premises. He has admitted that although he has mentioned in the para. No.4 of his examination-in-chief on affidavit that *'the applicant worked rarely when the occasion arose and he never worked continuously for 240 days during the working period'* but there is no such statement in the written statement of the OP/Company filed in this case. He has admitted that the Exbt.-B i.e. Certified Standing Orders is in respect of "The Lagan Jute Machinery Company Ltd.". He has denied the suggestion of the workman that Lagan Engineering Co. Ltd. and "The Lagan Jute Machinery Company Ltd." are not same and identical company. He has admitted that there is no averment either in the Written Statement of the company or in his examination-in-chief on affidavit to the effect that The Lagan Engineering Co. Ltd. and "The Lagan Jute Machinery Company Ltd." are the same and identical company. He has divulged that the OP/Company has not filed any document to show that the workman never worked continuously for 240 days during his working period. He has admitted that he has not filed any document to substantiate his statement that on 16.01.2019 the workmen working in G-shift at about 9 a.m. resorted to wildcat strike in a concerted manner. He has denied the suggestion of the workman that according to the Standing Orders of the OP/Company, prior to dismissal of a workman, holding of domestic enquiry by the OP/Company is mandatory. He has admitted that Exbt.-B is a document with caption 'Standing Orders'. He has denied the suggestion of the workman that his dismissal from the service of the company was not proper and appropriate.

Decision with reasons

Issue No. 1 :

This case has been started on the basis of an application u/s. 10(1B)(d) of the Industrial Disputes Act, 1947 by the applicant/workman Aparajit Chakraborty. It is seen that at the time of filing of this case the applicant filed the application u/s. 10(1B)(d) of the Industrial Disputes Act, 1947 sans any certificate as required under sub-Section (1B) of Section 10 of the Industrial Disputes Act, 1947 (West Bengal Amendment). Although according to sub-Section (1B) of Section 10 of the Industrial Disputes Act, 1947 a *'certificate about the pendency of the conciliation proceedings'* duly issued by the concerned Conciliation Officer under clause (b) of sub-Section (1B) of Section 10 of the Industrial Disputes Act, 1947 (West Bengal Amendment) is required to enclose along with the application u/s. 10(1B)(d) of the Industrial Disputes Act, 1947 at the time of filing of the same, the applicant Aparajit Chakraborty did not file such 'certificate' in Form-S. It is found that such *'certificate about the pendency of the conciliation proceedings'* issued by the concerned Conciliation Officer in Form-S was filed along with list of documents. It is seen that the applicant Aparajit Chakraborty filed the application u/s. 10(1B)(d) of the Industrial Disputes Act, 1947 on 12.03.2021 but the case was registered on 10.12.2021. Form-S was marked as Exbt.-10. It is seen from Exbt.-10 that Form-S was issued on 26.06.2020 under Memo. No.436/DLC/CNR. It is also found that the application u/s. 10(1B)(d) of the Industrial Disputes Act, 1947 has been filed sans

[04/2021/10(1B)(d)]

Form-T. It is required to mention here that irregularity took place in filing the application u/s. 10(1B)(d) of the Industrial Disputes Act, 1947 because such application was filed sans Form-S and Form-T. The OP/Company in the written statement raised the issue of non-maintainability in law and on facts of the present proceeding on several grounds. It is found that the present application u/s. 10(1B)(d) of the Industrial Disputes Act, 1947 has not been filed complying the provision of clause (c) of sub-Section (1B) of Section 10 of the Industrial Disputes Act, 1947 (West Bengal Amendment). So, it is transpired that this case has been filed after the statutory period of sixty days from the date of receipt of the 'certificate' in Form-S since the said 'certificate' was issued on 26.06.2020 and the present application was filed on 12.03.2021.

The Hon'ble High Court, Calcutta in connection with W.P. 21862 (W) of 1999 and stated that the 'limitation' is not applicable in the case u/s. 10(1B)(d) of the Industrial Disputes Act, 1947. I have carefully gone through the judgment passed in connection with **W.P. 21862 (W) of 1999** by the Hon'ble High Court, Calcutta and found that there is no whisper whatsoever on the point of 'limitation' within the four-corners of the cited judgment.

