

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

No. Labr/ 1423 /LC-IR/ 22015(15)/2/2020

Date : 11/12/2025

ORDER

WHEREAS under Labour Department's Order No. Labr./1035/LC-IR/22015(15)/2/2020 dated 25/11/2022 with reference to the Industrial Dispute between M/s MC Nally Sayaji Engineering Ltd., Polt No. M-16, ADDA Industrial Area, P.O. - R.K. Mission, Asansol-713305, District -Paschim Bardhaman and its workman Sri Amit Kumar Roy, Sitala Tower, Flat No. 403, Kalyanpur Housing, P.O- R.K.Mission, Asansol – 713305, Dist.- Paschim Bardhaman, 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 9th Industrial Tribunal, Kolkata.

AND WHEREAS the 9th Industrial Tribunal, Kolkata, has submitted to the State Government its Award dated 20.11.2025 in Case No. 40 of 2022 on the said Industrial Dispute Vide e-mail dated 21.11.2025 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/ 1423/1(5)/LC-IR/ 22015(15)/2/2020

Date : 10/12/2025

Copy forwarded for information and necessary action to:

1. M/s MC Nally Sayaji Engineering Ltd., Polt No. M-16, ADDA Industrial Area, P.O-R.K. Mission, Asansol-713305, District -Paschim Bardhaman.
2. Sri Amit Kumar Roy, Sitala Tower, Flat No. 403, Kalyanpur Housing, P.O- R.K.Mission, Asansol – 713305, Dist.- Paschim Bardhaman.
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/ 1423 /2(3)/LC-IR/ 22015(15)/2/2020

Date : 11/12/2025

Copy forwarded for information to :

1. The Judge, 9th Industrial Tribunal, Kolkata, Durgapur with reference to e-mail dated 21.11.2025.
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 MATTER OF INDUSTRIAL DISPUTE BETWEEN M/S MC NALLY SAYAJI
ENGINEERING LTD., POLT NO. M-16, ADDA INDUSTRIAL AREA,
P.O-R.K. MISSION, ASANSOL-713305, DISTRICT -PASCHIM BARDHAMAN**

VS.

**SRI AMIT KUMAR ROY (WORKMAN), SITALA TOWER, FLAT NO. 403,
KALYANPUR HOUSING, P.O- R.K.MISSION, ASANSOL – 713305,
DIST.- PASCHIM BARDHAMAN**

Case No. 40 of 2022 u/s- 10 of Industrial Dispute Act, 1947.

**Reference order being no. Labr./1035/(LC-IR)/22015(15)/2/2020
dated 25/11/2022 issued by the Joint Secretary, Government of West Bengal,
Labour Department.**

**BEFORE THE JUDGE, NINTH INDUSTRIAL TRIBUNAL, DURGAPUR,
WEST BENGAL. KOLKATA.**

**PRESENT:- SRI NANDADULAL KALAPAHAR, JUDGE,
9TH INDUSTRIAL TRIBUNAL, DURGAPUR.**

**Ld. Advocates for the petitioner/workman – Mr. S.K. Panda &
Smt. Anima Maji**

**Ld. Advocates for the Employer, Mc Nally Sayaji Engg. Ltd.-
Mr.Pijush Kanti Das &
Mr. Bijay Kumar.**

Date of Award : 20th November, 2025.

This case is registered under section – 10 of Industrial Dispute Act, 1947 on receipt of a reference order being no. Labr./1035/(LC-IR)/22015(15)/2/2020 dated 25/11/2022 issued by the Joint Secretary, Government of West Bengal, Labour Department and forwarded by Joint Secretary and the fact of this case is described herein below :-

**Sd/-
Judge**

“ Whereas an Industrial Dispute exists between M/S Mc Nally Sayaji Engineering Ltd. Plot No. M-16 ADDA Industrial Area, P.O -R.K.Mission, Asansol -713305, District -Paschim Bardhaman and its workman Sri Amit Kumar Roy, Sitala Tower, Flat No.403, Kalyanpur Housing , P.O- R.K. Mission, Asansol – 713305, Dist.-Paschim Bardhaman relating to the undermentioned issues being a matter specified in the Second Schedule to the Industrial Disputes Act, 1947 (14 of 1947),

And WHEREAS it is expedient that the said dispute should be referred to an Industrial Tribunal constituted under section – 7A of the Industrial Disputes Act, 1947 (14 of 1947),

Now , THEREFORE, in exercise of power conferred by Section 10 read with Section 2A of the Industrial Disputes Act, 1947(14 of 1947), the Governor is pleased hereby to refer the said dispute to the Ninth Industrial Tribunal constituted under Notification no. 4481-GE/G/3A-20/66 dated 07/09/1967 for adjudication;

The said Ninth Industrial Tribunal shall submit its award to the State Government within a period of three months from the date of receipt of this order by the said Ninth Industrial Tribunal in terms of Sub -Section (2A) of section 10 of the Industrial Dispute Act, 1947, subject to the other provision or provisions of the said Act.

The said Ninth Industrial Tribunal shall meet at such places and on such dates as it may direct.

ISSUE(S)

- 1) *Whether the refusal of employment of the workman namely Sri Amit Kumar Roy by the Management of M/S Mc Nally Sayaji Engineering Ltd. with effect from 30/09/2020 is justified or not ?*
- 2) *If not, what relief the workman is entitled to?*

Petitioner/workman, Amit Kumar Roy has filed his written statement in relation to the dispute raised before the Tribunal which is described herein below:

Sd/-

Judge

That above named workman is the permanent and bonafide employee of the above named employer. The said workman got his appointment from Mc Nally Bharat Engineering Co. Ltd. on 25.07.2009 as Stores Clerk with effect from 01.08.2009 and he was posted at the Product Division at Asansol.

That as per the scheme of arrangement between Mc Nally Bharat Engineering Co. Ltd. and Mc Nally Sayaji Engineering Ltd., it has been transferred to M.S.E.L with effect from the appointed date i.e 01.04.2008 as per approved order of the Hon'ble High Court, Calcutta.

That the concerned workman used to discharge his unblemished service towards his employer from the date of his joining till the date of his illegal termination/retrenchment.

That though the concerned workman sincerely and loyally performed his allotted duties towards his employer but despite that his employer used to behave cruelly to the concerned workman over some trifling matters.

That ultimately the management of the employer one associate Vice-President Mr. R.K.Singh created pressure upon the concerned workman for doing some illegal and informal works, then the concerned workman did not agree to perform the same, thereafter, the said Vice-President threatened him with dire consequences to the concerned workman for doing those illegal works, apart from that the management threatened the concerned workman with the help of Police Personnel in this regard. Then the concerned workman also performed his duty legally towards the management of the company but the concerned workman was deceived from the overtime and all other financial benefits out of his work.

That the concerned workman used to get victimised from his legitimate facilities of his employer even after it, the said Vice-President cunningly tried to evict the concerned workman from his residential accommodation which was allotted to him by the management earlier and those were also the illegal activities of the concerned employer towards the concerned workman without any rhyme and reason.

*Sd/-
judge*

That at last the fate of the concerned workman was dealt with by high handed conspiracy of the higher management. Suddenly, the management of the employer issued notified information of termination to the concerned workman who discharged his prolonged unblemished service towards his employer without any rhyme and reason.

That on being received the said unwarranted illegal termination letter from the management, the concerned workman made several representations for his illegal unwarranted termination before the employer authorities, but the management of the employer did not pay any heed to this matter.

That despite the several appeal made by the concerned workman for his illegal termination before the authorities but the authorities concerned remained silent in this matter.

That finding no other alternative the concerned workman compelled to raise an industrial dispute before the appropriate authorities as per provision of law, yet the said conciliation did not achieve its result, the conciliation was failed and the conciliation authority referred the matter to the appropriate Govt. as per law. Thereafter, the appropriate Govt. referred the matter to this 9th Industrial Tribunal for adjudication by framing issues.

In view of the above facts and circumstances, petitioner/workman has prayed for to accept his WS along with list of documents of this case. The concerned workman has further prayed for to direct the concerned employer to reinstate him in his service with full back wages as the concerned workman did not engage in any service or any other service for his livelihood.

The employer/management has contested the industrial dispute raised by the petitioner/workman Amit Kumar Roy by filing a WS contending inter alia --

that the instant dispute raised by the petitioner/workman Mr. Amit Kumar Roy is not maintainable in law and the present dispute cannot constitute any industrial dispute.

*Sd/-
Judge*

That the petitioner was designated as "Stores Officer" at Asansol Mc. Nally Sayaji Engineering Ltd. in the Grade –JM 2 (Junior Management 2) and he used to draw a monthly salary of Rs.11,300/- from the employer. He was provided a suitable accommodation by the Company and he was designated as Officer.

