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I/723324/2025

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

No. Labr/ 1463 /(LC-IR)/ 22015(16)/328/2018 Date : 22/12/2025

ORDER

WHEREAS under Labour Department's Order No. Labr/516/(LC-IR)/22015(16)/328/2018 dated 18.07.2018 with reference to the Industrial Dispute between M/s. Kinsley Industries Ltd.,7, Chittaranjan Avenue, Kolkata – 700072 and its workman Sri Paltan Ram, 95/1/2/H/14, Cossipore Road, Kolkata – 700002, 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 8th Industrial Tribunal, Kolkata.

AND WHEREAS the 8th Industrial Tribunal, Kolkata, has submitted to the State Government its Award dated 30.10.2025 in Case No. VIII-16/2018 on the said Industrial Dispute Vide e-mail dated 17.12.2025 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/ 1463/1(5)/(LC-IR)/ 22015(16)/328/2018 Date : 22/12/25

Copy forwarded for information and necessary action to:

1. M/s. Kinsley Industries Ltd.,7, Chittaranjan Avenue, Kolkata – 700072.
2. Sri Paltan Ram, 95/1/2/H/14, Cossipore Road, Kolkata – 700002.
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/ 1463 /2(3)/(LC-IR)/ 22015(16)/328/2018 Date : 22/12/25

Copy forwarded for information to :

1. The Judge, 8th Industrial Tribunal, Kolkata, with reference to e-mail dated 17.12.2025.
2. The Joint Labour Commissioner (Statistics), West Bengal, 6, Church Lane, Kolkata -700001.
3. Office Copy.

Assistant Secretary
to the Government of West Bengal

In the matter of an industrial dispute between M/s. Kinsley Industries Ltd., 7, Chittaranjan Avenue, Kolkata – 7000 072 and its workman Sri Paltan Ram, 95/1/2/H/14, Cossipore Road, Kolkata – 700 002.

(Case No. VIII-16/2018)

Before the Eighth Industrial Tribunal: West Bengal

Present Sri Amit Chattopadhyay
Judge,
Eighth Industrial Tribunal,
West Bengal.
Sri Paltan Ram …….Applicant / workman
Vs.
M/s. Kinsley Industries Ltd……. O.P. Company

A W A R D

Dated: 30.10.2025

Received a copy of order of reference vide G. O. No Labr/516/(LC-IR)/22015(16)/328/2018 dated 18.07.2018 from the Labour Department, Govt. of West Bengal and reference no. 3115-IR/IR/3A-6/59, dated 21/06/1960 referring an industrial dispute which exists between M/s. Kinsley Industries Ltd., 7, Chittaranjan Avenue, Kolkata – 7000 072 and its workman Sri Paltan Ram, 95/1/2/H/14, Cossipore Road, Kolkata – 700 002 for adjudication.

I S SU E (S)

1) Whether the termination of service of Sri Paltan Ram, W.e.f. 01.07.2016 by the management of M/s. Kinsley Industries Ltd. was justified?

2) To what relief, if any, is he entitled?

As per Written Notes Argument the case of the workman is that the present reference has been made before this Ld. Tribunal to adjudicate whether the termination of service of the applicant (workman) is legal and justified.

It is respectfully submitted that the scope of adjudication is confined strictly to the reference made, which is to determine the justification or otherwise of the termination in question.

Upon perusal of the written statement submitted by the Company, it transpires that the opposite party (company) is contending that the present matter is not a case of termination but rather of closure of the unit. The company has produced certain documents in purported support of its case.

However, it is evident from the documents filed and from the admission of the company that the unit has been closed solely by terminating the services of the applicant workman.

It is further submitted that a unit is ordinarily operated by employing multiple staff and workmen. In the instant case, the documents reveal that only the applicant's service has been terminated, which prima facie establishes that this is not a genuine case of closure but rather on of illegal termination.

As per Section 25FFF of the Industrial Disputes Act, 1947, compensation for closure is required to be calculated by considering both the duration of service of the employee and the last drawn wages. The company has failed to produce necessary documents such as:

i) Proof of date of joining the service;
ii) Last drawn wages (i.e. pay slip for the month of May).

In the absence of these documents, the payment of compensation as claimed by the company appears to be illusory and a mere eyewash.

From Exhibit D/3, it is manifest that the payment of compensation and gratuity are distinct. Nevertheless, under the statutory framework, the method of computation for closure compensation and gratuity remains the same.

Apart from the alleged grounds indicated in the notice of closure (Exhibit B), the company has utterly failed to produce any documentary evidence substantiating the grounds cited for closure.

The cross-examination of O.P.W.-1 has also revealed that the company has failed to establish that the alleged closure was effected in accordance with the provisions of law, including the payment of proper compensation and filing of requisite documents. No relevant documents have been produced to support the company's contentions.