The OP/Company has raised the issue of non-maintainability of this case u/s. 10(1B)(d) of the Industrial Disputes Act, 1947. It is found that apparently this case has been filed after the statutory period as provided in sub-section (1B), as amended by West Bengal Act 33 of 1989, clause (c) of the Industrial Disputes Act, 1947. In the matter of **W.P. No.19027 (W) of 2001**, the Hon'ble High Court, Calcutta has been pleased to observe – *"That there can be no doubt with regard to the matter being with the jurisdiction of the Labour Court. The jurisdiction is not ousted merely because the time frames prescribed under section 10(1B)(d) of the Act were not adhered to by the petitioner workman. The provision of section 10(1B)(d) of the Act are beneficial provision and thereby the procedure for such adjudication of an industrial dispute relating to an individual has been simplified. The benefit of the provision is for an individual in his private capacity and does not serve any public purpose, interest or policy non-compliance with the periods prescribed in the provision would only make it an irregularity and not an illegality."*

In view of such decision of the Hon'ble High Court, Calcutta, it can be safely said that due to filing of the Application u/s. 10(1B)(d) of the Industrial Disputes Act, 1947 without complying the statutory period of filing such an application before the Industrial Tribunal does not make such Application not maintainable. Apart from that, from the evidence on record as well as from the written notes of argument, it is surfaced that the OP/Company did not agitate over the matter of non-maintainability of this case.

In view of the facts and circumstances of this case and taking into consideration the evidence on record and also in view of the above discussion, I am of the opinion that no further discussion is required to make decision on Issue No.1 since no hesitation remains to hold that this case is maintainable in law and on facts.

So, the Issue No.1 is decided in affirmative in favour of the applicant/workman.

Issue No. 2 :

The applicant/workman in his application u/s. 10(1B)(d) of the Industrial Disputes Act, 1947 has specifically mentioned that the OP/Company name and style 'Lagan Engineering Company Private Limited' was erstwhile known as 'The Lagan Jute Machinery Company Limited'. The applicant/workman has noted the present and previous names of the 'opposite party / company' in the cause title of the application u/s. 10(1B)(d) of the Industrial Disputes Act, 1947.

The applicant/workman being PW-1 in his cross-examination has voluntarily divulged that in the year 2008 the activity and business of the OP/Company was running under the Management of contractor namely B.S. Basuri and he was engaged along with other workers as 'contractual workers' by the said contractor. He has also divulged during his cross-examination that no formal 'appointment letter' was issued in his favour prior to his joining in the service of the OP/Company. He has also divulged that in the month of October, 2012 Lagan Engineering Company Limited absorbed him as workman under their pay roll. From the trend of cross-examination of OPW-1, it is surfaced that the workman challenged the validity and legality of Certified Standing Orders of the OP/Company which has been exhibited as Exbt.-B. It is surfaced from the cross-examination of OPW-1 that the workman tried his best to make believable that the 'Certified Standing Orders' (Exbt.-B), which is claimed by the OP/Company as the Certified Standing Orders of Lagan Engineering Company Limited, is not in respect of the Lagan Engineering Company Limited but it is for The Lagan Jute Machinery Company Limited. Further it is surfaced from the trend of the cross-examination of the OPW-1 that the workman tried his best to make believable that Lagan Engineering Company Limited and The Lagan Jute Machinery Company Limited are two different companies and further the 'Certified Standing Orders' (Exbt.-B) is applicable for The Lagan Jute Machinery Company Limited, and not for Lagan Engineering Company Limited. In my considered opinion, in view of the 'cause title' of the application u/s. 10(1B)(d) of the Industrial Disputes Act, 1947 and the apparent admission of the applicant/workman that the present OP/Company – 'Lagan Engineering Company Limited' was previously known as The Lagan Jute Machinery Company Limited, the efforts of the applicant/workman through his Learned Advocate to establish that Lagan Engineering Company Limited and The Lagan Jute Machinery Company Limited are two separate companies, appears as infructuous and consequently the applicant/workman is estopped from claiming that Exbt.-B (Certified Standing Orders under the heading - The Lagan Jute Machinery Company Ltd.) is not at all applicable for the Lagan Engineering Company Limited.