That the present dispute as raised by the petitioner before this Tribunal claiming himself to be a workman of the establishment is totally misconceived representation as he never worked as a workman as defined under the provision of I. D. Act. and the petitioner being an officer is not covered under the provision of Industrial Disputes Act.

As per the management, the petitioner who was an officer was not performing his duties and he became negligent towards his job responsibility and there was no improvement in his attitude towards his job responsibility and performance in spite of giving him several verbal instructions for the same.

The performance of the petitioner amounted to gross negligence of work and as such he was warned to improve his work performance vide letter dated 02.07.2020 issued by the AGM-HR & IR, Mc Nally Sayaji Engineering Ltd.

That the petitioner/workman was appointed on 25.07.2009 and his service was confirmed with effect from 28.02.2010 and the said confirmation was made subject to all terms and conditions of his employment. The letter of confirmation dated 12.04.2010 issued by the Management to the petitioner would suffice to prove his confirmation in the company. The petitioner / workman was promoted as Stores Officer with effect from 01.04.2014 as is evident from ERP updation of the company and as mentioned in the monthly pay slips thereafter.

That the petitioner was given sufficient opportunity to improve his performance but he was absenting from his duty all along.

That after several instructions being given there was no change in his negligent attitude towards job responsibility. As a result of which the service of

*Sd/-
Judge*

the petitioner/workman was terminated by the management vide letter dated 01.09.2020 with one month's notice period and his last day of working was 30.09.2020. He was also informed to contact HR Deptt. and Accounts Deptt. for his full and final settlement.

That the petitioner was not a workman as his termination was made as per terms and conditions of his letter of appointment and the petitioner has no right to challenge the said order of termination.

In view of the above facts and circumstances, the present dispute as was raised by the petitioner/workman is liable to be rejected.

Referred issues herein above is as follows :–

ISSUES :-

- 1) *Whether the refusal of employment of the workman namely Sri Amit Kumar Roy by the Management of M/S Mc Nally Sayaji Engineering Ltd. with effect from 30/09/2020 is justified or not ?*
- 2) *If not, what relief the workman is entitled to?*

In proving this case, petitioner/workman has examined himself as PW-1 in this case and he has also produced some documents to substantiate his case which are described herein below:–

- 1) *The receipt copy of application letter dated 25.07.2009,*
- 2) *Different letters addressed to Sri Amit Kumar Roy by the management dated 01.10.2019, 12.04.10, 26.04.10, 15.7.11, 23.9.10, 05.9.11, 31.03.14, 01.04.16,*
- 3) *Termination letter dated 01.9.2020,*
- 4) *Letter addressed to the workman by the management dated 01.03.2021,*
- 5) *Letter addressed to the management by the workman dated 08.12.2021,*
- 6) *Letter addressed to the O.P by the workman and receipt on 25.12.2020,*

*Sd/-
Judge*

7) Letter addressed to the J.L.C, Asansol by the O.P dated 23.06.2021 which are marked as Exbt. nos. 1 (on consent), 2 series (on consent), 3(on consent), 4 (on consent), 5 (with objection), 6 (without objection) and 6/1 & 7 (without objection) respectively in this case.

Whereas on the other hand, the O.P/employer Mac Nally Sayaji Engineering Ltd. has examined one Manoj Kumar Sharma as O.P.W-1 in this case and discharged.

O.P/employer /Management has produced some documents in order to substantiate their case which are described herein below: –

- 1) Pay slip for April,2020 dated April,2020,
- 2) Letter to Sri Amit Kumar Roy from Company on 02.07.2020,
- 3) Letter to Sri Amit Kumar Roy from Company and his signature on 18.04.2011,
- 4) E.R.P of the management staff showing ,
- 5) Letter of confirmation service,
- 6) Letter dated 02.07.2020,
- 7) H.R Manual on November,2020

which are marked as Exbt. A (on admission), B (on admission), C & C/1 (on admission), D (with objection), E (without objection),F (with objection) & G (on consent) respectively in this case.

Having heard the argument of this case in presence of Id. Advocate for the petitioner/workman as well as Id.lawyer for the management /employer M/S Mc Nally Sayaji Engineering Ltd. perused the oral evidence of the respective parties and taking into consideration the relevant documents of both parties as was produced by them to this case, the instant case is taken up today for delivery of award/Judgement.

DECISION WITH REASON :-

It has been argued by the Id.lawyer for the petitioner/workman that Sri Amit Kumar Roy used to work as Stores Clerk and he used to get salary as per the norms of the company. The company used to pay the salary as per the duty of the workman. The concerned workman was absolutely a workman and he

Sd/-
Judge

was never included as officer of the company. The employer used to control their works / jobs and offices as per the guidance of the Model Standing Order. If the Model Standing Order is applied then there should be an approval as per the provision of law. The concerned workman used to perform his jobs through his physical labour or any machine or tools, then the concerned workman can never be called as Officer as he has never discharged any official job as per the definition of the 'Officer'. The concerned workman used to perform his works/jobs as per the definition of workman i.e under sec.2(s) of I.D. Act. The salary of the concerned workman never be accepted as salary of the officer. The sec. 2(s) used to be implemented in the field of the workman as per the state amendment of this Act.

The Management/Employer expressed their views in the WS where the termination of the workman was mentioned not as an officer but for negligence of his duty. The negligence of the workman was not duly proved by the management / employer. The management / employer has never issued any show-cause, charge sheet following the domestic enquiry as per the provision of service condition which is mentioned either in the standing order or in the bylaws of the company. Therefore, the concerned workman was victimised by the hands of the management / employer that the termination of the service of the petitioner/workman amounts to economically death of the concerned workman.

That the management should take another view about the NCLT. The Id. NCLT should be implemented for all but the management here intentionally tried to implement the same as pick & choose policy. The concerned workman was victimised by the hands of the management and the management intentionally terminated the job of workman taking a false plea of negligence in his duty. So, the concerned workman is entitled to get employment with full back wages.

Whereas on the other hand, the Management/Employer of the company has argued before this tribunal that the instant dispute raised by the

*Sd/-
Judge*

petitioner is not maintainable in law and the dispute cannot constitute any valid industrial dispute as per the provisions of I.D. Act, 1947.

Petitioner was designated as Stores officer of the O.P/Co. at their Stores at Asansol in the Grade JM-2(Junior Management) and he used to draw monthly salary of Rs.11,300/- from the employer and he was also provided a suitable accommodation from the company as he was designated as Officer. The petitioner was never a workman under the provision of I.D. Act and the contention of the petitioner in the present case cannot be entertained by this tribunal in the event of the petitioner being an Officer who does not come under the purview of I.D. Act. The petitioner was discharging his duty as a Store Officer.

The evidence of petitioner would amply establish that he was not a workman under the company and the duty of the petitioner was as Stores Officer and his argument debars him from claiming to be workman.

The service condition of petitioner is not governed by the provisions of model standing order and as such the termination of the petitioner for not performing his duty as an officer of the company on account of negligent act towards his job responsibility despite the several instructions being issued and no improvement being made in his attitude towards his job responsibility was found.

The performance of the petitioner amounted to gross negligence in his work and as such he was warned to improve his work performance vide letter dated 02.07.2020 issued by the AJM,HR and IR of the company.

The petitioner was appointed on 25.07.2009 and his service was confirmed with effect from 28.02.2010 and confirmation was made subject to all terms and conditions of his employment.

The petitioner has totally failed to establish that being a store officer he performed his duty of a workman and the said contention of the petitioner is out and out baseless and erroneous.

*Sd/-
Judge*

The petitioner was promoted as stores officer with effect from 01.04.2014 which will be evident and established from the ERP updation of the company and in the monthly pay slips. In spite of giving sufficient opportunity to the petitioner to improve his performance but he all along absented himself from his duty and thereby causing loss to the company.

The petitioner was terminated by the management vide letter dated 01.09.2020 with one month notice period.

The termination of the petitioner was made by the company as per the terms and conditions of the letter of appointment and petitioner has no right to challenge his termination by raising the industrial dispute before this tribunal which is legally not tenable.

That O.P / Co. as per order of National Company Law Tribunal, Kolkata bench case no. TA(IB) No.1214/KB/2022n in CP(IB) No.131 /KB/2020 in an application u/s 30(6) and sec. 31(1) of the insolvency and bankruptcy code 2016 was declared as insolvent and as per the order of NCLT the Co. Is functioning with direction as per the resolution as approved by NCLT. Therefore, in view of the above, the present case filed by the petitioner before this tribunal is liable to be rejected.