The documents filed by the company (exhibits _____) pertain to two units of the company. However, no document has been produced showing the number of employees employed in the specific unit in question of how many were terminated, if any, apart from the applicant.

But surprisingly, the company has filed the balance sheet through special leave application wherein it shows the separate balance sheet of the company without filing the composite balance sheet which prima-facie shows the same and is fully baseless and / or concocted and / or have been produced for the purpose of the case.

It is thus established that the alleged closure is bad in law and that the same has been orchestrated solely to victimize the workman.

The company has further failed to file any document like the attendance register, salary register, or any appointment letter of the workman to substantiate that the closure was lawfully executed. Consequently, the notice of closure itself stands vitiated and in direct contravention of established legal principles.

Furthermore, the impugned termination of the applicant's service has been effected without issuance of any show cause notice or charge sheet, nor has the applicant been given any opportunity to defend himself, rendering the entire process void ab initio. The impugned notice of termination was issued on 30.06.2016, with effect from 01.07.2016.

In view of the foregoing facts and circumstances, it is humbly prayed that this Ld. Tribunal may be pleased to hold that the termination of service of the applicant is illegal,

unjustified, and contrary to the provisions of law. The applicant is therefore entitled to be reinstated in service with full back wages.

It is further prayed that this Ld. Tribunal be pleased to hold that the alleged closure is a mala fide act by the company to victimize the applicant, thereby resorting to unfair labour practices in violation of law.

The present case centers around justification of termination of service of Sri Paltan Ram with effect from 01.07.2016 by the management of M/s. Kingsley Industries Limited and as to whether he is entitled to any relief or not.

The company had its unit / factory situated at 6, Nawab Dilanganj Road, P.O. Cossipore, Kolkata – 700 002. This factory was called as Jute Accessories Factory and it was a manufacturing unit. The company has no other manufacturing unit like jute accessories factory. The said unit was closed down permanently with effect from 30.06.2016.

There was another unit of the company which is not a manufacturing unit and only assembling work was done in the said unit. The said unit is located at different premises and its address is different. The nature of activities of the other unit was totally different with the activities of the closed unit. Moreover the closed unit was no way connected with other unit nor it was dependant on the other unit. The nature of employees of those two units are totally different. Even there is no post of machine operator come setter in the other unit and there was no scope of deployment of machine operator come setter in other unit considering the nature of activities being carried on the other unit.

There had been heavy and continuous losses in operating the company's jute accessories factory, due to continuous decreasing sales low productivity and increasing cost etc. The company was unable to continue the manufacturing operation of the company's jute accessories factory. It had therefore been decided to close down the manufacturing operation of the Company's jute accessories factory. Accordingly it was declared that the manufacturing operation of the company's jute accessories factory was closed with effect from closure of working hours of 30.06.2016. Consequent upon closure the services of all the workers of the said unit stood terminated and the applicant was given letter of termination in as much as the closure leads to automatic termination of service.

Sri Paltan Ram, the concerned workman in the present dispute challenged the order of termination and the Govt. of West Bengal referred the matter for adjudication of the issues under reference.

The company contested the case by filing written statement before this Tribunal and in their written statement the company has taken certain preliminary points relating to the maintainability of the reference touching the locus-standi of the applicant including the jurisdiction of the Tribunal and prayed for hearing of the preliminary points first before going into the merit of the case.

The silent preliminary points taken are set out hereunder :-

1. The Reference is not maintainable since no dispute proper has been raised so as to transform the alleged dispute to be an Industrial Dispute.
2. The Reference is not maintainable since the factory has been closed permanently with effect from 30.06.2016 and there was no independent reference challenging the legality of the said closure before any forum or any court of law being a collective dispute.
3. The Reference is not maintainable since there cannot be any reference of termination of service unless the closure is declared invalid through a proper reference by the Tribunal or the Labour Court.
4. The Reference is not maintainable since the closure is a collective nature of dispute as defined u/s 2(k) of Industrial Dispute Act, 1947 and required sponsoring by group of workmen. In that event the provisions of Sections 2A of Industrial Dispute Act, 1947 cannot be invoked touching termination due to closure.
5. The Reference is not maintainable since it is the settled position of law that **the closure leads to automatic termination of service** and as such there is hardly any scope to examine the legality of such termination arising out of closure.
6. The Reference is not maintainable since the applicant is **estopped** from raising any dispute concerning the termination of service as he has admitted the factum of closure by accepting the closure compensation offered to him.
7. The Reference is not maintainable since there is no scope to initiate any proceedings for cessation of employment by way of termination of service due to closure.
8. The Reference is not maintainable since the same has become infractuous in view of the fact the applicant has taken his full and final payment including the amount of closure compensation.
9. The Reference is not maintainable since the closure leads to automatic termination of service.