The workman in his application u/s. 10(1B)(d) of the Industrial Disputes Act, 1947 (hereinafter refer to as 'application') has claimed that the OP/Company issued charge-sheet against him and directed him to file his 'reply' within seven days of the receipt of the copy of the charge-sheet. The workman in his 'application' has pleaded that although he prepared his 'reply' to the charge-sheet, he failed to submit the same because 'temporary suspension of work' of the factory of the Company was declared on 18.03.2019 and the office of the Company was closed.

The workman during hearing on merit of this case did not produce any copy of the notice of 'temporary suspension of work' of the factory of the Company with a view to substantiate his claim. Here in this space it is to mention here that the workman would have sent his 'reply' to the charge-sheet by post had he realized that his 'reply' to the charge-sheet would not be submitted by hand due to some adverse situation. Moreover, during hearing on merit of this case, he would have submitted petition before this Tribunal seeking direction upon the OP/Company to furnish the copy of the 'notice of suspension of work' with a view to substantiate his claim. On scrutiny of the record it is evident that the workman being the PW-1 has corroborated his statements in this matter by reiteration of such statement as contained in the 'application'.

Taking into consideration the above discussion, I am of the opinion that the workman committed fault by not complying the direction of his employer.

The workman in his 'application' has claimed that the OP/Company without holding any domestic enquiry over the charges brought against him by the charge-sheet

dated 28.01.2019 (Exbt.-4) straightway issued dismissal letter dated 03.10.2019 against him and summarily dismissed him from his service with immediate effect from 03.10.2019. It is needless to mention here that the workman being PW-1 has corroborated his statement over such matter in his evidence. Moreover, the OP/Company during cross-examination of PW-1 did not make any effort to challenge or controvert such statement of PW-1. It is found from the written statement of the OP/Company that the OP/Company mentioned that since the workman did not submit his reply to the charge-sheet, dismissal letter dated 03.10.2019 was issued and the workman was dismissed from his service of the OP/Company. So, it is clear that actually no domestic enquiry was held over the charge-sheet dated 28.01.2019 and the workman was straightway dismissed from his service of the OP/Company.

The Hon'ble Supreme Court of India in the matter of **Workmen of Motipur Sugar Factory (Private), Ltd. and Motipur Sugar Factory (Private), Ltd.** [Civil Appeal No.108 of 1964, dated 30.03.1965] has been pleased to observe – *It is now well-settled by a number of decisions of this Court that where an employer has failed to make an enquiry before dismissing or discharging a workman, it is open to him to justify the action before the Tribunal by leading all relevant evidence before it. In such a case the employer would not have the benefit which he had in cases where domestic enquiries have been held. The entire matter would be open before the Tribunal which will have jurisdiction not only to go into the limited questions open to a Tribunal where domestic enquiry has been properly held [see *Indian Iron and Steel Company v. their workman* (1958 1 L.L.J. 260)] but also to satisfy itself on the facts adduced before it by the employer where the dismissal or discharged was justified.....* 'It was pointed out that – 'the important effect of omission to hold an enquiry was merely this : that the Tribunal would not have to consider only whether there was a prima facie case but would decide for itself on the evidence adduced whether the charges have really been made out.'

The charge-sheet dated 28.01.2019 has been marked as Exbt.-4. It is seen from the Exbt.-4 that two numbers of charges were framed against the workman by the OP/Company. The charges are as follows :-

- (i) that you have resorted to an illegal strike without notice;
- (ii) that you have held meeting within the factory premises without obtaining permission of the competent authority.

In view of the above cited observation of the Hon'ble Supreme Court of India, it is to be looked into whether the OP/Company has been able to justify its action i.e. dismissal of the workman Aparajit Chakraborty from his service by leading all relevant evidence before this Tribunal in connection with this case.

In my considered opinion although the instant application u/s. 10(1B)(d) of the Industrial Disputes Act, 1947 has been filed by the workman claiming certain reliefs from this Tribunal against the action (relating to dismissal), in view of the observation of the Hon'ble Supreme Court of India in *Civil Appeal No.108 of 1964, dated 30.03.1965*, as mentioned above, onus has shifted on the shoulder of the OP/Company to establish the charges, so framed by the charge-sheet dated 28.01.2019, in this case by adducing all relevant evidence.

