

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

No. Labr/ 1465 / (LC-IR) / 22015(15)/70/2018

Date : 22/12/2025

ORDER

WHEREAS under Labour Department's Order No. 1463-I.R. dated 25.11.2014 with reference to the Industrial Dispute between (1) M/s. Essar Engineer's, Abdul Hamid Street, 7th Floor, Room No. 704, Kolkata-700069 & (2) Durgapur Project Limited, Durgapur, West Bengal and its workmen Sri Shyamal Chakraborty and 20 (Twenty) others, D.N. Jhupri near D. N. 284, D.P.L. Colony, Durgaqpur-1, 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 4th Industrial Tribunal, Kolkata.

AND WHEREAS the 4th Industrial Tribunal, Kolkata, has submitted to the State Government its Award dated 12.12.2025 in Case No. VIII-105 of 2014 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/ 1465 /1(6)/(LC-IR) / 22015(15)/70/2018

Date : 22/12/2025

Copy forwarded for information and necessary action to:

1. M/s. Essar Engineer's, Abdul Hamid Street, 7th Floor, Room No. 704, Kolkata-700069.
2. Durgapur Project Limited, Durgapur, West Bengal.
3. Sri Shyamal Chakraborty and 20 (Twenty) others, D.N. Jhupri near D. N. 284, D.P.L. Colony, Durgaqpur-1
4. The Assistant Labour Commissioner, W.B. In-Charge, Labour Gazette.
5. The O.S.D. & E.O. Labour Commissioner, W.B. New Secretariat Building, 1, K. S. Roy Road, 11th Floor, Kolkata- 700001.
6. 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/ 1465 /2(3)/(LC-IR) / 22015(15)/70/2018

Date : 22/12/2025

Copy forwarded for information to :

1. The Judge, 4th 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. Essar Engineers, Abdul Hamid Street, 7th Floor, Room No. 704, Kolkata – 700 069 and their workmen Sri Shyamal Chakraborty and 20 (Twenty) others, D. N. Jhupri near D. N. 284, D.P.L Colony, Durgapur-1.

(Case No. VIII-105 of 2014)

Reference No: 1463-I.R. dated 25.11.2014.

BEFORE THE FOURTH INDUSTRIAL TRIBUNAL, KOLKATA: WEST BENGAL

P R E S E N T

SHRI NANDAN DEB BARMAN, JUDGE
FOURTH INDUSTRIAL TRIBUNAL
KOLKATA.

Sri Shyamal Chakraborty and 20 (Twenty) others, D.N. Jhupri near D. N. 284, D.P.L. Colony, Durgaqpur-1.

----- Applicant/Workmen.

Vs.

M/s. Essar Engineer's, Abdul Hamid Street, 7th Floor,
Room No. 704, Kolkata-700 069.

----- Opposite Party/Employer No.1

Durgapur Project Limited
Durgapur, West Bengal

----- Opposite Party/Employer No.2

A W A R D

Dated: 12th December 2025.

ISSUES UNDER REFERRENCE TO BE ADJUDICATED

- (1) Whether refusal of employment of 21 workers, viz. Shri Shyamal Chakraborty and 20 others with effect from 01.05.2014 by M/s. Essar Engineers, is justified?
- (2) What relief, if any, as the workers are entitled to?

Written Statement on behalf of Workmen

- 1) That the above named Opposite Party/ OP/Company is a OP/Company within the meaning of OP/Company's Act, 1956, having its office as referred.
- 2) That the above named employer Establishment/Factory is also an Industry within the meaning of Section 2(j) of the Industrial Disputes Act, 1947 and the Applicants/Workmen in this organization, are also the employees within the arena of Section 2 (s) of the said Industrial Disputes Act, 1947.
- 3) That the Applicants/Workmen had been working more than 10 (ten) years so reflected into the body of the schedule marking as Annexure "A" with this written statement and their last drawn salary was around Rs. 10,000/- per month.
- 4) That the Applicants/Workmen had been in coverage of E.S.I. Act and Provident Fund Act and had respective Code Numbers thereof, which are both ventilated into the body of the schedule marking as Annexure "A" with the Written Statement, detailing the same.
- 5) That the Applicants/Workmen were directly employed by the Durgapur Project Limited from the year 1999 and so on and their services were utilized by the Principal Employer as an admitted position on record ventilated in the Provident Fund Statement of individual Applicant/Workman and the separate Gate Pass was issued and signed and sealed by the M/s. Durgapur Project Limited all are reflecting the same of the Principal Employer and the name of the Contractor M/s. Essar Engineers, who is a coordinator to took service of the Applicants/Workmen for the interest and benefit of M/s Durgapur Project Limited and the service of the Applicants/Workmen was out and out utilized for the purpose of the Principal Employer with a view to upliftment of its business taking the advantage with a plotted and motivated presumption by way of incorporating the same of the above said employer OP/Company.
- 6) That the above named Employer/Opposite Party followed an anti-labour policy by way of violating the labour laws and took the advantage of poverty and illiteracy of the working class of the society compelled the workmen to work more than 48 hours in a week without payment of overtime and / or minimum wages was at all paid to them and kept mum to pay all other statutory entitlement.
- 7) That the Applicants/Workmen states that from the date of joining, they had been discharging their duties to the entire satisfaction of their superiors and

the Management of the Employer/Opposite Party. They all along used to maintain a good, clean spotless, meritorious and unblemished record of services during the tenure of their employment till the unjustified illegal termination of service under the veil of “Refusal of Employment” by the above said Employer/Opposite Party with effect from 01-05-2014 causing which it was an utter dismay as well as highly shocking to the concerned Applicants/Workmen.