10. The Reference is not maintainable since there does not subsists any employer employee relationship between the company and the applicant consequent upon the declaration of closure.

A. <u>Submission on behalf of the company</u> :-

i. The contention of the company is that the alleged dispute could not transform to be an Industrial dispute. Moreover the Govt. of West Bengal has no material on the basis where all the issues under reference could be referred. The specific contention is that the instant reference is not maintainable since the factory / unit was closed permanently with effect from 30.06.2016 and there was no independent reference challenging the legality of the said closure before any forum or any court of law being a collective dispute as defined u/s 2(k) of the Industrial Disputes Act, 1947.

That apart it is the settled position of law that the closure leads to automatic termination of service as such there is hardly any scope to examine the legality of such termination arising out of closure.

ii. The present reference is not maintainable since the same has become infructuous in view of the facts that the applicant has taken his full and final payment

including amount of closure compensation. Consequent upon declaration of closure there never subsisted any employer employee relationship between the company and the applicant. The preliminary points involved in this case go to the very root of the maintainability of the reference.

iii. In view of the fact a separate application was filed by the company with a prayer to hear the preliminary point first before going into the merit of the case. Upon hearing both the parties the Ld. Tribunal was of the opinion that **such point has to be decided along with other issues**. The Ld. Tribunal vide its order dated 17.09.2019 has held that the Labour Directorate did not frame any specific issue of maintainability and accordingly the Ld. Tribunal was pleased to frame an additional issue and reframe the issues referred for adjudication. The additional issues as framed by the Tribunal vide order dated 17.09.2019 is as follows:-

"1. Is this case maintainable in its present form and law?"

In view of the above the issues are reframed as follows:-

"1. Is this case maintainable in its present form and law?

2. Where the termination of service of Sri Paltan Ram w.e.f. 01.07.16 by the management of M/s. Kingsley Industries Limited?
3. To what relief if any is he entitled?"

iv. The present reference has been made at the instance of the individual workman u/s10 read with Section 2A. As per provision of Sec. 2A an individual workman can raise dispute which has to be confined regarding termination of service or dismissal or retrenchment. To challenge the closure or the question involved regarding the closure, a collective dispute has to be raised either by the union or majority of the workmen. An individual person cannot challenge the legality of the closure at its own initiative because the very object of the Industrial Disputes Act clearly indicates which disputes come under as collective nature and which dispute can be raised by an individual employee. Obviously the legality of the closure cannot be challenged by an individual employee in a reference u/s 10 read with Section 2A. After the closure of the unit no claim of the individual regarding termination survived against the company. Further the question of closure and its legality could not be decided as an incidental question to the main question referred to the Tribunal. The legality of the closure would not arise in the present reference and it could not be determined as an incidental question, that is major industrial dispute is not an incidental question. Whether the closure is real or not is not a question which arises in the present reference and the Tribunal has no jurisdiction to go into the question. In the instant case the justifiability of the termination has been referred and the termination due to closure is interlinked because of the fact closure leads to automatic termination of service.

v. As the unit closed its business and declared closure on 30.06.2016 the services of its employees stood terminated on and from the said date.

vi. A workman in an individual capacity cannot raise an Industrial dispute challenging closure of general grievance as held by Kerala High Court in the case of

Mangalam Publication (India) Pvt. Ltd. vs. Thampy reported in 2006 LLR 598. A dispute pertaining to closure can only adjudicated u/s 2(k) and not 2A of the I.D. Act.

vii. Undisputedly the date of permanent closure of the Jute Accessories Factory/unit was 30.06.2016 and the date of permanent closure of the said unit shall play a pivotal role in determining the alleged entitlement of Sri Paltan Ram the concerned workman to relief, if any provided of course the action taken by the company is held to be illegal.

viii. Since the Jute Accessories Factory/unit has been closed down permanently w.e.f. 30.06.2016, it is required to be considered as to whether Sri Paltan Ram is ultimately entitled to any relief or not.

B. <u>Permanent closure of factory/unit is an admitted one</u>

During the course of evidence, the evidence adduced on behalf of the concerned workman has admitted that the Jute Accessories Factory/unit has been closed down. The relevant portion of the evidence of PW-1 are being reproduced hereunder :-

<u>Evidence of Sri Paltan Ram, PW-1</u>

" A closure notice was pested on the main gate of the company and the company also sent closure notice by post to my residential address along with cheque of full and final settlement. **(in cross)**

" I received the letter and cheque" **(in cross)**

C. <u>Acceptance of full and final payment –</u>

<u>Evidence of Sri Paltan Ram, PW-1</u>

"It is true that one cheque of Rs. 2,82,146/- was sent to me by the company. I did not return the cheque to the company before filing the case. " **(in cross)**

"The notice pay amount i.e. one month salary and leave encashment and bonus was also within the said amount." **(in cross)**

D. <u>Cheque encased -</u>

<u>Evidence of Sri Paltan Ram, PW-1</u>

"I deposited the cheque to my bank and it was encashed. I withdraw money from that amount" **(in cross)**

E. <u>Acceptance of payment without protest -</u>

<u>Evidence of Sri Paltan Ram, PW-1</u>

"Prior to deposit the cheque and after encashment and also before filing the case I did not send any letter of protest to the company. **(in cross)**

F. <u>No protest against closure –</u>

G.