So, we have to go through the evidence lying with this record, particularly the evidence adduced on behalf of the OP/Company, to find out whether the OP/Company has been able to establish the allegation levelled against the workman by framing charge against him through charge-sheet dated 28.01.2019.

Charge No. 1 – '*that you have resorted to an illegal strike without notice.*'

From the wordings of the charge no.1, it appears that the OP/Company has confirmed that an 'illegal strike' took place in the workplace i.e. in the factory at the behest / effort of the workman. This can be spelt out in this manner that the workman was an instrumental in the matter of cessation of normal functioning of the workplace i.e. of the factory. In the circumstances of such an imputation brought by the OP/Company, the OP/Company with a view to make it reliable and believable, would have to bring in the record the 'attendance register' of the workers / employees to show that during the period of such 'illegal strike' the space for marking attendance of the concerned workers / employees including the present workman remains blank in the attendance register because the workers or workmen participating in the 'illegal strike' would not certainly put their signatures in the attendance register as a mark of their presence at the workplace / factory during such period of illegal strike. Apart from that, if any 'illegal strike without notice' takes place in the work-place / factory, it is supposed that immediate officials / authority i.e. Factory Manager / Workshop Manager, Personnel Manager etc. would prepare official documents for recording such 'illegal strike without notice' and would make written communication about such unnatural happening to their authority in upper line (line of authority) seeking instruction etc. So, it is supposed that all those 'documents' would be under the custody of the OP/Company and with a view to establishing the allegation as contained in 'Charge No.1', the OP/Company was required to produce and prove all those documents in course of hearing on merit i.e. at the time of recording evidence of witness on behalf of the OP/Company. Apart from that, it is reasonably considered that the OP/Company was required to adduce other witness(s) with a view to get support from such witness(s) in respect of the 'Charge No.1' as well as for getting corroboration of the version of OPW-1 to make it more certain or reliable, ultimately for strengthening the allegation levelled against the workman by 'Charge No.1'.

On perusal of the evidence of the OPW-1 it is found that his statements in his examination-in-chief on affidavit were fetched from the contents of the written statement of the OP/Company. It is seen that the OPW-1 in course of preparation of his examination-in-chief on affidavit and subsequently during swearing affidavit identified and proved seven sets of documents and all those documents were marked as exhibited documents. On scrutiny of the exhibited documents it is found that no 'attendance register' of the relevant period of the 'illegal strike without notice', held at the workplace of the factory, was identified by the OPW-1 and marked as exhibited document. Furthermore, in course of evidence of OPW-1, no cogent and reliable document in the nature of official record in respect of 'illegal strike without notice' and official communication, as described in the above, was brought in the record and identified by the OPW-1, consequently no such document was marked as exhibited document. It is to note here that the OP/Company in its 'list of documents' did not file 'attendance register' of the relevant period of the 'illegal strike without notice' for showing the attendance marks of the workmen / employees of the OP/Company during the period when the alleged 'illegal strike without notice' happened in its workplace / factory as well as no 'document' from office record and official communication in respect of alleged 'illegal strike without notice' was brought in the record and identified by the OPW-1 for the purpose of establishing its claim against the workman Aparajit Chakraborty as contained in Charge No.1 of the charge-sheet dated 28.01.2019. It is evident from the examination-in-chief on affidavit of OPW-1 that he did not mention the name(s) of other workman / workmen who allegedly participated in the said 'illegal strike without notice' along with the workman Aparajit Chakraborty for the purpose of making his statements more specific and reliable. It is evident from the cross-examination of OPW-1 that he has admitted that he did not mention in his examination-in-chief on affidavit the names of