- 8) That the Employer/Opposite Party followed an unfair measure of policy avoiding the task of pre-conditions and pre-requisite of the legislature which hits the relevant provisions of Section 2(oo) and its conditions precedent, so enumerated under Section 25F of the Industrial Disputes Act, 1947 had been out and out violated holding maximum power of pen.
- 9) That the Applicants/Workmen had raised their voice inter alia challenging the arbitrary action by submitting a “Demand of Justice” to the Employer/Opposite Party conveying their redressal grievances but it yield no effect due top arrogant and non-compromise attitude of the management who were deaf ear to consider the said demand of justice.
- 10) That the Applicants/Workmen without finding any alternative avenue left open to them but to take shelter before the conciliatory machinery raising an Industrial Dispute before the Labour Commissioner, Government of West Bengal vide their letter dated 30.05.2014 and letter dated 19.06.2014 respectively.
- 11) That the Assistant Labour Commissioner, Government of West Bengal was pleased to hold Conciliation Proceeding by fixing number of Joint Conferences but the matter was not settled due to suborn and non-settling attitude of the opposite party OP/Company, vide its letter dated 22.07.2014 and minutes date 07.08.2014 and 13.08.2014.
- 12) That as there was no chance of any settlement, the Assistant Labour Commissioner, Government of West Bengal, sent his Failure Report to the Labour Secretary, Government of West Bengal, 20B, Abdul Hamid Street, Kolkata- 700 069 under section 12(4) of the Industrial Disputes Act, 1947.
- 13) That thereafter, the Government of West Bengal through its Deputy Secretary, send an order of Reference being No. 1463-I.R. dated 25.11.2014 to the Learned Fourth Industrial Tribunal, West Bengal, Kolkata, by framing issues for adjudication.

- 14) That the Applicants/Workmen beg to submit that the purported termination by way of refusal of employment of their services is an essence of a case of retrenchment as defined under section 2(oo) of the Industrial Disputes Act, 1947 and in this case of retrenchment the Employer/Opposite Party OP/Company did not observe the statutory pre-conditions and pre-requisites as provided in Section 25F of the Industrial Disputes Act, 1947.
- 15) That the purported “Termination of service” under the veil of refusal of employment of your applicants/employees, is therefore, void-ab-initio, irregular, illegal, and inoperative and for which the Applicants/Workmen are entitled to reinstatement with full back wages and other consequential benefits thereto for the period of forced idleness, so created by the Employer/Opposite Party OP/Company by force, violating the pre-existing law of the land.

Written Statement of the OP/Employer No. 1, M/s. Essar Engneer's

- 1) That the instant case under reference is pending for adjudication before this Learned Tribunal in respect of dispute with Sri Shyamal Chakraborty & 20 others, who had filed their Written Statements, which contains various statements and/or allegations which are incorrect, baseless and misleading. The OP/Company would advert to those of the said statements and/or allegations and/or contentions as are material for the proper disposal of the lis and save what have been specifically admitted hereinafter, the rest shall be regarded as denied.
- 2) That the OP/Company divides its Written Statement into 3 parts, i.e., Part-1, containing the submissions regarding maintainability of the reference, Part-II narrates the brief and concise facts of the case, and Part-III deals with the statements and averments made by the applicants in their written statements.

Part - I

- 3) That the instant case under reference is not maintainable as:
 - A) The order of reference has referred issues for adjudication to this Learned Tribunal as being “...a matter specified in the Second Schedule to the Industrial Disputes Act, 1947 (14 of 1947),” but this Learned Tribunal does not have any jurisdiction to deal with any matter specified in the Second Schedule to The Industrial Disputes Act, 1947.
 - B) This Learned Tribunal is not a “Labour Court” as per Section 7 of the Industrial Disputes Act, 1947 and hence does not have jurisdiction to adjudicate upon any issues referred for adjudication to this Learned Tribunal.

- C) That the issues referred for adjudication are not matters as enumerated in Third Schedule to the Industrial Disputes Act, 1947 and hence this Learned Tribunal does not have jurisdiction to adjudicate on the same.
- D) That the issues referred for adjudication are vague and indefinite and no proper adjudication can be made thereon in absence of any specified date of alleged termination of service.
- E) That the appropriate Government had no materials before it to make any order of reference on the issue of any alleged illegal termination of service of Sri Shyamal Chakraborty & 20 others by M/s. Essar Engineers, who is a Contractor under Durgapur Project Ltd.
- F) That there was no prior demand before the management by the applicants of this case before the raising of alleged dispute to the Labour Commissioner, Government of West Bengal.

- 4) That the OP/Company submits that there was no termination of service of Shri Shyamal Chakraborty and twenty others by way of refusal of employment at any point of time as alleged.
- 5) It is explicit where the amounts of work order in terms of money have been reduced adequately almost in half. In such circumstances the OP/Company had no capacity to absorb all the man power due to financial inability by virtue of work order so entrusted to Contractor by DPL the Principal Employer.
- 6) That the OP/Company respectfully submits in accordance with the agreement dated 1st January, 2012 OP/Company worked its continuity of work upto April, 2014, where after the contractual agreement ceased to exist by the Principal Employer, so paid at the same rated amount Rs. 6,01,666/-.
- 8) That DPL being the Principal Employer (Govt. of West Bengal) has not accommodated any amount for increment inspite of repeated request and written representation initiated by the Contractor under order of reference vide its letter dated 07.03.2015 yielded no effect.
- 9) That the Principal Employer, DPL has not accelerated rate of wages to the Contractor for which the Contractor have no control over the situation due to fresh reduced work order.
- 10) That the opposite party OP/Company submits that the dispute is not maintainable since the same suffers from infirmity being based on suppression of materials fact and/or incorrect assumption.