<u>Evidence of Sri Paltan Ram, PW-1</u>

"i. I did not send any letter to my union protesting the closure of the company**.(in cross)**

H. <u>Details break up and closure compensation</u>

It has been alleged by the workman concerned that he was paid lesser amount of closure compensation. To this, the company have given the details break up mentioning therein the item-wise amount paid to

the workman concerned at the time of closure. Not a single instance has been shown by the workman concerned that calculation appears to be wrong or lesser amount of compensation has been paid. No details of calculation has been furnished by the workman concerned although onus lies upon him to establish it but he failed to point out any deficiency in this regard. Rather his own evidence negate his own allegation. The material portion of his evidences are quoted below:-

Evidence of Sri Paltan Ram, PW-1

"i. I did not send any letter to the company stating the fact

that the company gave me lesser amount of compensation. **(in cross)**

ii. "I did not calculate the lesser amount of closure compensation." **(in cross)**

iii. "I did not send any letter personally to the Labour Commissioner regarding lesser amount of closure compensation." **(in cross)**

iv. "The company also sent a break up figure of my salary, gratuity and other benefits with check."(in cross)

v. "I did not send any letter to the company stating that the calculation of money in respect of benefit is not correct." (in cross)

I. **No functional integrity vis.-a-vis. transfer -**

OPW-1 in his evidence has stated that Jute accessories factory/unit has been closed permanently with effect from 30.06.2016 and the said closure was inevitable due to the reason as shown in the notice of the closure. Jute accessories factory/unit is a manufacturing unit and the company has no other manufacturing unit except jute accessories unit.

The other unit located in a different place as assembling unit and the nature of activities of the said unit is totally different with the closed unit. The company's other unit are engaged in diverse lines of business and it is not feasible to transfer employees from manufacturing unit to assembling unit, particularly when the nature of work differs significantly. The company's operation and workforce deployment must remain flexible and a

transfer to a different unit that does not align with the workman's skill or qualification is not a practical or legally required solution. The obligation to transfer of the workman is not absolute under the law particularly when the nature of work at the receiving unit differs significantly from the work the workman was engaged in. The closure itself under the circumstances does not impose a legal obligation on the company to find alternate placement for all affected workers in unrelated units.

J. **Absurdity of relief as sought for -**

Admittedly the unit in question has been permanently closed with effect from 30.06.2016. No court of law has yet declared taking up the issue of legality of the closure in a proper and separate reference that the closure is not a real one. Obviously there is no

scope of any nature of relief be given to a person when the unit is closed long before. The so called relief is unfounded with the factum of the situation.

K. <u>OPW-1 categorically stated in his evidence as follows –</u>

<u>Evidence of Sri Shiv Ratan Julasaria, OPW-1</u>

"I say that the plea of transfer has no manner of applicability while the closure declared under the provision of the Industrial Disputes Act 1947. Moreover the open unit of the company cannot be acquitted with the factory where Sri Paltan Ram was employed. The activities of the open unit is totally different from the activities of the closed unit. Moreover the closed unit was a manufacturing unit and the activity of the manufacturing process was carried in the closed unit. There is no manufacturing activities in the open unit." **(in chief)**

"I say that the nature of employment in open unit are totally different with the nature of employment of the closed unit. There is no post of machine operator cum setter in the open unit and there was / is no scope of deployment of machine operator cum setter in open unit considering the nature of activities being carried on in the open unit." **(in chief)**

"I deny that there is scope of transfer of the applicant to other unit prior to closure since the activities of another unit were totally different. " **(in chief)**

"I say that there was no similar manufacturing unit like closed unit of the company in other places." **(in chief)**

"I say that at present there is no branch or unit under Kingsley Industries Ltd." **(in chief)**

"I say that no employee of the closed unit were transferred to another unit." **(in chief)**

The statements made by the OPW-1 as quoted above remain unchallenged and uncontroverted. Moreover the sequences of facts have never been assailed in his cross examination. It establishes that

the closed unit i.e. Jute Accessories Unit and Assembling unit are independent and one could not depend on other. Moreover the nature of employment of both the units were totally different and specialised experience or educational background was required to work at other unit. Obviously, the question of transfer from manufacturing unit to assembling unit for the applicant have no meaning. There was no functional integrity between those units.

PW-1 has admitted the following in this respect –

<u>Evidence of PW-1</u> :

"i. I do not know whether there is other factory of our company" (in cross).