Issue Nos. 1 & 2 :

Both the issue nos. 1 and 2 framed by the appropriate Govt. are taken up together for arising at just and proper decision of this case.

It is a case of the petitioner Amit Kumar Roy that he was employed as Stores Clerk at Asansol Division and he used to get his salary as per the norms of the company. That this petitioner was absolutely a workman and he was informed that he has been included as officer of the company and a deceptive designation of the officer was given to the petitioner. The employer used to control his work/ job and office as per the guidance model standing order. The concerned workman used to perform his job through his physical labour or any machine or tools and the concerned workman can never be called as an officer as he has never discharged his official job as per the definition of 'officer'. The

*Sd/-
Judge*

concerned workman used to perform his work as per the definition of workman i.e u/s 2s) of the I.D. Act. The salary of concerned workman was never accepted as salary of the officer. The section 2(s) used to be implemented in the field of workman as per the state amendment of I.D. Act. The management / employer has disclosed their views in the WS where the termination of the workman was mentioned not as an officer but for negligence of his duty. The negligence of the workman was not duly proved by the management /employer. The management / employer company has never issued any show-cause, charge sheet following the domestic enquiry as per the provision of service condition as is mentioned either in the standing order or by laws of the company. The concerned workman was victimised by the hands of the management and the termination of the service of the petitioner amounts to economically death of the concerned workman. The management /employer intentionally terminated the job of workman taking a false plea of negligence in his duty and accordingly, the concerned workman is entitled to get his reinstatement in his service with full back wages.

The management /employer Co. has contended before this Industrial Tribunal that the instant dispute raised by the petitioner is not maintainable in law and the dispute cannot be regarded as valid industrial dispute as per the provision of I. D. Act.1947. Petitioner was designated as Stores officer of the O.P/Co. at their Stores at Asansol in the Grade JM-2(Junior Management) and he used to draw monthly salary of Rs.11,300/- from the employer and he was also provided a suitable accommodation from the company as he was designated as Officer. The petitioner was never a workman under the provision of I. D. Act and the contention of the petitioner in the present case cannot be entertained by this tribunal in the event of the petitioner being an Officer who does not come under the purview of I. D. Act. The petitioner was discharging his duty as a Stores Officer. From the evidence of petitioner it is established that he was not a workman under the Co. and the duty of the petitioner was as a Store Officer and the workman debars him from claiming to be a workman.

Sd/-
Judge

The service condition of the petitioner was not governed by the provision of model standing order. The termination of job of the petitioner was done for not performing his duty as an officer of the Co. and on account of his negligent act towards his job responsibility despite several instructions were issued to him and no improvement was made.

The performance of petitioner amounted to gross negligence in his work as such he was warned to improve his work performance vide letter dated d 02.07.2020 issued by the AJM,HR and IR of the company.

The petitioner was appointed on 25.07.2009 and his service was confirmed with effect from 28.02.2010 and confirmation was made subject to all terms and conditions of his employment.

The petitioner has totally failed to establish that being a store officer he performed his duty of a workman and the said contention of the petitioner is out and out baseless and erroneous.

The petitioner was promoted as stores officer with effect from 01.04.2024 which is evident and established from the ERP updation of the company and in the monthly pay slips. Despite giving sufficient opportunity to the petitioner to improve his performance but he all along absented himself from his duty and thereby caused loss to the company.

The petitioner was terminated by the management vide letter dated 01.09.2020 with one month notice period.

The termination of the petitioner from his job was made by the company as per the terms and conditions of the letter of appointment and petitioner has no right to challenge his termination by raising the industrial dispute before this tribunal which is legally not tenable.

Having heard argument of Id.lawyer for the petitioner as well as the Id.lawyer for the management / employer, it has been contended by the Id.lawyer for the management / employer/ Co. that the dispute raised by the petitioner is not an industrial dispute before this Industrial Tribunal as such the

*Sd/-
Judge*

instant case filed by the petitioner before this Industrial Tribunal is not at all maintainable.

From the contention raised from the sides of both parties that according to petitioner he is a workman in the Mc Nally Sayaji Engineering Ltd. and he has not performed his duty as such Stores Officer though he was promoted to Store Officer by the management/employer / Co. He has all along rendered his work as a Store Clerk in the Mc Nally Sayaji Engineering Ltd. It is further the case of the petitioner that he has never performed any managerial, supervisory and administrative duties in the Mc Nally Sayaji Engineering Ltd. on the basis of the letter issued by the management and ; promoted him to Stores Officer from Stores Clerk. The petitioner comes under the purview of workman under the definition of section 2(s) of I. D. Act, 1947 as such the termination of his service by the management of Mc Nally Sayaji Engineering Ltd. without following the show-cause notice, charge sheet and findings of misconduct of negligent in work, his termination of service from the Mc Nally Sayaji Engineering Ltd. is wholly illegal and bad in the eye of law and the same is liable to set aside.

On the other hand, it has been contended by the Id.lawyer for the management/employer that the petitioner was appointed on 25.07.2009 as a Stores Clerk at Asansol Store Division and his service was confirmed w.e.f 28.02.2010 and his confirmation of service was made subject top all terms and conditions contained in his appointment letter. Subsequently, the petitioner was promoted to Stores Officer from Stores Clerk w.e.f 01.04.2024. The petitioner is an Office4r which does not come under the purview of I.D. Act. The petitioner was discharging his duty as Stores Officer and he is not a workman under the Company. The duty of the petitioner in event of the Stores Officer he is debarred from claiming himself to be a workman under the Mc Nally Sayaji Engineering Ltd. Petitioner was terminated by the management vide letter dated 01.09.2020 with one month notice period. The termination of the petitioner from his job was made by the Company as per the terms and conditions of the letter of appointment.

*Sd/-
Judge*

It is evident from the definition of "Industrial Dispute" under the provision of section 2(k) of I.D. Act that ---- "Industrial Dispute" means any dispute or difference between employers and employers, or between employers and workmen, or between workmen and workmen, which connected with the employment or non-employment or the terms of the employment or with the condition of labour, of any person.

As per the definition of the definition of the industrial dispute u/s 2(k) of I.D. Act, 1947 it is very much clear that the petitioner has been claiming himself to be a workman as a Stores Clerk as well as depending upon the nature of duties though he has been designated as a Stores Officer from Stores Clerk in the Mc Nally Sayaji Engineering Ltd. and the management / employer/Co. has contended that the petitioner does not come under the purview of workman, he in the event of being Stores Officer from Store Clerk as per the letter dated 31.03.2014 issued by the General Manager of Mc Nally Sayaji Engineering Ltd.

According to the management / employer Co. that the petitioner was negligent in performing of his work as such Stores Officer and notices were also issued to the petitioner on several occasions for the purposed of improvement of his work as Stores Officer, as there was no improvement in the work of the petitioner as such he was terminated from the service vide letter dated 01.09.2020 by one Rajesh Kumar Singh, Associate Vice-President – Unit Head, Mc Nally Sayaji Engineering Ltd. Therefore, this is purely a dispute in between the petitioner and the management /employer Co. , Mc Nally Sayaji Engineering Ltd. in regard to the employment of the petitioner and it is squarely falls under the purview of 'industrial dispute' as per the provision u/s 2(k) of Industrial Dispute Act, 1947.

When the petitioner was promoted to Stores Officer from Stores Clerk vide their letter dated 31.03.2014 issued by the General Manager, the said letter of promotion of the petitioner has not specified any nature of duties to be performed by the petitioner in Mc Nally Sayaji Engineering Ltd. in the event being a Stores Officer from Stores Clerk. Therefore, the contention raised by

*Sd/-
Judge*

the Id.lawyer for the management / employer / Co. of Mc Nally Sayaji Engineering Ltd. that the dispute raised by the petitioner before this Industrial Tribunal is not an industrial dispute is not tenable in the eye of law.

Now, the 2nd question is whether the petitioner Amit Kumar Roy who was appointed as a Stores Clerk initially on 25.07.2009 and his service was subsequently confirmed from 28.02.2010 on fulfilment of certain terms and conditions of his letter of Appointment containing therein and subsequently he was promoted to Stores Officer w.e.f 01.04.2024 vide letter dated 31.03.2014 issued by the General Manager of Mc Nally Sayaji Engineering Ltd. can be termed as a 'workman' as claimed by the petitioner u/s 2(s) of I.D. Act,1947 in the Mc Nally Sayaji Engineering Ltd. or not?