Part - II

11. Without prejudice to the above submission and fully relying on the same the OP/Company proposed to narrate the brief and concise facts of the case as follows:

- i) That it is admitted position and material on record that the workman did not raise any bipartite dispute demanding justice either to the Principal Employer or to the Contractor which hits the provision of law.
- ii) That M/s. Essar Engineers, a Contractor of DPL (Govt. of West Bengal) is not a direct Contractor but as a Sub-Contractor engaged by DPL Co-operative Society Ltd. to act as a Co-ordinator for productivity of work order within the stipulated period and whereafter said contractual agreement stands to be void or terminated as such the nature of work of the above named OP/Company is fully based on contract-orient job in accordance with the Contract and Abolition Act.
- iv) That the continuity of employment and re-instatement of the workmen for continuation of the work, is depending on the matter, so long the Principal Employer provided pay packages of its workmen, but in spite of repeated request more than Rs. 25 lakhs kept outstanding to the Principal Employer on which the OP/Company compelled to face helpless situation to pull on its business.

Part-III

- i) That the statement made in Paragraph-1 of the said statement are matters of record and any statement contrary there to or consistent there with is denied.
- ii) With reference to paragraph (2) of said statements the OP/Company submits that the establishment is not an industry within the meaning of section 2(J) of the I.D. Act, 1947. The contention of the workmen that the establishment is an ‘Industry’ and the employees are covered under Section 2(s) of the said Industry is disputed as well as confusing.
- iii) With reference to paragraph 3 of the said statement reflecting into the body of schedule marking as annexure “A” is denied and disputed and put the workmen to proof this same as such the work order with the Principal Employer was ceased to exist after 29th April, 2014.
- iv) With reference to paragraph “8” does not arise at all and it should not obviously hit the law under section 2(oo) of I.D. Act as the job was fully entrusted contract oriented job and termination of said work order the OP/Company must not saddled retrenchment compensation so demanded to the Contractor, if such payment only provided by the Principal Employer.

13. The workmen are not legally entitled to get any relief, so long the relief amount of any, provided by the Principal Employer.

Written Statement of OP/Employer No.2 Durgapur Project Limited.

1. That Durgapur Project Limited is a Company duly registered under the Companies Act, 1956 having its registered office at Administrative Building, Durgapur and a licensee for Generation of power as well as distribution of the electrical energy to the consumers as defined under the Electricity Act, 2003 within its jurisdiction/area.
2. That in this case under reference issues were framed by the Labour department to adjudicate “whether refusal of employment by M/s. Essar Engineers is justified or not”. Therefore, DPL is nowhere in the picture of reference but unfortunately, in spite of filling show cause by taking all the points, the Ld. Tribunal passed an order by adding DPL as party respondent in the instant reference case, which is absolutely illegal and not sustainable in law. DPL is strongly questioning the maintainability of this case against DPL.
4. It is specifically submitted that Durgapur Project Limited has really no role to play with the workers of the contractor about their engagement and disengagement. It is up to the contractor against whom the work order was issued to perform the work by way of engagement of Labour. Appointment of labour in a contract work is totally depending upon the contractor and none else.
5. The instant dispute is really between the contractors and their labour and DPL have hardly any scope to do anything for the contractor’s labours that too who are not working and work done under the contract which has been expired and over. It is an admitted position as per statements made in Para (iii) at page 7 of reply to the applicant against show cause petition filed by the DPL.
6. The Contract Labour Act defines “contract labour” as a workman who is employed in connection with the work of an establishment when he is hired in or in connection with such work by or though a contractor, with or without the knowledge of the Principal Employer.

The Supreme Court has laid down in the Gammon India case (1974) that the expression ‘employed in or in connection with the work of the establishment’ does not mean that the operation assigned to the workmen should be part of, or incidental to, the work performed by the Principal Employer.

Simply, Principal Employer is the employer for whom work is done by others. Here in the instant case which is admitted position is that the DPL given tender to one named organization and the said organization given sub-contract to another named organization for completion of the work under Tender. Therefore, on the basis of above analogy, the Principal Employer would be the 1st organization with whom the agreement

was executed by the DPL authority and as such, the DPL does not come under the preview and / or definition of Principal Employer. That apart, it is stated that the applicants are not legally entitled to any such relief. Granting of the relief claimed would mean paying a premium for defiance and insubordination by those concerned who engaged these persons against the interdict in that behalf. Thus, on the whole, the applicants in this case are found to be not entitled to any relief. This petition has, therefore, to be dismissed.

It is established law of the land that tribunal cannot go beyond the scope of the reference as such, in the instant case there is no scope to pass any order against DPL.

The Apex Court by delivering judgment clearly laid down the law that daily labour / worker has no right to claim for continuation of work that too the contract against which they were working has been expired.

The scope of alleged Principal Employer has been clearly mentioned in the contract and beyond that there is no role to play by the DPL, being the added respondent of this case.

7. Further points to be considered as to whether person or persons worked under a Sub-Contractor has got any legal rights to claim continue, particularly when the relevant contract has been expired and new contract has been flouted.