"ii. The jute division is totally closed" (in cross).

"iii. The two units are situated at Kossipore area at Kolkata and out of two one unit was closure which unit manufactured the pin of jute mill. This unit is closed. In another unit at Chopra the packing of machines and other works done." (in cross).

"iv. I have no technical experience. It is true that in other unit the technical person used to work. I have no idea whether manufacturing work was done in the Chopra unit." (in cross).

There was complete closure of Jute Accessories Unit with effect from 30.06.2016 leading to consequential termination of service since closure leads to termination of service. The applicant has admitted that his service was terminated as the company closed the manufacturing unit. The material portion of the evidence of PW-1 is reproduced below –

Evidence of Sri Paltan Ram , PW-1

"As the unit of our company declare closure so my service was terminated." (in cross)

L. Exhibits -

The applicant produced the following documents –

i. Conciliation notice dated 29.09.2016 (Ext-1)
ii. Closure notices dated 30.06.2016 (Ext-2 & 2A)
iii. Compensation chart (Ext – 2B)
iv. Pay slips (Ext-3)

The above documents marked Exhibits on behalf of the workman does not reflect anything or establishes anything as he alleged in his evidence or claim statement.

On behalf of the company documents have been produced which have been marked Ext. A, B, C, D, E, F, G, H, I, J, K, L, M. The documents shows that the company has acted in good faith, ensuring compliance with all relevant labour laws including those pertaining to the provisions in paying closure compensations due to closure. The workman's termination was based on legal grounds and the compensation package provided is well within the statutory framework.

From the above, it is apparent **first**, that admittedly Sri Paltan Ram joined as labour, **secondly** he was engaged and worked in the manufacturing unit, **thirdly** admittedly the company was closed on 30.06.2016, **fourthly** Sri Paltan Ram was informed about the closure, **fifthly** he was paid full and final settlement of his dues consequent upon closure, **sixthly** he en-cashed the cheque, **seventhly** he did not send any protest to the company that he was receiving the cheque on protest, **eighthly** no short payment was made by the company and details breakup about the full and final settlement including gratuity were sent to Sri Paltan Ram, **ninethly** Sri Paltan Ram did not protest for closure against the company, **tenthly** admittedly no amount has been shown terming as low rated compensation, **eleventh** undisputedly the works of two units are of different types, **twelve** admittedly the service of Sri Paltan Ram was terminated as the company closed the manufacturing unit, **thirteenth** it is the settled position of law that closure leads to automatic termination of service, **fourteenth** Closure itself does not

impose legal obligation to find alternate placement for all affected workers in unrelated units of the company, **fifteenth** more over there was no similar unit like the closed unit of the company.

Case Laws:

Closure leads to termination of service -

1. Hathi Singh Mfg. Co. and Ors. Vs. Union of India
   1960 – II – LLJ 1 at page 8
   " Closure of an Industrial undertaking involves termination of employment."
2. General Labour Union (Red Flag) vs. B. V. Chauvan
   AIR 1985 SC 297 at page 298
   " On the other hand closure implies closing of industrial activity as a consequence of which workmen are rendered jobless."

Under the circumstances the management humbly prays for an award that the termination of service is an automatic effect of closure and no relief can be given to the applicant when the unit is closed.

It is the contention of the workman that on 30.06.2016 the company issued one closure notice with effect from 30.06.2016 and thereby all concerned workers were informed that their service would become redundant and would stand terminated by way of closure w.e.f. 01.07.2016 and as such there services would not required w.e.f. 01.07.2016 in the factory. It has been further contended by the workman that the cheque along with payment details has been sent with the letter dated 30.06.2016 to the last recorded address through speed post with A/D. The workman has alleged that the company has illegally made him unemployed by the closure notice which is illegal and bad in law.

The case of the company is on the other hand that the company had its unit / factory situated at 6, Nawab Dilanganj Road, P.O. Cossipore, Kolkata – 700 002. This factory was called as Jute Accessories Factory and it was a manufacturing unit. The company has no other manufacturing unit like jute accessories factory. The said unit was closed down permanently with effect from 30.06.2016.

There was another unit of the company which is not a manufacturing unit and only assembling work was done in the said unit which is located at different premises and its address is different. The nature of activities of the said unit was totally different with the activities of the closed unit. Moreover the closed unit was no way connected with other unit nor it was dependant on the other unit. The nature of employees of those two units are totally different. Even there is no post of machine operator – cum - setter in the other unit and there was no scope of deployment of machine operator - cum - setter in other unit considering the nature of activities being carried on the other unit.