other workmen who were provoked by the workman Aparajit Chakraborty and participated in the illegal strike. Further, he has admitted that he has not filed any document to substantiate his statement contained in his examination-in-chief on affidavit to the effect that the workman Aparajit Chakraborty provoked other workmen working in 'G' shift on 16.01.2019 at about 9 a.m. and instigated general workmen to stop their work and thereby they resorted to wildcat strike in a concerted manner. The OPW-1 in his cross-examination has admitted that he is unable to disclose the names of the workmen who were the henchmen of the workman Aparajit Chakraborty as well as the names of the workmen who got provoked by the instigation of Aparajit Chakraborty to participate in illegal strike without notice. So, it is surfaced from the evidence of OPW-1 that he has no knowledge about the names of the workmen who were the henchmen of the workman Aparajit Chakraborty as well as about the names of the workmen who got provoked by the instigation of Aparajit Chakraborty for holding 'illegal strike without notice'. At the same time, it is evident from the testimony of OPW-1 that he levelled a salvo of accusations against the workman Aparajit Chakraborty without having complete knowledge about the 'fact in issue', as stated by the OP/Company in its written statement, filed by one Jayanta Ganguly, Deputy General Manager (P & A), Lagan Engineering Co. Ltd. It is to mention here that the OP/Company in the 'Charge No.1' as contained in the charge-sheet dated 28.01.2019 did not mention the specific date on which the workman allegedly resorted to an illegal strike without notice and for how long such illegal strike without notice was continued. In my view, absence of specific date of starting 'illegal strike without notice' by the workman, as alleged, and the tenure / continuance of such 'illegal strike without notice' in the charge-sheet dated 28.01.2019 makes the same as omnibus allegation.

After taking into consideration the statements of the OPW-1 in his examination-in-chief on affidavit and in his cross-examination, it is found crystal clear that the OP/Company failed to perform its obligation with the purpose of establishing its claim as well as for substantiating the allegation, as contained in Charge No.1, brought against the workman Aparajit Chakraborty by adducing best evidence supposedly lying under its custody and control.

Charge No.2 – *“that you have held meeting within the factory premises without obtaining permission of the competent authority.”*

From the very face of the subject matter of the Charge No.2, it can be spelt out that any 'meeting' under the initiative of workman / workmen may take place within the factory premises subject to the prior permission of the competent authority of the OP/Company but in this instant matter allegation is that a meeting was held within the factory premises under the initiative of the workman Aparajit Chakraborty but he did not obtain prior permission of the competent authority for holding such meeting. So far the knowledge goes, the term 'meeting' is not defined in the Industrial Disputes Act, 1947. According to Oxford Learner's Dictionary the meaning of 'meeting' is – *'an occasion when people come together to discuss or decide something'*. The word 'meeting' can be explained as – *'an assembly of people for a particular purpose, especially for formal discussion'*. Further, the word 'meeting' can be explained as – *'a planned or unplanned gathering of two or more people to discuss a specific topic or achieve a common goal'*. So, it is realized that presence of at least two persons, without any upper limit, is required for discussion over any issue at a certain place and time. In this case, it has been alleged that the workman Aparajit Chakraborty held meeting within the factory premises without obtaining permission of the competent authority. In view of such imputation against the workman Aparajit Chakraborty, it is realized that he along with other workman / workmen assembled within the factory premises for holding meeting and such meeting was held without taking prior permission of the competent authority. The OP/Company

in its written statement did not divulge any name / names of other workman / workmen who were supposedly assembled within the factory premises in a meeting held under the initiative of the workman Aparajit Chakraborty. As stated earlier, the OPW-1 in his examination-in-chief on affidavit has reproduced the relevant contents of the written statement submitted by the OP/Company. So, from the examination-in-chief on affidavit of OPW-1 the name / names of workman / workmen who allegedly assembled in a meeting held under the initiative of the workman Aparajit Chakraborty within the factory premises without prior permission of the competent authority, could not be found. Moreover, the Charge No.2 does not contain the specific date of holding meeting, as alleged, within the factory premises under the initiative of the workman Aparajit Chakraborty. In the above it has been mentioned that the OPW-1 in his cross-examination has admitted that he cannot say the names of the workmen who were the henchmen of the workman Aparajit Chakraborty as well as who were provoked by the instigation of Aparajit Chakraborty and his henchmen. Further, he has admitted that he has not filed any document to substantiate his statement made in his examination-in-chief on affidavit to the effect that the workman Aparajit Chakraborty on 16.01.2019 while working in 'G' Shift at about 9 a.m. deliberately and intentionally provoked and instigated other general workmen to stop their work and to create panicky and violent situation inside the premises. So, it is revealed from the materials on record and the evidence on record that the OP/Company has been unable to adduce satisfactory evidence to establish that 'meeting' took place within the factory premises. Apart from that it is found that the Charge No.2 does not disclose the 'date' on which such a 'meeting', as alleged, took place inside the factory premises. In my considered opinion, absence of specific date of holding 'meeting' within the factory premises by the workman, as alleged, as well as lack of disclosure of the names of participant(s) workman / workmen in the said 'meeting', marks the same as omnibus allegation.