- a) Even assuming but not admitting that the worker has got any relief, in that case, such relief should be either from the contractor with whom he/they were working or from the DPL authorities.
- b) That initially the work order was issued in favour of Durgapur Project Employees Co-operative Society Limited (in short DPEM Co-Opt. Ltd) for Annual maintenance for new Wagon Tripler Crusher & Stocker-cum-re-claimer of Coal Handling Plant, DPPS for a period of 16 (sixteen) Months with effect from 1st January, 2013 till 30th April, 2014. In the said Job contract the Petitioners were engaged as labourers by the said Contractor at their own accord, wherein the Durgapur Project Limited as no role to play save and except to see that the contractor complied with the Statutory Compliance with regard to their Labourers as a Principal Employer.
- c) That thereafter, the period of such contract was over and new contract was executed by and between the parties with effect from 1st May, 2014 till one year mentioning therein certain terms and conditions. In the said contract one of the terms and condition is clause 5, wherein it has been clearly mentioned that “the name of your laborers supplied during the period”. It means the responsibility of supplying labourers is solely discretionary power of the contractor and not to the DPL authorities.
- d) Subsequently, from 1st May, 2014 the work order was issued in favour of “M/s. ESSAR ENGINEERS” after observing tender formalities and said M/s. ESSAR ENGINEERS engaged new Labourers replacing the petitioners working under the previous contract considering the scope of contract and Durgapur Project Limited has got no role to play

over the engagement of new labourer by the Contractor against whom new contract has been awarded. It is needless to mention here that there is no reciprocal contract about engagement of laborers considering the scope of contract between the Parties.

e) So far, the scope of responsibility of DPL authorities as Principal Employer is concerned with regard to the labourers supplied by the contractor during subsisting of contract is very limited and to the extent to see that the statutory compliance has been made by the contractor against their engaged labourers and nothing else. Here in the instant case the petitioners were engaged by the then contractor against the contract which was subsisting at the relevant point of time and for that period there is no dispute at all and such contract was over and expired. Even assuming but not admitting that there are some responsibilities casts upon the Principal Employer to the contractor laborers but in that case also such responsibilities between the Principal Employer with the contract laborers was cut off with the expire of period of contract. Therefore, so long the contract is subsisting there is some responsibilities of Principal Employer but here in the instant case there is a fresh contract and responsibilities, if any, with regard to the contract laborers by the Principal Employer to the extent of the laborers who were working but under no circumstances, there is responsibility to the laborers who were working under the earlier contract which has been admittedly over and expired as per valid law of the land.

f) It is submitted that the earlier contract is nothing but concluded contract and essence of the contract is “time bound” and the moment such time period mentioned in that contract was over, responsibility of any, between the parties was also goes and nobody can claim anything from such contract save and except damages, if any, occurred from such contract in accordance with law.

g) It is further submitted that the Hon'ble Supreme Court as well as the different High Court of our Country held that, “in a commercial contract time is of essence of contract” here in the instant case the essence of contract was absolutely over and expired at the completion of contract.

h) It is specifically submitted that the Durgapur Project Limited has really no role to play with the workers of the contractor about their engagement and dis-engagement. It's up to the contractor, against whom the work order was issued to perform the work by way of engagement of Labour. Appointment of labour in a contract work is totally depending upon the contractor and none else.

i) The instant dispute is really between the contractors and their labourers and DPL have hardly any scope to do anything for the contractor labours that too who are not working and work done under the contract which has been expired and over.

9. The instant application is not at all maintainable as the Ld. Tribunal is not a “Labour Court” as per Section 7 of the Industrial Dispute Act 1947 and as such jurisdiction to adjudicate this dispute by this Ld. Tribunal is in question to be decided first and then the main issue may be taken up for decision.

10. The issues referred for adjudication are not matters as enumerated in Third Schedule to the Industrial Dispute Act 1947. Therefore, Jurisdiction of this Ld. Tribunal is in question to be taken up for consideration prior to decide the issue involved herein.

11. It is submitted that DPL has got no knowledge about engagement and thereby termination, if any, of the applicants as because DPL in no way connected to them.

12. The DPL crave Leave to add to, alter or amend this Written Statements at any stage of the proceeding, if necessary for proper adjudication of the issue.

13. With regard to the statements of ESI and Provident Funds are concerned and its Statutory compliance, it has not created any right to continue the work which has been completed.

14. With regard to the statements made in paragraphs 10, 11, 12, 13, (1 & 2) of 14 and 15, the written statements of the Petitioner/Applicants are denied and disputed. Save, what may be substantiated by the record of the answering Respondent/Opposite party (DPL). Further submission is that Section 25F of I.D. Act, 1947 is not at all applicable in the facts and circumstances of the case and also the Durgapur Project Limited is no way connected to this dispute. The moment Contract period is over the work of the applicant is also over and come to an end. It is made clear that DPL neither engaged the applicants nor terminated them from employment. Therefore, DPL has got no role to play with their termination and as such, prayer made herein has got no manner of application to the Durgapur Project Limited.

DECISIONS WITH REASONS

One Shyamal Chakraborty for self and on behalf of 20 other Applicant/Workmen in order to establish their case adduced his oral evidence as PW-1 and also produced so many documentary evidences, which have been exhibited as Exhibit-1 to Exhibit-38 respectively.

The documents exhibited by and on behalf of the Applicant/Workmen are as follows:

List of Exhibited documents as produced from the end of Applicant/Workmen.