It is defined u/s 2(s) of I.D.Act,1947 that --- "workman" means any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment by express or implied, and for the purposes of any proceeding under this Act in relation to industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person -----

- i) *who is subject to the Air Force-Act, 1950(45 of 1950), or the Army Act,1950 (46 of 1950), or the Navy Act, 1957 (62 of 1957); or*
- ii) *who is employed in the police service or as an officer or other employee of a prison; or*
- iii) *who is employed mainly in a managerial or administrative capacity; or*
- iv) *who, being employed in a supervisory capacity, draws wages exceeding [ten thousand rupees] per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature].*

*Sd/-
Judge*

From the document Exbt.1, it is found that the petitioner Amit Kumar Roy was employed as a Stores Clerk w.e.f 01.08.2009 vide letter dated 25.07.2009 issued by the Vice-President (Product Division) for Mc Nally Bharat Engineering Co. Ltd.

From document Exbt.2 reveals that as per the order of Hon'ble High court at Calcutta dated 28.07.2009, the Product Division of Mc Nally Bharat Engineering Co. Ltd. was transferred to Mc Nally Sayaji Engineering Ltd. w.e.f appointed date i.e 01.04.2008 of Mr. Amit Kumar Roy and then he was performing his duty in Mc Nally Sayaji Engineering Ltd. as per the letter dated 01.10.2009 issued by Managing Director for Mc Nally Bharat Engineering Co. Ltd.

Document Exbt.2/1, it is revealed that the management was pleased to confirm the service of petitioner Amit Kumar Roy w.e.f 28.02.2010 as per the letter dated 12.04.2010 issued by Vice-President for Mc Nally Sayaji Engineering Ltd.

Document Exbt.2/6 reveals that the petitioner Amit Kumar Roy was promoted to the position of officer – cum- Stores w.e.f 01.04.2014 vide letter dated 31.03.2014 issued by General Manager for Mc Nally Sayaji Engineering Ltd.

It is found from the document Exbt.2/7 i.e letter dated 01.04.2016 issued by Unit Head for Mc Nally Sayaji Engineering Ltd. the total monthly gross salary of petitioner Amit Kumar Roy was Rs.8,700/- p.m. It is further revealed from document Exbt.3 that the employment of the petitioner Amit Kumar Roy from the Company was terminated with one month notice period ending on 30.09.2020 as per the termination letter dated 01.09.2020 issued by the Associate Vice-President – Unit Head for Mc Nally Sayaji Engineering Ltd.

From the document Exbt.D, it is found that the petitioner Amit Kumar Roy was shown that he was performing his job in Grade J.M-2 as Stores Officer on and from 01.04.2014. From the document Exbt.D it is also evident the two window pages of the Laptop have been tagged with each other in order to create this document Exbt.D. Therefore, this document Exbt.D is

*Sd/-
Judge*

found to be not credible for taking into consideration in proving the case on behalf of the management / employer of Mc Nally Sayaji Engineering Ltd.

It is found from the cross examination of the witness O.P.W-1 Manoj Kumar Sharma for and on behalf of the management / employer of Mc Nally Sayaji Engineering Ltd. that he joined their Company on 16.12.2019 as AGM(HR-IR) of the O.P/Co. At the time of his joining Amit Kumar Roy was working in the post of Stores Officer, he was drawing monthly salary around Rs.11,500/- p.m. Their Co. issued a caution letter to Amit Kumar Roy for his gross negligence of work but never issued any show-cause notice for any departmental enquiry. Before the issue of termination letter dated 01.09.2020 no charge sheet was issued to Mr. Amit Kumar Roy.

This witness O.P.W-1 has also stated in his examination-in-chief that the petitioner was an officer and he was not performing his duties and he became negligent towards his job responsibility and there was no improvement in his attitude towards his job responsibility and performance in spite of giving him several instructions. The petitioner was warned to improve his work performance vide letter dated 02.07.2020 issued by AGM (HR-IR), Mc Nally Sayaji Engineering Ltd.

Witness P.W-1 Amit Kumar Roy has stated in his oral evidence that he was appointed in Mc Nally Bharat Engineering Co. Ltd. on 25.07.2009 as Stores Clerk w.e.f 01.08.09 and posted at Product Division at Asansol. That as per the scheme of arrangement between Mc Nally Bharat Engineering Co. Ltd. and Mc Nally Sayaji Engineering Ltd. the petitioner was transferred to Mc Nally Sayaji Engineering Ltd. w.e.f his date of appointment i.e 01.04.2008 as per the approved order of the Hon'ble High Court at Calcutta. He is discharged his unblemished service towards his employer from the date of his joining till the date of his illegal termination / retrenchment. He sincerely and loyally performed his allotted duties towards his employer but the employer used to behave with him cruelly over some trifling matters. The management/ employer particularly, one Associate Vice-President Mr. Rajesh Kumar Singh created pressure upon him for doing some illegal and informal

*Sd/-
Judge*

works when he did not agree to perform, the said Vice-President threatened him with dire consequences for doing those illegal works.

He performed his duty legally towards the management /employer Co. but he was deceived in a pre-planned manner from the overtime and all other financial benefit out of his work. He got victimised from obtaining his legitimate facilities from his employer even after it, the said Vice-President cunningly tried to evict him from his responsible accommodation which was allotted by the management earlier amounting to illegal activities to the concerned employer towards him. He has become the victim of the conspiracy of the higher management which resulted the issuance of letter of termination of his job by the management/employer all of a sudden.

Witness P.W-1 in his cross-examination he has specifically stated that he was never posted as a Stores Officer but he was working as a Stores Clerk in the O.P./Co. It is fact that O.P./Co. promoted him to the post of Stores Officer w.e.f 01.04.2014. It is a fact that his gross salary of Rs.11,300/- p.m. His job was to make entry in the concerned registers for receiving of materials as well as disbursing the same to the various contractors. He was looking after the job of loading and unloading of materials. It is a fact that work of loading and unloading of materials was done by labourers. On being shown the pay slip for the month of April, 2020 he admitted that his designation was mentioned as Stores Officer which was marked as Exbt.A. He was terminated illegally by the management vide its letter dated 01.09.2020. He is still occupied the accommodation provided by the Company.

In a case reported in (1970) 3 Supreme Court cases 378 Burmah Shell Oil Storage and Distribution Co. of India Ltd. Vs. Burmah Shell Management Staff Association & Ors. this court relies upon Paras 8,9,10,11 & 12 of the judgement which are reproduced herein below, wherein the Hon'ble Supreme Court of India has been pleased to observe that --

8. In South Indian Bank Ltd. v. A.R. Chacko [AIR 1964 SC 1522 : (1964) 5 SCR 625 : (1964) 1 Lab LJ 19 : (1964) 8 Fac LR 128 : (1964-64) 26 FJR 64 : 1964 Ker LJ 227] the Court applied a similar test when it held:

Sd/-
Judge

"We can find no mistake in the approach of the Labour Court to the question nor can we see any justification for interfering with its conclusion on the evidence in the case. All the relevant documents produced have been duly considered by the Labour Court in the light of the oral evidence given; and on such consideration it has come to the conclusion that though on paper certain rights and powers were assigned to him and occasionally he acted in the place of the Agent when the Agent was absent, such duties did not form part of his principal and main duties."

The Court, thus, approved of the test of finding out which duties were the principal and main duties.

9. *In Ananda Bazar Patrika (Private) Ltd. v. Workmen [(1969) II LLJ 670]* this Court clearly enunciated the principle by stating:

"The principle which should be followed in deciding the question whether a person is employed in a supervisory capacity or on clerical work is that if a person is mainly doing supervisory work but incidentally or for a fraction of the time also does some clerical work, it would have to be held that he is employed in supervisory capacity, and, conversely, if the main work done is of clerical nature, the mere fact that some supervisory duties are also carried out incidentally or as a small fraction of the work done by him will not convert his employment as a clerk into one in supervisory capacity."

Dealing with the facts of that case, the Court found that Gupta, the employee concerned, was employed on clerical work and not in supervisory capacity. The principal work that Gupta was doing was that of maintaining and writing the cash book and of preparing various returns. Being the senior most clerk, he was put in charge of the provident fund section and was given a small amount of control over the other clerks working in his section. The only powers he could exercise over them was to allocate work between them, to permit them to leave during office hours, and to recommend their leave applications. These few minor duties of a supervisory nature could not convert his office of senior clerk in charge into that of a supervisor.