According to the company there had been heavy and continuous losses in operating the company's jute accessories factory due to continuous decreasing sales, low productivity and increasing cost etc. The company was unable to continue the manufacturing

operation of the company's jute accessories factory. It had, therefore, been decided to close down the manufacturing operation of the Company's jute accessories factory. Accordingly, it was declared that the manufacturing operation of the company's jute accessories factory was closed with effect from closing of working hours of 30.06.2016. Consequent upon closure the services of all the workers of the said jute accessories unit stood terminated and the workman was given letter of termination. The company asserted further that the closure was permanent and effective from 30.06.2016 , after which the employment of all workers automatically ceased. The workman was duly informed of the closure through notice pasted on the main gate and sent by post along with a cheque for full and final settlement. The workman in the present reference en-cashed the cheque for Rs. 2,82,146/- sent by the company without any protest or reservation, thereby accepting the closure compensation.

According to the company there was no similar or functionally integrated unit where the workman could be transferred, as the other unit of the company performed only assembling work, not manufacturing. The company's contention is that the closure is permanent, as such the termination is automatic and not open to challenge by a single workman under Section 2A of the Industrial Disputes Act.

The management raised several preliminary points regarding maintainability of the reference such as :-

i. The reference is not maintainable as no proper industrial dispute exists under Section 2(k) of the I.D. Act.

ii. The reference is incompetent since the closure has not been challenged through a collective dispute and single workman cannot question the legality or genuineness of a closure .

iii. The termination being a natural consequence of closure , no independent issue of dismissal or retrenchment survives.

iv. The workman having accepted closure compensation without protest, is estopped from disputing it.

v. There exists no employer–employee relationship after closure.

The workman in order to establish his case adduced his oral evidence as PW-1 and relied some documentary evidence which have been exhibited as follows:-

1. Conciliation notice dated 29.09.2016 - Ext-1
2. Closure notices dated 30.06.2016 - Ext-2 & 2A
3. Compensation chart - Ext – 2B
4. Pay slips of the workman - Ext-3

On the contrary the company to establish their case have examined one witness namely Shiv Ratan Julasaria as OPW-1 and also exhibited so many documentary evidence which are as follows :-

i. Authorisation letter – Ext. A

ii. Closure notice date 30.06.2016 – Ext. B

iii. Company's letter dated 30.06.2016 with details of payment/annexure issued to Mr. Paltan Ram along with POD – Ext. C

iv. Company's letter dated 30.06.2016 with annexure addressed to the Labour Commissioner, Govt. of West Bengal – Ext. D

v. Company's letter dated 01.07.2016 with annexure addressed to the Inspector of factories – Ext. E

vi. Company's letter dated 01.07.2016 with annexure addressed to the Office in Charge, Chitpur Police Station – Ext. F

vii. Company's letter dated 30.06.2016 with annexure addressed to the Conciliation Officer – Ext. G

viii. Company's letter dated 08.07.2016 addressed to the Regional Director Insurance – Ext. H

ix. Company's letter dated 01.07.2016 addressed to the Regional Provident Fund Commissioner – Ext. I

x. Company's letter dated 29.08.2016 with annexure addressed to the Asst. Labour Commissioner – Ext. J

xi. Company's letter dated 13.10.2016 addressed to the Asst. Labour Commissioner – Ext. K

xii. Company's letter dated 12.04.2017 addressed to the Asst. Labour Commissioner – Ext. L

xiii. Company's letter dated 17.11.2017 addressed to the Asst. Labour Commissioner – Ext. M

By dint of the order of reference the issues that are required to be decided by this Tribunal are whether the termination of service of the workman by the Management is justified and the aspect of entitlement of relief. During the pendency of the reference the Tribunal framed an additional issue relating to the maintainability of the case in its present form and in law.

So before considering the main issues under reference the Tribunal has to examine the question of maintainability of the reference.

Ld. Advocate representing the company has advanced his arguments on different points including the point of maintainability and cited cases to make it relevant to establish the case of the company.

At the very outset the Ld. Advocate of the company has argued that the present reference has been made at the instance of the individual workman u/s10 read with Section 2A. As per provision of Section 2A an individual workman can raise dispute which has to be confined regarding termination of service or dismissal or retrenchment. To challenge the closure or the points involved regarding the closure, a collective dispute has to be raised either by the union or majority of the workmen. An individual person cannot challenge the legality of the closure at its own initiative because the very object of the Industrial Disputes

Act clearly indicates which disputes come under as collective nature and which dispute can be raised by an individual employee. According to his submission the legality of the closure cannot be challenged by an individual employee in a reference u/s 10 read with Section 2A. After the closure of the unit no claim of the individual regarding termination survived against the company. Further the question of closure and its legality could not be decided as an incidental question to the main

question referred to the Tribunal. According to the company the legality of the closure would not arise in the present reference and it could not be determined as an incidental question, that is major industrial dispute is not an incidental question. Whether the closure is real or not is not a question which arises in the present reference and the Tribunal has no jurisdiction to go into the question. In the instant case the justifiability of the termination has been referred and the termination due to closure is interlinked because of the fact closure leads to automatic termination of service. As the unit closed its business and declared closure on 30.06.2016 the services of its employees stood terminated on and from the said date.