Exhibit-1	Gate pass of S. Chakraborty.
Exhibit-2	Pay slip of S. Chakraborty.
Exhibit-3	Salary of March, 2013 of S. Chakraborty.
Exhibit-4	ESI Card of S. Chakraborty.
Exhibit-5	Statement of claim, period from 01.07.11 to 30.04.14 of S. Chakraborty
Exhibit-6	Letter dt. 19.06.14 to S.D.O., Durgapur by workers of Essar Engineers.
Exhibit-7	Letter dt. 22.07.14 to M/s. Essar Engg. by N. Mondal, ALC, Durgapur.
Exhibit-8	Letter dt. 22.07.14 to M/s. Essar Engg. by N. Mondal, ALC, Durgapur.
Exhibit-9	Minutes of discussion dt. 13.08.14 in office chamber of ALC Durgapur.
Exhibit-10	Another Minutes of chamber dt. 07.08.14.
Exhibit-11	Hand-written list of 21 workmen.
Exhibit-12	Copy of ESI Card of Shri Shyamal Chakraborty.
Exhibit-13	Copy of voter Identity Card.
Exhibit-14	Copy of Aadhar Card of Shri Tarun Das.
Exhibit-15	Copy of Aadhar Card of Sri Indrajit Kundu.
Exhibit-16	Copy of Aadhar Card of Shri Amit Mitra.
Exhibit-17	Copy of Aadhar Card of Sri Sudhannya Halder.
Exhibit-18	Copy of Aadhar Card of Sri A. Ruidas.
Exhibit-19	Copy of Aadhar Card of Sri Chandan Hari.
Exhibit-20	Copy of Aadhar Card of Sri Khagendranath Das.
Exhibit-21	Copy of Aadhar Card of Sri Dulal Ch. Dey.
Exhibit-22	Copy of Aadhar Card of Sri Manik Kr. Chyamal.
Exhibit-23	Copy of Aadhar Card of Sri Tarun Kr. Roy.
Exhibit-24	Copy of Aadhar Card of Sri Sujit Das.
Exhibit-25	Copy of Aadhar Card of Sri Mithun Ankure.
Exhibit-26	Copy of Aadhar Card of Sri Bhairav Paul.

Exhibit-27	Copy of Aadhar Card of Shri Netai Karmakar.
Exhibit-28	Copy of Aadhar Card of Sri Parimal Das.
Exhibit-29	Copy of ESI ID Card of Sri Sanjoy Das.
Exhibit-30	Copy of ESI ID Card of Sri Mohan Singh.
Exhibit-31	Copy of ESI ID Card of Sri Swapan Kr. Dutta.
Exhibit-32	Copy of ESI ID Card of Sri Rajesh Yadav.
Exhibit-33	Copy of letter of ALC dt. 02.03.2015.
Exhibit-34	Copy of order dt. 25.11.2024 of the Deputy Secretary.
Exhibit-35	Copy of show cause of DPL (3pages).
Exhibit-36	Copy of report of conciliation Officer dt. 19.08.2014 (3 pages)
Exhibit-37	Six sheets of paper annexed with the letter dt. 02.03.2015 (7 pages)
Exhibit-38	Authorization letter of OP/Company.

On the other hand, the OP No. 1 M/s. Essar Engineers in order to establish their case adduced evidence by tendering affidavit-in-chief of two witnesses, namely Mr. Chandan Kumar Das as OPW-1 and Mr. Sailesh Saraf as OPW-3 respectively. OP No. 2 Durgapur Project Limited adduced evidence by tendering affidavit-in-chief of one witness, namely Mr. Tanmoy Mondal.

In addition to their oral evidences, some documentary evidences adduced from their end, which have been marked as Exhibit-A to Exhibit-L respectively.

List of Documents as exhibited by the OP/Employer are as follows: adduced evidence by tendering affidavit-in-chief of two witnesses, namely Mr. Chandan Kumar Das.

Exhibit-A	Letter dt 07.03.2015 No. DEPM/164/2014-15.
Exhibit-B	Agreement dt. 05.01.2022.
Exhibit-C	Order dt. 25.05.20215 ref. No. PP/GM(PP)/79/15-16/58 (6 sheets)
Exhibit-D	Letter dt. 30.04.2015.
Exhibit-E	Letter dt. 16.09.2013 (request for release of payment)
Exhibit-F	Letter dt. 29.04.2015 (request for release of full and final payment Vide ref. No. EE/CAL/1015-16/007)
Exhibit-G	Letter of Essar Engineers authorizing Sailesh Saraf to depose on behalf of the Company as a witness of the Company dated 14.05.2024.
Exhibit-H	The work order dated 07.08.2013 to M/s. DPEM Co-Opt Society Ltd. by DPL.
Exhibit-I	The work order dated 16.07.2014 to M/s. Essar Engineers by DPL.

Exhibit-J	Letter of General Secretary, DPL Contractor Workers Association dated 01.05.2014 to M/s. Essar Engineers.
Exhibit-K	License granted to Essar Engineers by the Govt. of West Bengal dated 31.07.2014.
Exhibit-L	Letter of General Secretary DPL Contractors Workers Association dated 14.09.2012.

Ld. Counsel representing the Applicant/Workmen in addition to his oral argument has filed his written arguments, contending *inter alia* on different points relating to facts and relevant law and citation of different cases to make it relevant to establish the case of Applicant/Workmen.

According to his argument it is crystal clear that the continuity of employment started on 07-01-1999, as mentioned under Serial No. 9, where the employee worked under the DPL principal employer. It also reflects the individual PF Code Number, ventilated that the workman was covered under both ESI and PF benefits with DPL. There is no contrary evidence provided by DPL to demolish or washout the factual positions.

The workmen were working more than 10 years and their last drawn salary was around Rs. 10,000/- (may be the same as little more or less) so reflected into the body of the scheduled marking annexure-A with the written statement, remaining on record.

The applicant workers were working in the factory of Durgapur Project Ltd. from the year 1999 onwards & their services were utilized by the principal employer as admitted position on record ventilated by given separate code number.

The applicants were provided with gate pass to work inside the factory of DPL, which was signed and sealed by M/s. DPL, clearly reflecting the involvement and acknowledgement of the principal employer. Being a Contractor M/s. Essar Engineers subsequently came into picture as a Co-Ordinator to took service from the applicant /workmen only for the interest & benefit of principal employer DPL. The services of the workmen were, in fact, utilized for the benefit of the principal employer through their chosen contractor M/s. Essar Engineers. The service of the worker was inside the factory of DPL for the upliftment of his business capital gain taking the advantage with pre-plotted policy.