*Sd/-
Judge*

10. *Assistance in this matter is also available from decisions by the Court in England where, in connection with the applicability of the Factories Act, and other Acts, the Courts had to decide whether an employee was employed on manual labour or not. The earliest case is *Re Dairymen's Formen and Re Tailors' Cutters* [(1911-12) 28 Times Law Reports 587]. After referring to decisions on the Employers and Workmen's and Compensation Acts, Swinfen Eady, J., held that those cases really afforded assistance in determining the true meaning of this statute. In his opinion, although they might perform manual labour, the question was whether that was the real substantial employment for which they were engaged or whether it was not incidental or accessory to it. Applying this principle to the case of Tailors Cutter, it was held:*

"The actual labour of cutting out cloth might be manual labour, but the position he really occupied was a manager of a business department. His duties therefore substantially were not those involving manual labour and he was not workman within the Act."

11. *In *Reid v. British and Irish Steam Packet Company Limited* [(1921) 2 KBD 319] reference was made to an earlier decision by that very Court in *Jaques v. Owners of the Tug Alexandra* [(1921) 2 AC 339] which decision was rendered on November 18, 1920, and in which the Court adopted the definition which was given by the late Master of the Rolls sitting as a Judge of first instance, of the meaning of "employed otherwise than by way of manual labour". That meaning was approved by saying:*

"What that learned Judge said was, that the question whether a person is employed otherwise than by way of manual labour within the meaning of that section is to be determined by considering whether any manual labour that he may do in the course of his service is the real substantial work for which he is engaged, or whether it is only incidental or accessory thereto, if it be the latter, the employment is not in manual labour."

*This principle was also later approved by the House of Lords in the appeal, which came before it against the decision in the case of *Jaques v. Owners of**

*Sd/-
Judge*

Steam Tug Alexandra, decided on July 4, 1921, where Lord Buckmaster in his speech said:

"The difficulty that arises in the construction of the statute is due to the number of employments in which it is impossible to assert that the employment is solely manual labour or is solely exclusive of manual labour, and it has been held in a series of cases approved in the present instance by the Court of Appeal that in these circumstances the real test is the substantial nature of the employment. If that be manual labour the fact that there are other duties performed that could not be so described does not take the employee outside the benefit of the statute. If, on the other hand, the substantial part of the employment cannot be described as "manual" labour, the fact that manual work has to be performed does not bring him within. This test, which in my opinion is the only reasonable one that can be applied to the statute is, I think, the one that was accepted by the learned County Court Judge, and if that be so, unless the proved facts are of such a character that it was not open to him to hold that by their proper application the deceased was excluded front the Act, his finding is conclusive and cannot be questioned."

A similar principle was indicated by Lord Wrenbury in the following words:

"The question to be answered I think is this : When the employer offered and the man accepted the employment, was it substantially an offer of manual labour although it involved some other work, or was it an offer of other work although there was attached to it an obligation to do some manual labour? To put this particular case: Was the employment that of master of the tug with the duties and responsibilities attaching to that office but coupled with an obligation to take part with the crew in the manual work, or was the employment that of a manual labourer who was to be responsible for the tug as senior man among the crew?"

12. *In J. and F. Stone Lighting and Radio Ltd. v. Havgarth [(1968) AC Pt. 3, p. 157] the same test of the substantial nature of the employment was applied in interpreting the words "employed in manual labour" in the Factories Act. Thus, in the present case also, in determining which of the employees in*

*Sd/-
Judge*

the various categories are covered by the definition of "workman", we have to see what is the main or substantial work which they are employed to do? If it is supervisory work, it would be held that they were employed to do supervisory work even though they may also be doing some technical, clerical or manual work. If, on the other hand, the supervisory work be incidental to the main or substantial work of any other type viz. clerical, manual or technical, the employment would not be in a supervisory capacity. It is in the light of these principles that we shall now proceed to examine the correctness of the decision of the Tribunal in respect of various categories of workmen involved in this reference. We shall take them up in the order in which they were discussed by the counsel for parties in the course of their arguments.

The Hon'ble Supreme Court was of the opinion :

- i) *U/s 2(s) of the Industrial Dispute Act,1947 (as amended Act 1936) an employee in an industry to be a workman must be employed to do skill or unskilled or manual work, supervisory work, technical or clerical work subject to four exceptions mentioned herein.*
- ii) *Under exception (iii) even a workman who is employed mainly in a managerial or administrative capacity goes out of the definition of the workman, while under exception (iv) persons who are employed in a supervisory capacity go out of definition provided they either draw wages exceeding Rs.500/- per mensem or exercised, by the nature of the duties attached to the office or by reason or power vested in them, functions mainly of managerial nature.*

In a case reported in 1970 (3) Supreme Court cases 248 Anandabazar Patrika (P) Ltd. Vs. The workman the Hon'ble Supreme Court of India was pleased to observe in Para 3 of the judgement that :

3. *The question whether a person is employed in a supervisory capacity or on clerical work , in our opinion dependent upon whether the main and principle duties carried out by him are those of supervisory character, or of a nature carried out by a clerk. If a person is mainly doing supervisory work, it would have to be held that he is employed in supervisory capacity; and, conversely if the workman work done is of clerical nature, the mere fact that*

*Sd/-
Judge*

some supervisory duties are also carried out incidentally or as a small fraction of the work done by him will convert his employment as a clerk in to one in supervisory capacity. This principle finds support from the decision of this court in **South Indian Bank Ltd. Vs. A.R. Chacko and management of M/s May & Baker (India) Ltd. Vs. their workman**. In the present case, we have, therefore, to examine the evidence to see whether the Labour Court is right in holding that because of the main work of Gupta being clerical in nature, he was not employed in supervisory capacity.

In a case reported in (1994) 3 Supreme Court cases 510 S.K. Maini Vs. M/s Carona Sahu Co. Ltd. and Ors. reliance is placed upon the Para 9 of the judgement which is reproduced herein below, wherein the Hon'ble Supreme Court of India has been pleased to observe that --

9. After giving our careful consideration to the facts and circumstances of the case and the submissions made by the learned counsel for the parties, it appears to us that whether or not an employee is a workman under Section 2(s) of the Industrial Disputes Act is required to be determined with reference to his principal nature of duties and functions. Such question is required to be determined with reference to the facts and circumstances of the case and materials on record and it is not possible to lay down any strait-jacket formula which can decide the dispute as to the real nature of duties and functions being performed by an employee in all cases. When an employee is employed to do the types of work enumerated in the definition of workman under Section 2(s), there is hardly any difficulty in treating him as a workman under the appropriate classification but in the complexity of industrial or commercial organisations quite a large number of employees are often required to do more than one kind of work. In such cases, it becomes necessary to determine under which classification the employee will fall for the purpose of deciding whether he comes within the definition of workman or goes out of it. In this connection, reference may be made to the decision of this Court in *Burmah Shell Oil Storage and Distribution Co. of India Ltd. v. Burmah Shell Management Staff Assn.* [(1970) 3 SCC 378 : (1971) 2 SCR 758 : (1970) 2 LLJ 590] In *All India Reserve Bank Employees' Assn. v. Reserve Bank of*

Sd/-
Judge

India [(1965) 2 LLJ 175 : AIR 1966 SC 305 : (1966) 1 SCR 25] it has been held by this Court that the word 'supervise' and its derivatives are not words of precise import and must often be construed in the light of context, for unless controlled, they cover an easily simple oversight and direction as manual work coupled with the power of inspection and superintendence of the manual work of others. It has been rightly contended by both the learned counsel that the designation of an employee is not of much importance and what is important is the nature of duties being performed by the employee. The determinative factor is the main duties of the employee concerned and not some works incidentally done. In other words, what is, in substance, the work which employee does or what in substance he is employed to do. Viewed from this angle, if the employee is mainly doing supervisory work but incidentally or for a fraction of time also does some manual or clerical work, the employee should be held to be doing supervisory works. Conversely, if the main work is of manual, clerical or of technical nature, the mere fact that some supervisory or other work is also done by the employee incidentally or only a small fraction of working time is devoted to some supervisory works, the employee will come within the purview of 'workman' as defined in Section 2(s) of the Industrial Disputes Act.

It was held by the Hon'ble Supreme Court of India that whether or not an employee is a workman u/s 2(s) of Industrial Dispute Act, 1947 is required to be determined with reference to his principle nature of his duties and functions. Such question is required to be determined with reference to the facts and circumstances of the case and materials on record and it is not possible to lay down any straight jacket formula which can decide the dispute as to the real nature of duties and functions being performed by an employee in all cases. When an employee is required to do more than one kind of work it becomes necessary to determine under which classification u/s 2(s) the employee will fall for the purpose of deciding whether he comes within the definition of 'workman' or goes out of it. The designation of an employee is not of much importance and what is important is the nature of duties being performed by the employee. The determinative factor is the main duties of the

*Sd/-
Judge*

employee concerned and not some works incidentally done. Viewed from this angle, if the employee is mainly doing supervisory work but incidentally or a fraction of time also does some manual or clerical work, the employee should be held to be doing supervisory work. Conversely, if the main work is of manual, clerical or of technical nature, the mere fact that some supervisory or other work is also done by the employee incidentally or only a small fraction or working time is devoted to some supervisory works, the employee will come within the purview of 'workman' as defined in section 2(s) of Industrial Dispute Act.