It was argued by the Ld. Advocate representing the workman that the present reference has been made by the government to adjudicate whether the termination of service of the workman is legal and justified. It was submitted by him that the scope of adjudication is confined strictly to the reference made, which is too determine the justification or otherwise of the termination in question. According to his further argument the unit has been closed solely by terminating the services of the workman. He relied on the case laws of Karan Singh Vs. Executive Engineer, Haryana State Marketing Board reported in (2007) 14 SCC 291 and another case law of National Engineering Industries Ltd. vs. State of Rajasthan and Others reported in (2000) 1 SCC 371.

Having heard the argument of the Ld. Advocates of both the parties and on perusal of record and the case laws cited by them it appears that the present dispute has been referred to the Tribunal u/s 10 read with section 2A of the Industrial Disputes Act, 1947 at the instance of an individual workman. Provisions of Industrial Disputes Act, 1947 shows that the closure of an industrial undertaking is a matter of collective dispute u/s 2(k) of the said Act and obviously it cannot be the subject of an individual dispute u/s 2A.

In Mangalam Publications (India) Pvt. Ltd. v. Thampy (2006 LLR 598) , the Hon’ble Kerala High Court held that a dispute relating to closure can be adjudicated only under Section 2(k) and not under Section 2A, as the legality or genuineness of closure affects a body of workmen, not a single individual.

The Hon’ble Supreme Court in General Labour Union (Red Flag) v. B.V. Chavan, AIR 1985 SC 297 also observed that closure implies cessation of industrial activity and once the undertaking is closed, no industrial dispute regarding individual termination can survive unless the closure itself is impugned.

The present reference has been made by the Govt. of West Bengal based on the dispute raised by single workman challenging his termination arising out of closure u/s 2A of the Industrial Disputes Act, 1947. After considering the ‘

submission of both the parties as well as on consideration of legal proposition it is viewed that no doubt the act of making reference is an administrative act on the part of the appropriate government and it is beyond the pale of judicial scrutiny. Therefore, in view of the above this Tribunal hold that the appropriate government has the power to refer the dispute to the Tribunal and in that event the Tribunal has to examine the legality and / or validity of the issues referred for adjudication.

All other issues i.e. issues under reference are taken up together for discussion and adjudication as the same are related to each other with regard to the facts and circumstances and provision of law in connection with the case.

From the evidence of Sri Paltan Ram (PW-1) it is revealed that the closure notice was pasted on the main gate of the company and also sent by post to his address along with cheque. In cross examination the workman has stated that he received the letter and cheque sent by the company and he deposited the cheque to his bank and it was en-cashed.

The workman has alleged that he was paid lesser amount of closure compensation. It was argued by the Ld. Advocate of the workman that as per section 25FFF of the Industrial Disputes Act, 1947 compensation for closure is required to be calculated by considering both the duration of service of the workman and his last drawn wages. It was argued by him that the company has failed to produce the proof of date of joining the service of the workman and his last drawn wages i.e. Payslip for the month of May and in the absence of those documents the payment of compensation as claimed by the company appears to be illusory and mere eyewash. Ld. Advocate representing the workman further argued that it is manifest from Exhibit D3 that the payment of compensation and gratuity are distinct. Nevertheless under the statutory framework the method of computation for closure compensation and gratuity remains the same. Apart from that the alleged grounds indicated in the notice of closure (Exhibit-B) the company has utterly failed to produce any documentary evidence substantiating the grounds cited for closure.

I have carefully examined the documentary evidence as well as the oral evidence adduced by the parties to the reference. In order to substantiate the contention of the workman no details of calculation has been provided by him. Rather the workman Sri Paltan Ram in his evidence has stated that he did not send any letter to the company stating the fact that the company gave him lesser amount of compensation. The company produced the letter dated 30.06.2016 with Annexure (Exhibit C). It shows that the said letter was addressed to the workman making details of payment being full and final payment made to the workman. It is apparent there-from that notice pay for one month and closure compensation have been paid to the workman along with the due wages, gratuity and amount of other components as stated therein.

Moreover, in cross examination the workman has confirmed that he did not calculate the lesser amount of closure compensation and did not send any letter personally to the Labour Commissioner regarding lesser amount of closure compensation.

The company produced the letter dated 29.08.2016 addressed to the Asst. Labour Commissioner, Govt. of West Bengal, enclosing therewith statement of closure compensation (Exhibit - J). The enclosure of the Exhibit - J shows that the workman joined the establishment on 1.8.1998.