He further argued that, “the true test may, with brevity, be indicated once again. Where a worker or group of workers labours to produce goods or services and these goods or services are for the business of another, that other is, in fact, the employer. He has economic control over the workers’ subsistence, skill, and continued employment. If he, for any reason, chokes off, the worker is virtually laid off. The presence of intermediate contractors with whom alone the workers have immediate or direct relationship – ex-contractor – is of consequence when, on lifting the veil or looking at the conspectus of

factors governing employment, we discern the naked truth. Though draped in different perfect paper arrangement, the real employer is the Management, not the immediate contractor. Myriad devices, half, hidden in fold after fold of legal form – depending on the degree of concealment needed, the type of industry, the local conditions, and the like – may be resorted to when labour legislation cut welfare obligations on the real employer, based on Articles 38, 39, 42, 43, and 43-A of the Constitution. The court must be astute to avoid the mischief and achieve the purpose of the law and not be misled by the maya of legal appearances.” He referred the case law record – FLR – 1978 (37) page No. 136.

That the company followed and unfair measure of labour policy by circumventing the pre-conditions and pre-requisites mandated by the legislature, thereby violating the relevant provisions of Section 2(oo) and the conditions precedent enumerated under Section 25F of the Industrial Disputes Act, 1947, including the absolute requirement under Section 25F(b) of the Industrial Disputes Act.

It was argued that the “TRIBUNAL HAS NOT TRAVELED BEYOND THE SCOPE OF REFERENCE”, relying upon the decision by the Supreme Court reported in Indian Farmers Fertilizer Co-op Ltd. V. Industrial Tribunal (i), Allahabad 2002 (i) CLR 1106 (SC)

He relied upon various pronouncements of the Hon’ble Supreme Court, tailored to diverse factual scenarios as reflected in the judgment dated August 12, 2013, Deepali Gundu Surwase vs Kranti Junior Adhyapak Mahavidyalaya (D. Ed.) & Ors., reported at (2013) 10 Supreme Court Cases 324, wherein the Court was pleased to hold, inter alia, at paragraph 38 thereof:

It is settled law that the burden of proof of the existence of a particular fact lies on the person who makes a positive averment about its existence. It is always easier to prove a positive fact than to prove a negative fact. Therefore, once the employee shows that he was not employed, the onus lies on the employer to specifically plead and prove that the employee was gainfully employed and was getting the same or substantially similar emoluments.

He further relied upon the decisions of some cases as Hindustan Tin Works (P) Ltd. v Employees [Hindustan Tin Works (P) Ltd. v. Employees, (1979) 2 SCC 80 ; 1979 SCC (L&S) 53] ; J.K. Synthetics Ltd. v. K. P. Agrawal [(2007) 2 SCC 433: (2007) 1 SCC (L&S) 651 ; Surendra Kumar Verma v. Central Govt. Industrial Tribunal-cum-Labour Court, (1980) 4 SCC 443: 1981 SCC (L&S) 16] .

Ld. Counsel representing the OP No.1 M/s Essar Engineers in addition to his oral argument has filed his written arguments, contending inter alia on different points relating

to facts and relevant law and citation of different cases to make it relevant to establish the case of OP No.1.

He argued that the Ld. Counsel of the Applicant/Workmen cited the judgment of the Ld. 2nd Labour Court does not have any legal impact since the Labour Court is always court below to the Learned Tribunal. Hence, the judgement is not applicable here and more-so, the fact of the present case is completely different from the cited cases. The judgment cited by the applicants between State Bank of India and N. Sundramni (1) LLJ, 1976 Pg-478 is in connection with the retrenchment compensation but in present case, there is no retrenchment on the part of the contractor M/s. Essar Engineers since the contract period between DPL and Essar Engineers have come to an end and there is no scope of termination/retrenchment by M/s. Essar Engineers. The judgement in connection with 1985 (i) Lab I.C. H.D. Singh – Vs Reserve Bank of India clearly stated the statutory provision of section 25F of I.D. Act. In this connection, if there is no termination, section 25F is not required to be complied with.

In case of 1993 (675FLR) Pg-111 D.K. Yadav-vs-J.M.A. Industries Ltd. is not applicable since this case is pertaining to retrenchment procedure.

He further argued that for less than 2 years the DPL authority has given the contract to the Essar Engineers and after completion of the said contract their service has came to an end and in the present case if any benefit is given to the applicants, that should be provided by the DPL Authority solely and exclusively as the applicants rendered services for the works of DPL authorities under different contractors time to time, and in the present case, the question of natural justice as stated in the present judgement does not have any impact.

That the case cited by the applicants in 1010 (1) LLJ Pg 841, SC – Ramesh Kumar – Vs. State of Haryana pertaining to section 2(OO), 2(s), 25(F) is not relevant to the present case since there is lot of different factual aspect between the judgment and the instant case. The judgment cited in 1978 (37) FLR, is totally different context and as such this judgement is not at all applicable in the present case. The case of D.P. Maheshwar -Vs- Delhi Administration and others concerned, is not at applicable in the present case since the case is pertaining to hearing on preliminary issues.

As the judgment of Deepali Gundu case clearly indicates that without pleading of “not gainfully employed elsewhere by the applicants/workmen”, the back wages cannot be awarded to the applicants. In the present case admittedly, there was no whisper in the statements of claims/written statement, by the applicants that they were not gainfully employed elsewhere after alleged termination of service and therefore, the workmen are not entitled to get any back wages in absence of such pleadings.