In a judgement reported in (1983) 4 S.C Cases 293 D.P Maheshwari Vs. Delhi Administration and Ors. the reliance is placed upon Paras 5 & 6 of the judgement which is reproduced herein below, wherein the Hon'ble Supreme Court of India has been pleased to observe that --

5. *Curiously enough, the learned Single Judge of the High Court affirmed the finding of the Labour Court that D.P. Maheshwari was not employed in a supervisory capacity. He said:*

"In the face of this material and the admitted hypothesis the conclusion that the respondent was not mainly employed in a supervisory capacity is certainly a possible conclusion that may be arrived at by any tribunal duly instructed in the law as to the manner in which the status of an employee may be determined. It is, therefore, not possible for this Court to disturb such a conclusion having regard to the limited ambit of review of the impugned order."

Having so held, the learned Single Judge went on to consider whether the workman was discharging duties of a clerical nature. He found that it would be difficult to say that D.P. Maheshwari was discharging 'routine duties of a clerical nature which did not involve initiative, imagination, creativity and a limited power of self direction'. The learned Single Judge did not refer to a single item of evidence in support of the conclusions thus recorded by him. He appeared to differ from the Labour Court on a question of fact on the basis of a generalisation without reference to specific evidence. No appellate court is

*Sd/-
Judge*

entitled to do that, less so, a court exercising supervisory jurisdiction. Referring to the finding of the Labour Court that the workman was discharging mainly clerical duties the learned Single Judge observed: "It is erroneous to presume, as was apparently done by the Additional Labour Court, that merely because the respondent did not perform substantially supervisory functions, he must belong to the clerical category." This was an unfair reading of the Labour Court's judgment. We have earlier extracted the relevant findings of the Labour Court. The Labour Court not only found that the workman was not performing supervisory functions but also expressly found that the workman was discharging duties of a clerical nature. The Division Bench which affirmed the judgment of the learned Single Judge also read the judgment of the Labour Court in a similar unfair fashion and observed: "It is no doubt true that the Labour Court held that the appellant's evidence showed that he was doing mainly clerical work. As we read the order as a whole it appears that in arriving at this conclusion the Labour Court was greatly influenced by the fact that the appellant was not employed in a supervisory capacity." We have already pointed out that the Labour Court did not infer that the appellant was discharging duties of a clerical nature from the mere circumstance that he was not discharging supervisory functions. The Labour Court considered the entire evidence and recorded a positive finding that the appellant was discharging duties of a clerical nature. The finding was distinct from the finding that the appellant was not discharging supervisory functions as claimed by the company. We would further like to add that the circumstance that the appellant was not discharging supervisory functions was itself a very strong circumstance from which it could be legitimately inferred that he was discharging duties of a clerical nature. If the Labour Court had drawn such an inference it would have been well justified in doing so. But, as we said, the Labour Court considered the entire evidence and recorded a positive finding that the workman was discharging duties of a clerical nature. The Division Bench, we are sorry to say, did not consider any of the evidence considered by the Labour Court and yet characterised the conclusion of the Labour Court as perverse. The only evidence which the Division Bench considered was that of

Sd/-
Judge

MW I Shri K.K. Sabharwal and under the impression that the Labour Court had not considered the evidence of K.K. Sabharwal, the Division Bench observed, "The non-reference to the said evidence while discussing the point in issue, would clearly vitiate the order of the Labour Court." This was again incorrect since we find that the Labour Court did consider the evidence of MW I fully.

6. Shri G.B. Pai, learned counsel for the company, drew our attention to the qualifications of the appellant and certain letters written by him to the Managing Director and argued that the qualifications and the letters indicated that the appellant was discharging duties, not of a clerical nature but those of a senior executive closely in the confidence of the Managing Director. We are unable to agree with Mr Pai. First, we are not prepared to go behind the finding of fact arrived at by the Labour Court which certainly was based on relevant evidence and next, all that we can say from the qualifications and the letters is that the appellant was occasionally deputed by the Managing Director to undertake some important missions. The question is what were his main duties and not whether he was occasionally entrusted with other work. On that question, the clear finding of the Labour Court is that he was mainly discharging duties of a clerical nature.

*The Hon'ble Supreme Court of India was pleased to observe in Para 7 of the case reported in **1988 (Supp.) Supreme Court Cases 82 National Engineering Industries Ltd. vs. Shri Kishan Bhageria And others** while discussing the case of **D.P. Maheshwari Vs. Delhi Administration** that the question whether a person was performing supervisory or managerial work was the question of fact to be decided bearing in mind the correct principle. The principle therefore is, one must look into the main work and that must be found out from the main duties. A supervisor was one who could bind the Company to take some kind of decision on behalf of the Company. One who was reporting merely as to the affairs of the Company and making assessment for the purpose of reporting was not supervisor.*

*At page 1290, of Black's Law Dictionary, Special Deluxe, Fifth Edition, "supervisor" has been described, *inter alia*, as follows: In a broad sense, one*

*Sd/-
Judge*

financial authority over others, to Superintend and direct. The terms 'supervisor' means any individual having authority in the interest of the employer, to hire, transfer, suspend, lay-off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibility to direct them, or to just their grievances or effectively to recommend such action if in connection with the foregoing exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgement.

In a judgement reported in 1960 SCC online SC 183: AIR 1967 SC 428: (1961) 1LLJ 18 Lloyds Bank Ltd., New Delhi Vs. Pannalal Gupta & Ors. wherein the reliance is placed upon Paras 10 & 12 of this judgement which are reproduced herein below wherein the Hon'ble Supreme Court of India has been pleased to observe that --

10. *However, before a clerk can claim a special allowance his work must appear to have some element of supervisory character. The work that is done by the clerks in the audit department substantially consists of checking up books of accounts and entries made in them. This checking up is primarily a process of accounting, and the use of the word "checking" cannot be permitted to introduce a consideration of supervisory nature. The work of checking the authority of the person passing the voucher or to enquire whether the limit of authority has been exceeded is also no doubt work of a checking type but the checking is purely mechanical, and it cannot be said to include any supervisory function. If we take into account the six classes of clerks specified in clause 9 it would suggest that in respect of each one of them there would normally be some persons working under the persons falling in that clause; in other words, a person claiming the status of a supervisor in clause 9 should normally have to supervise the work of some others who are in a sense below him. On the argument urged by Mr Ramamurthy every clerk working in the audit department would be a supervisor and as such would be entitled to draw a monthly special allowance of Rs 50, though in the general hierarchy of the banks' employees he may be much below the head clerks or head cashiers who draw Rs 20 as monthly allowance. The Tribunal has characterised the work of*

*Sd/-
Judge*

these clerks as internal auditors but that obviously is an overstatement. Audit in the sense in which the word "internal audit" is understood is very different from the work of checking which is entrusted to the clerks in the audit department. Similarly, when the Tribunal has observed that the clerks in the audit department supervise the work of almost all the persons in that establishment that again is obviously an overstatement. It would be legitimate to say that the work done in the audit department is important for the proper and efficient functioning of the bank, but it would be idle to elevate that work to the status of officers who supervise the work of everybody concerned with the bank's establishment. In our opinion, therefore, the conclusion drawn by the Tribunal as regards the status of the three workmen by reference to the ninth category specified in para 164(b) of the Award is manifestly erroneous and cannot be sustained.