In view of the logical deduction made above and based on the observation of the Hon'ble Supreme Court of India made in the matter of *Workmen of Motipur Sugar Factory (Private), Ltd. and Motipur Sugar Factory (Private), Ltd.*, it is now convincing and uncontradicted that the OP/Company in absence of holding domestic enquiry over the charge-sheet dated 28.01.2019 has failed to justify its action against the workman Aparajit Chakraborty taken on the basis of two numbers of charges, as contained in the charge-sheet dated 28.01.2019, levelled against him by leading all relevant evidence in this case. Further, the occasion has arisen to hold that the charges as contained in the charge-sheet dated 28.01.2019 (Exbt.-4) have not been really made out.

Thus, I am of the opinion that there is no need for further discussion as we have got sufficient reason to come to the conclusion that the termination of service of the applicant/workman Aparajit Chakraborty by the OP/Company w.e.f. 03.10.2019 is not at all justified.

So, the Issue No.2 is decided in negative in favour of the applicant/workman.

Issue No. 3 :

In the above, we have already come to the conclusion that the present application u/s. 10(1B)(d) of the Industrial Disputes Act, 1947 is maintainable and accordingly Issue No.1 has been decided in affirmative whereas Issue No.2 has been decided in negative i.e. it has been held that the termination of service of the applicant/workman by the OP/Company w.e.f. 03.10.2019 is not at all justified.

In view of the decision in respect of Issue No.1 and Issue No.2, the applicant/workman is entitled to get relief. The applicant/workman in his application u/s. 10(1B)(d) of the Industrial Disputes Act, 1947 has sought for relief (relevant to the facts

[04/2021/10(1B)(d)]

and upto date situation) in the nature of reinstatement in service and making payment of 'due wages'.

The applicant/workman in his application u/s. 10(1B)(d) of the Industrial Disputes Act, 1947 has claimed that after termination of his service from the OP/Company he became unemployed and he has been maintaining his livelihood in miserable condition because of his severe financial hardship. The applicant/workman being PW-1 in his examination-in-chief on affidavit has stated that he is an unemployed person. Being cross-examined by the OP/Company he has divulged that he has not been working under any other concern and his livelihood is going on depending on the basis of donations from others. It is found that the OP/Company did not controvert the version of the applicant/workman that he is going through unemployment after termination of his service and he has been going through financial hardship. Apart from that the OP/Company did not lead evidence by its witness to bring in the record that the applicant/workman is not an unemployed person as well as he is not going through financial hardship to maintain his livelihood. In view of the evidence on record and the materials on record it is safe to say that the OP/Company found no sufficient ground to controvert the claim of the applicant/workman that he has become unemployed after termination of his service from the OP/Company and that he has been leading his livelihood in financial hardship.

In this situation, I am of the opinion that the applicant/workman is entitled to get the relief of full back wages from the OP/Company as he is entitled to be reinstated in his service from the date of his termination i.e. from 03.10.2019.

Thus, the Issue No.3 is decided accordingly in favour of the applicant/workman.

Hence,

it is,

O r d e r e d

that the Application u/s. 10(1B)(d) of the Industrial Disputes Act, 1947 is allowed on contest and after full adjudication of the industrial dispute raised by the applicant through such 'Application'.

In view of the decision made in the Issue No.2, M/s. Lagan Engineering Co. Pvt. Ltd. is directed to reinstate the applicant/workman Mr. Aparajit Chakraborty to his original post with full back wages from the date whence the Management of the Company stopped payment of his wages and benefits till the date of his reinstatement in the service. Further, M/s. Lagan Engineering Co. Pvt. Ltd. is directed to provide other consequential benefits in accordance with law within 60 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
25.11.2025