It was further argued that the applicants who are under reference did not produce the documents that are already superannuated and/or retired, in absence of such the Learned Tribunal is not in a position to deal with the case and for giving relief if any.

There is settled principle of law contended in M.L. Shingla Vs. Punjab National Bank 2019 1 SCC (L&S) 805 clearly stated that in absence of pleadings the workmen are not entitled to get back wages. In the present case, the tribunal held and awarded 50% back wages. The Hon'ble Supreme Court ultimately turned down the said back wages on the plea that in pleadings there was absence of the averment to the effect that the applicants are not gainfully employed elsewhere.

The workmen admittedly never raised any demand to the management after cessation of employment. In case of Capital Ltd. -Vs- Eight Industrial Tribunal 2006 III CLR 285 our High Court clearly stated that raising dispute before the management is *sicqua-non* and to the effect in the said case the Hon'ble High Court has rejected the order of reference.

Admittedly, there was an agreement between the principal employer and contractor Essar Engineers on 1st January, 2012 and as per the said Agreement Essar Engineer worked there upon till 29th April, 2014. Whereafter contractual agreement ceased to exist by the principal employer.

Admittedly, the continuity of employment retaining the workmen under reference depends on the Principal Employer because they are the sole authority to decide the number of employees, duty allotments and pay packages even DPL authorities was sole responsible to decide who will enter to their factory premises and admittedly M/s Essar Engineers had no control over it.

It was further argued that M/s. Essar Engineers has no authority to appoint and or terminate the employment of the workmen at any point of time and admittedly the Principal Employer used to pay wages to the workmen through the contractor M/s. Essar Engineers.

It was further argued that had the applicants/workmen any demand regarding the cessation of employment, it should be made to the principal employer only and Learned Tribunal considering all aspects already passed order to add DPL as a party to the present proceeding and from the evidence of the applicants/workmen it is clear that M/s. Essar Engineers never issued any appointment letters to the workers. It is admitted further that DPL used to pay the Provident fund contribution in respect of applicants.

It was further argued that DPL used to issue gate pass to the applicants and one of the applicant Shri Molay Kr. Chakraborty on his cross-examination dated 23.06.2022 stated that DPL has given the job to them. It was further argued that the concerned

applicant/workman had been working under DPL since 2000/2001 under different contractors for the job of DPL and by working under Essar Engineers only for two years, M/s. Essar Engineers cannot be held liable for employment and/or any other benefits seeking before this Learned Tribunal considering the whole aspect and the whole evidences and on the materials on records, if any, demands or benefits claimed against M/s. Essar Engineers ought to be rejected. If any grievances of the applicants relating to any benefits should be paid by the added party - DPL authority as Principal Employer, but not against the Essar Engineers since the contractor Essar Engineers is now closed since long.

Ld. Counsel representing OP No. 2 Durgapur Projects Ltd. advanced his oral argument by stating that it is a reference case in which the appropriate Government referred the dispute in between the applicant/workmen and M/s. Essar Engineers to this Ld. Industrial Tribunal for adjudication on two specific issues. M/s. Essar Engineers was the only opposite party employer in the said dispute raised by the workmen and referred by the appropriate Government but neither there was any dispute against the DPL before the conciliation officer nor there was any reference made by the appropriate Government by involving DPL with the alleged dispute of this case. Since there was no direct relation between DPL and Workmen, then there was no whisper about the DPL in the respective issues for adjudication. According to his further argument DPL has given work order to the contractor M/s. DPEM Co-operative Society Ltd. but M/s. Essar Engineers was provided with the said work for the period of one year as a Sub-Contractor under the main contractor M/s. DPEM Co-operative Society Ltd. So, the DPL neither had any direct relation with the concerned workmen who used to work under the said Sub-Contractor M/s. Essar Engineers nor has any liability towards the said workmen. Relying upon the decision of State of Karnataka vs. Uma Debi he further submitted that daily labourer has no right to claim reinstatement or compensation, if any.

Having considered the above discussed arguments of both side Ld. Counsels and on careful perusal of the materials on record including the pleadings of the parties and oral as well as documentary evidences of the parties, it appears that the applicant workmen raised their disputes before the Conciliation Officer of Govt. of West Bengal against one and only Opposite Party i.e., M/s. Essar Engineers, claiming it as their employer and accordingly due to failure of said conciliation procedure the Conciliation Officer referred the dispute before the appropriate authority of the Government and accordingly the appropriate authority of the Government referred the dispute before this Tribunal for adjudication on two specific issues i.e., (1) whether refusal of employment of 21 workers,

viz. Shri Shyamal Chakraborty and 20 others with effect from 01.05.2014 by M/s. Essar Engineers, is justified ? and (2) what relief, if any, as the workers are entitled to?

It is admitted fact that the appropriate authority of the Government referred the dispute with prime issues to adjudicate whether refusal of employment of 21 workers viz. Shri Shyamal Chakraborty and 20 others w.e.f. 01.05.2014 by M/s. Essar Engineers is justified or not. So, it is clear from the said issue and the exhibited documents of the applicant/workmen i.e., (Exhibit-6 to Exhibit-10) that the applicant workman raised their dispute against the said M/s. Essar Engineers as their employer. Even after going through the initial written statement of the applicant workmen, it appears that beside M/s. Essar Engineers as the employer of the concerned employees there was no whisper about the OP No. 2, Durgapur Projects Limited (in short DPL). Initially there was no claim of the applicant workmen by raising any dispute against the OP No. 2, Durgapur Projects Limited.