*12. The question as to whether an employee holds a supervisory post or not frequently arose for decision before Industrial Courts under the original definition of a workman in the Industrial Disputes Act. Section 2(s) as it originally stood defined a workman as meaning, *inter alia*, any person employed (including an apprentice) in any industry to do any skilled or unskilled, manual or clerical, work for hire or reward. Under this definition, on many occasions the employers claimed that the workmen concerned were officers or members of the supervisory staff and as such did not fall under Section 2(s), and workmen contended that they were doing merely clerical or mechanical work and did not fall in the class of officers or supervisors. Dealing with such disputes Industrial Courts generally considered the essence of the matter and did not attach undue importance to the designation of the employee or the name assigned to the class to which he belonged. It was always a matter of determining what the primary duties of an employee were — did he do clerical or manual work?; if the answer was in the affirmative he was a workman; — were his duties of a supervisory nature?; if the answer was in the affirmative he was not a workman. In considering the latter aspect of the problem industrial adjudication generally took the view that the supervisor or officer should occupy a position of command or decision and should be*

*Sd/-
Judge*

authorised to act in certain matters within the limits of his authority without the sanction of the Manager or other supervisors. Take the case of checking inspectors with which the Industrial Tribunal was concerned in A.R. Nataraja Ayyar and Trichy-Srirangam Transport Co. Ltd [[1955] I LLJ 608]. The checking inspector had to check the conductors and drivers and to verify if they were doing their duties properly. In that behalf he had to send his daily check report to the office. It was urged on behalf of the checking inspector that he was not in absolute control of any group of workers and that the report which he made had to be submitted to his superiors for final orders. Even so it was held that the general nature of the duties indicated that the checking inspector belonged to the cadre of the supervisory staff. Similarly in United Commercial Bank, Ltd. v. L.S. Seth [[1954] II LLJ 457] it was held that the chief cashier of a banking company who was responsible for all the acts of commission and omission of the employees of the cash department, and under whose control and supervision the work of the cash department was done by the employees of the said department, was not a workman since he belonged to the cadre of the supervisory staff. To the same effect is the decision of the Labour Appellate Tribunal in the case of Burma-Shell Oil Storage and Distributing Company of India, Ltd., Madras and Their Employees [[1954] I LLJ 21]. "To be an officer", it was held, "an employee must occupy a position of command and direction and should be authorised to act without the sanction of the Manager or other supervisors. The name or the designation of the employee is not a determining test". We have referred to these industrial decisions merely for the purpose of emphasising the fact that in deciding the status of an employee the designation of the employee is not decisive; what determines the status is a consideration of the nature and duties of the function assigned to the employee concerned; that is why the point which arises for our decision in the present appeal lies within a narrow compass. Having regard to the nature of the duties and functions assigned to the three employees by the appellant, would it be reasonably possible to hold that they are supervisors under clause 9 of Para 164(b) of the Award? In our opinion, the answer to this question must be in the negative.

Sd/-
Judge

The Hon'ble Supreme Court of India was pleased to hold that "we have referred to these industrial decisions merely for the purpose of emphasizing the fact that in deciding status of an employee the designation of the employee is not decisive; what determines the status is a consideration of the nature and duties of the functions assigned to the employee concerned, that is why the point which arises for our decision in the present appeal lies within the narrow compass". Having regard to the nature of the duties and functions assigned to the 3 employees by the appellant, would it be reasonably possible to hold that they are supervisors under clause 9 of para 164(b) of the award? In our opinion the answer to the question must be in the negative.

In view of the aforesaid case laws cited herein above and so far as this case is concerned, the petitioner Amit Kumar Roy was initially appointed as a 'Stores Clerk' on 25.07.2009 at Asansol Store Division and his service was confirmed w.e.f 28.02.2010 and his confirmation of service was dependent upon the fulfilment of all the terms and conditions contained in his appointment letter. Subsequently, the petitioner was promoted to 'Stores Officer' from Stores Clerk w.e.f 01.04.2014.

According to the management, the petitioner Amit Kumar Roy is a Stores Officer who does not come under the purview of the definition 'workman' u/s 2(s) of Industrial Dispute Act.

But it is the case of the petitioner Amit Kumar Roy that he is a workman u/s 2(s) of Industrial Dispute Act, 1947 as he used to do the clerical and manual work and though he was promoted as a Stores Officer but he had not discharged the functions of Stores Officer and he had been doing the clerical work being a 'Stores Clerk'.

It is also evident from the cross-examination of witness P.W-1 which was put to him during his cross-examination by the Id. Counsel of the management / employer and the petitioner has stated that his job was to make entry in the concerned register for receiving of materials as well as disbursing the same to the various contractors. He was looking after the job of loading and unloading of materials. It is fact that the work of loading and

*Sd/-
Judge*

unloading of materials was done by labourers. on being shown pay slip for the month of April, 2020, he admitted that his designation was mentioned as a 'Store Officer' which was marked as Exbt.A in this case.

In a number of case laws the Hon'ble Supreme Court of India has been pleased to hold that the designation of the employee is not decisive factor but the determinative factor is whether the employee was working as a workman or he was discharging any managerial or supervisory work under the provision of section 2(s) of Industrial Dispute Act, 1947 or not. So far as this case is concerned, the petitioner Amit Kumar Roy used to make entry in the register for receiving of materials as well as disbursing the same to the various contractors and he also looked after the job of loading and unloading of materials. Work of loading and unloading of materials was done by the labours. From the aforesaid evidence of petitioner Amit Kumar Roy from his cross-examination it is very much clear that he was not discharging any supervisory functions or managerial functions in the administrative capacity or of M/S Mc Nally Sayaji Engineering Ltd. That the petitioner Amit Kumar Roy was not acting or discharging his functions in the administrative capacity or in a managerial capacity for and on behalf of the Company i.e M/S Mc Nally Sayaji Engineering Ltd. in order to bind the Company.

Considering the aforesaid facts and circumstances, I am of the considered view that the petitioner Amit Kumar Roy was not discharging the functions as a Store Officer of the M/S Mc Nally Sayaji Engineering Ltd. rather he comes under the purview of 'workman' u/s 2(s) of Industrial Dispute Act, 1947 considering his nature of duties as is found from his cross-examination as PW-1 in this case.

It is also pertinent to mention herein that as per the letter dated 31.03.2014 issued by the General Manager for M/S Mc Nally Sayaji Engineering Ltd. , the petitioner Amit Kumar Roy was promoted to the position Officer – Store w.e.f 01.04.2014 which is marked as Exbt.2/6 in this case.

On going through the document Exbt.2/6, I find that when the petitioner Amit Kumar Roy was promoted to officers – stores the said letter

*Sd/-
Judge*

does not contain any duties assigned to him to be performed as an Officer-Stores of M/S Mc Nally Sayaji Engineering Ltd.

According to the Id. lawyer for the management /employer that the petitioner Amit Kumar Roy was discharging his duty in the grade of JM 2 (Junior Management) but the document i.e letter dated 01.04.2014 issued by the General Manager whereby he is said to be promoted to 'Officer – Stores' from 'Stores Clerk' does not contain his assignment of duties to be performed by petitioner as Officers- Stores. Consequently, it can never be said that the petitioner was discharging the functions of " Stores Officer" in M/S Mc Nally Sayaji Engineering Ltd. in the grade JM 2 (Junior Management).

That this Labour Court has already come to finding considering the nature of duties performed by the petitioner Amit Kumar Roy that he is a workman u/s 2(s) of Industrial Dispute Act, 1947. Petitioner Amit Kumar Roy is not a "Store Officer". Therefore, the termination of the job of the petitioner by the management vide letter dated 01.09.2020 is wholly illegal and bad in the eye of law as the management / employer of the Company has not conducted any domestic enquiry against the petitioner Amit Kumar Roy before the termination of his job in the form of preliminary enquiry, showing cause of termination of job, submitting charge sheet and proving the fact that he was negligent in doing his work of the Company. Therefore, the termination of job of the petitioner by the management is not tenable in the eye of law and the letter of termination of the job of the petitioner Amit Kumar Roy in M/S Mc Nally Sayaji Engineering Ltd. by the management /employer of the Company is liable to be set aside.

That the letter of termination of job of the petitioner Amit Kumar Roy issued by Associate V.P. – Unit Head for M/S Mc Nally Sayaji Engineering Ltd. dated 01.09.2020 is liable to be set aside on the following grounds :

- i) *This Industrial Tribunal upon considering the oral evidence including the cross-examination of P.W-1 has come to a finding that the designation is not a decisive or determinative factor as to whether the petitioner was a workman or Stores Officer, it depends*

Sd/-

Judge

ii) upon the nature of duties performed by the petitioner Amit Kumar Roy while he was employed in M/S Mc Nally Sayaji Engineering Ltd. That the petitioner Amit Kumar Roy used to make entry in the register for receiving of materials as well as disbursing the same to various contractors and he also looked after the job of loading and unloading of materials. The work of loading and unloading of materials was done by the labourers. From the aforesaid evidence of the petitioner Amit Kumar Roy from his cross-examination it is evident that he was not discharging any duty in supervisory capacity and he was not discharging any managerial functions in the administrative capacity of the Company, M/S Mc Nally Sayaji Engineering Ltd. The petitioner Amit Kumar Roy was also not discharging or acting any functions in the administrative capacity for and on behalf of the M/S Mc Nally Sayaji Engineering Ltd. in order to bind the Company.