The workman in his cross examination has stated that prior to deposit of the cheque and after encashment of the same he did not send any letter of protest. In his cross examination it is further emerged that he did not send any letter to his union protesting the closure. The workman has admitted that the company sent a breakup figure of his salary, gratuity and other benefit with cheque and it is his own admission that he did not send any letter to the company stating that the calculation of money in respect of benefit is not correct.

The relevant statutes show that the mode of calculation of Gratuity under the Payment of Gratuity Act, 1972 is based on last drawn wages whereas the closure compensation is to be calculated taking into consideration the average pay under the Industrial Disputes Act, 1947, obviously the modes of calculation of two components i.e. gratuity and retrenchment compensation are different.

In view of the above the plea of lesser compensation fails as no computation, evidence or calculation error was proved by the workman.

The workman in his evidence has admitted that the unit of the company declared closure, so his service was terminated.

On analyzing the entire evidence on record both oral and documentary it unequivocally establishes that the workman was aware of the closure and he accepted the closure compensation and raised no contemporaneous protest or challenge.

OPW-1, Sri Shiv Ratan Julasaria in his evidence has stated that the jute accessories unit was permanently closed due to heavy losses. There was no functional integrity between the jute accessories manufacturing unit and the assembling unit. No employee from the closed unit was transferred to another unit. There was no manufacturing work being done in the other unit. The above evidence remains uncontroverted. The evidence clearly shows that the closed unit was a manufacturing unit, while the other existing unit was an assembling and packing unit, involving entirely different work and requiring different skills. Functional integrity between the units has not been established by the workman. The burden of proof in this regard lies on the workman, which he has failed to discharge. Therefore, there was no legal or practical obligation on the part of the company to transfer the workman to another unit having no comparable post or nature of work.

The workman himself admitted receipt and encashment of closure compensation without any protest. He never raised any grievance at the relevant time regarding the amount or validity of closure. In Hathi Singh Mfg. Co. v. Union of India (1960 II LLJ 1) and General Labour Union (Red Flag) v. B.V. Chavan (supra) , the Apex Court categorically held that closure of an undertaking necessarily results in automatic termination of employment. Hence, once closure is permanent, termination of service is an automatic and legal consequence.

From the legal proposition it is established that the termination of service of the workman is a direct and automatic consequence of the lawful and bona fide closure of the establishment. The workman has been paid full and final payment including closure compensation and notice pay and he has accepted the same without any protest.

Hence, it is

O R D E R E D

that the termination of service of Sri Paltan Ram w.e.f. 01.07.2016 is justified as it is the automatic and legal consequence of the permanent closure of the Jute Accessories Factory of M/s. Kingsley Industries Ltd. The reference is accordingly answered in favour of the management and against the workman.

In view of the above findings, the workman is not entitled to any relief. The management has already paid the lawful closure compensation, which has been accepted by the workman and en-cashed without protest.

Accordingly this case is disposed off on contest and this order is to be treated as Award.

Let the necessary number of copies of this judgment and award be sent to the Secretary, Labour Department, Government of West Bengal, New Secretariat Building, 12th Floor, 1 Kiran Shankar Roy Road, Kolkata – 700 001.

Dictated & Corrected by me

Judge

-Sd-
(Amit Chattopadhyay)
Judge
Eighth Industrial Tribunal,
Kolkata
30.10.2025

GOVERNMENT OF WEST BENGAL
DIRECTORATE OF INDUSTRIAL TRIBUNALS
NEW SECRETARIAT BUILDINGS
BLOCK – 'A', 2ND FLOOR
1, KIRAN SANKAR ROY ROAD
KOLKATA – 700001

Memo. No. -

Dated Kolkata, the 30.10.2025

From: Shri Amit Chattopadhyay,
Judge,
8th Industrial Tribunal,
Kolkata – 1.

To : The Secretary to the
Govt. of West Bengal,
Labour Department,
New Secretariat Buildings, 12th Floor,
1, Kiran Sankar Roy Road,
Kolkata – 700 001.

Sub: An industrial dispute between M/s. Kinsley Industries Ltd. and its workman Sri Paltan Ram under Section 10 of the Industrial Disputes Act, 1947.

(Case No. VIII-16/2018)

Sir,

I am sending herewith the Award passed in the matter of an industrial dispute between M/s. Kinsley Industries Ltd., 7, Chittaranjan Avenue, Kolkata – 7000 072 and its workman Sri Subrata Sanyal, 95/1/2/H/14, Cossipore Road, Kolkata – 700 002.vide G. O. No /516/(LC-IR)/22015(16)/328/2018 dated 18.07.2018 and reference no. 3115-IR/IR/3A-6/59, dated 21/06/1960 for adjudication.

Encl: As stated above.

Yours faithfully,

-Sd-
(Amit Chattopadyay)
Judge,
Eighth Industrial Tribunal,
Kolkata
30.10.2025