Therefore, the petitioner Amit Kumar Roy can be regarded as workman u/s 2(s) of I.D. Act, 1947. The petitioner has never acted as Stores Officer though he was designated as Stores Officer as per the document Exbt.2/6.

li) That mere incorporation of the designation of petitioner Amit Kumar Roy in his pay slip as Stores Officer is not suffice to come to a finding that the petitioner Amit Kumar Roy was a Stores Officer and his termination of service by the management of the Company on the basis of the terms and conditions of his appointment letter on account of contractual obligation is not tenable in the eye of law and the same is also not justified in the eye of law.

iii) That the letter document Exbt.2/6 issued by the General Manager for M/S Mc Nally Sayaji Engineering Ltd. on 31.03.2014 does not contain any assigned duty to be performed by the petitioner Amit Kumar Roy in the event of being the alleged Officer – stores of M/S

*Sd/-
Judge*

- iv) *Mc Nally Sayaji Engineering Ltd. in order to come to a finding that the petitioner was a Stores Officer of M/S Mc Nally Sayaji Engineering Ltd.*
- v) *That this Industrial Tribunal has already arrived at a conclusion that petitioner Amit Kumar Roy is a 'workman' as per the definition of section 2(s) of I.D. Act, 1947. Therefore, the management of M/S Mc Nally Sayaji Engineering Ltd. ought to have conducted a domestic enquiry against the allegation that the petitioner was negligent in performing his duties in spite of repeated letter issued to him. The management of Co. has neither conducted any domestic enquiry in the form of preliminary enquiry against the allegation of the petitioner being negligent in performing his duty of the Company, nor issued any show cause notice of termination of job nor submitted any charge sheet against such allegations levelled against the petitioner Ami Kumar Roy nor the management of the Company has proved the fact of allegations of petitioner being negligent in performing his duty of the Company by examining any witness or on producing necessary documents.*
- vi) *That it has been provided u/s 25(N) (1) of I.D.Act,1947 that : No workman employed in any industrial establishment to which this chapter applies, who has been in continuous service for not less than one year under the employer shall be retrenched by that employer until, -*
 - a) *the workman has been given three months notice in writing including the reasons for retrenchment and the period of notice has expired or the workman has been paid in wages of such notice, wages for the period of the notice; and*
 - b) *the prior permission of the appropriate Government or such authority as may be specified by that Government by notification in the official gazette (hereafter in this section referred to as the specified authority) has been obtained on a application made in this behalf.*

*Sd/-
Judge*

That in view of the aforesaid provision of section 25(N) of I.D. Act,1947 as the petitioner Amit Kumar Roy has been held to be a workman u/s 2(s) of I.D.Act,1947. Therefore, the prior permission of the appropriate Govt. or of his concerned authority is required by the management of the Company M/S Mc Nally Sayaji Engineering Ltd. for termination of the job of petitioner. Therefore, non-compliance of provision of Section 25(N) of I.D. Act, 1947 the termination of job of the petitioner issued by the management M/S Mc Nally Sayaji Engineering Ltd. is not tenable in the eye of law.

Considering the aforesaid discussion I am of the view that the termination of the service of the petitioner Amit Kumar Roy by virtue of a letter of termination of job of petitioner Amit Kumar Roy issued by Associate V.P- Unit Head for M/S Mc Nally Sayaji Engineering Ltd. dated 01.09.2020 is not justified. That the action taken by the management of the Company for termination of the job of the petitioner Amit Kumar Roy is wholly illegal and bad in the eye of law and the same is liable to be set aside.

The job of the petitioner was terminated by the management of the Company vide their letter dated 01.09.2020 and since then the petitioner Amit Kumar Roy has not been drawing any retrenchment allowance / wages from the Company, M/S Mc Nally Sayaji Engineering Ltd. The petitioner Amit Kumar Roy is also not employed in any other Company to maintain his livelihood and run his family.

Consequently, the petitioner Amit Kumar Roy in the event of being workman is entitled to reinstate in his service of the Company M/S Mc Nally Sayaji Engineering Ltd. with full back wages from the date of termination of his job without disturbing his continuity in service.

That the contention raised by the management / employer of M/S Mc Nally Sayaji Engineering Ltd. that the termination of service of the petitioner Amit Kumar Roy from the Company was justified as he was a Store Officer and he does not come under the purview of workman as per the definition u/s 2(s) of I.D.Act,1947 and his service from the Company

*Sd/-
Judge*

can be terminated as per terms and conditions of his appointment letter has not been duly proved by the management / employer of Co. M/S Mc Nally Sayaji Engineering Ltd. by leading any sufficient oral evidence as well as the documentary evidence in this respect. Therefore, the contention raised by the Id.lawyer for the management / employer of M/S Mc Nally Sayaji Engineering Ltd. regarding the termination of service of the petitioner Amit Kumar Roy on the ground that he was a Store Officer and he was negligent in his duty to the Company on the basis of contractual obligation is found to be devoid of any merit in the eye of law.

Considering the argument of the Id.lawyer for the petitioner Amit Kumar Roy as well as Id.lawyer for the management /employer of M/S Mc Nally Sayaji Engineering Ltd., the rival contention of both the parties in consonance with the facts of this case as well as the oral and documentary evidence of this case as was led and produced by both the parties to this Industrial Dispute , I am of the view that the termination of service of the petitioner Amit Kumar Roy by the management / employer named M/S Mc Nally Sayaji Engineering Ltd. vide their letter dated 01.09.2020 (Exbt.No.3) is found to be not justified. As the petitioner, Amit Kumar Roy has not been drawing any retrenchment allowances/ wages from his Company M/S Mc Nally Sayaji Engineering Ltd. and he is not employed in any other Company to maintain his livelihood and run his family. Consequently, the petitioner Amit Kumar Roy in the event of being workman is entitled to reinstate in his service in the Company named M/S Mc Nally Sayaji Engineering Ltd. with full back wages from the date of his termination of service i.e. 01.09.2020 (document Exbt. No. 3) without disturbing his continuity in service.

Thus, the issue nos. 1 & 2 hereby stand disposed of.

In result, the reference order being no. Labr./1035/(LC-IR)/22015(15)/2/2020 dated 25.11.2022 issued by the Joint Secretary, Govt. of West Bengal, Labour Deptt. and forwarded by the Joint Secretary, the referred issues raised by the petitioner Amit Kumar Roy in respect of

*Sd/-
Judge*

justification of termination of his service by the management of M/S Mc Nally Sayaji Engineering Ltd. w.e.f 30.09.2020 and his entitlement to any other relief/reliefs , if any, deserves to be allowed.

Hence, it is

O R D E R E D

that the impugned reference order being no. Labr./1035/(LC-IR)/22015(15)/2/2020 dated 25.11.2022 issued by the Joint Secretary, Government of West Bengal, Labour Department and forwarded by him in respect of referred issues raised by the petitioner Amit Kumar Roy with respect to the justification of termination of his service by the Management of Company named Mc Nally Sayaji Engineering Ltd. and his entitlement to relief / reliefs be and the same is adjudicated, considered and allowed on contest against the Management/Employer, Mc Nally Sayaji Engineering Ltd. and without any cost.

Accordingly, it is held that the termination of service of the petitioner Amit Kumar Roy by the Management of the Company named Mc Nally Sayaji Engineering Ltd. vide letter dated 01.09.2020 (document Exbt.No.3) issued by the Associate V.P- Unit Head for Mc Nally Sayaji Engineering Ltd. is unjustified and unreasonable and the same is set aside in the event of being illegal, arbitrary and unreasonable.

Petitioner Amit Kumar Roy is reinstated in his service from the date of termination with all the service benefits together with full back wages without disturbing his continuity in service which is applicable as per the provision of law.

The Management of the Company, Mc Nally Sayaji Engineering Ltd. is directed to permit the petitioner Amit Kumar Roy to join in his service within one (01) month from the date of communication of this judgement and order & to release all his service benefits forthwith within the aforesaid period which he is entitled to receive.

*Sd/-
Judge*

A copy of this judgement and order be communicated to the Management of the Company Mc Nally Sayaji Engineering Ltd. for his information and compliance in this regard.

Send a copy of this award to the Secretary, Labour Department, Government of West Bengal for information and taking necessary action from his end.

Thus, this case no. 40 of 2022 referred under section – 10 of the Industrial Dispute Act, 1947 hereby stands disposed of.

D/C by me

Sd/-

Judge

sd/-

(Nandadulal Kalapahar)

*Judge, 9th Industrial Tribunal,
Durgapur.*