However, subsequently deviating from the earlier stand of the applicant workmen they preferred a Special Leave Petition before the Tribunal, praying for adding Durgapur Projects Limited as a party to this case claiming that DPL is their principal employer as they use to work for the benefit of DPL.

It was argued by the Ld. Counsel of the Applicant/Workmen that the workmen having individual PF Code Number, which ventilated that the workmen were, covered under both ESI and PF benefits with DPL. On the other hand, DPL has flatly denied their liability to pay any PF contribution in respect of concerned workmen of this case. In this regard, the applicant workmen tried to establish their case of payment of ESI and PF contribution by producing a photocopy of a purported statement of salary in the name of Shyamal Chakraborty by exhibiting the same as Exhibit-3. But having careful perusal of the said Exhibit-3, it appears that though in the top of the said document the name of 'The Durgapur Project Ltd.' has been scribed but the said document does not bear any official seal or signature of any authority showing its authenticity as a document and also to prove that it was at all issued by any authority either from DPL or from PF or ESI. So, in absence of such authority this document i.e., a typed sheet cannot be considered as a document and cannot be as evidence in connection with this case. Similarly, Exhibit-2 although in the name of S. Chakraborty and Essar Engineers also does not bear any seal or signature of any authority and cannot be considered as a document to take the same as evidence in connection with this case. Beside these two purported documents of one employee S. Chakraborty in respect of his wages and ESI & PF contribution the applicant workmen also tried to establish their case of their relation with DPL as their principal employer by producing photo copy of gate pass issued by DPL in the name of worker S. Chakraborty.

Having careful perusal of the said gate pass which has been exhibited as Exhibit-1 it appears that it was issued from the end of Durgapur Projects Ltd in the name of worker S. Chakraborty and the name of the firm is Essar Engineers. In this regard, if we go through the evidence in cross-examination of OPW-2 Shri Tanmoy Mondal, then it would appear before us that it was clarified by him by saying that “anybody who is working in DPL whether contractual or direct was issued gate pass to ingress and egress”. The Ld. Counsel of the DPL also in his argument submitted that the campus of the DPL is a protected place and working inside the said place by any worker either its direct employee or the worker of any contractor required gate pass issued by the DPL authorizing his ingress and egress in the said campus for security reason but the said gate pass cannot be a document to prove a person having gate pass that he is a direct employee or worker under the DPL. Beside this gate pass the applicant workmen exhibited photo copies of ESI card in the name of Shyamal Chakraborty as Exhibit-4 and Exhibit-12 respectively and in the name of Sanjay Das, Mohan Singh, Swapan Dutta and Rajesh Yadav as Exhibit-29 to Exhibit-32 respectively. Having careful perusal of these documents it appears that although it bears IP number, date of birth and address of the concerned employee with Employees State Insurance Corporation but does not bear name of any place of work or the concerned employer with whom the employees were related. Other documents of applicant/workmen i.e., Exhibit-13 to Exhibit-28 are nothing but voter and Aadhaar Cards of different workers which cannot establish any relation of those workers either with DPL or with M/s Essar Engineers.

Now, if we go through the other exhibited documentary evidence of the applicant/workmen, then it would appear before us that Exhibit-5 claims to be a statement of claim of Shyamal Chakraborty, workers employed in M/s Essar Engineers, a contractor of DPL which is a scheduled employer under the Minimum Wages Act, 1954. Exhibit-6 goes to show that it was a letter of 25 retrenched workers of M/s. Essar Engineers to the Sub-Divisional Officer, Durgapur written on 19.06.2014 with signatures of 20 workers. Exhibit-7 is a letter issued by the Assistant Labour Commissioner, Durgapur to the Manager of M/s Essar Engineers. Exhibit-8 goes to show that 21 workers with their signature wrote a letter to the Deputy Labour Commissioner, Durgapur on 30.05.2024 stating that since 01.10.2003 they were engaged with Essar Engineers and from the beginning Essar Engineers was with T.R.F and after two years Essar was with DPL Co-operative till 30.04.2014. Exhibit-9 claims to be a Minutes of the discussion dated 13.08.2014 held in the office chamber of Assistant Labour Commissioner, Durgapur in the matter of industrial disputes raised by the workmen goes to show that M/s. Essar Engineers was addressed as a contractor under the Durgapur Project Ltd. and the representative of

said Essar Engineers management of DPL and workmen remained present there where the management and the contractor were asked to produce the list of workmen of the contractor for the period prior to 29.04.2014 and after 29.04.2014 on the next meeting. Exhibit-10 is also a Minutes of the discussion dated 07.08.2014 held in the chamber of the said Assistant Labour Commissioner of Durgapur in presence of aforesaid representatives of the parties which goes to show that “the workmen verbally demanded for reinstatement in M/s. Essar Engineers and also demanded that they have been working under the same contractor for the last few years and all on a sudden they have been retrenched on and from 02.05.2014. The contractor while interpreting about the point said that a fresh work order has been issued in favour of him from 29.04.2014 where the amount of work order in terms of money have been reduced almost in half. Hence, he has no capacity to absorb all the 47 manpower. The workmen on the other hand demanded that in the said work order a provision was laid down to continue with all 47 heads and the same work order may be produced for further discussion”.

With regard to the above discussed contention of Exhibit-10, if we go through the relevant work order which have been exhibited from the end of the applicant/workmen as Exhibit-37 (collectively) and from the end of the OP No.-1 / Ms. Essar Engineers as Exhibit-I respectively, it will appear that it was given in favour of a contractor M/s. Essar Engineers by the DPL for a period of one year w.e.f. 01.05.2014, which does not show the number of workers to be engaged but the clause-11(g) of the said work order clearly mentioned that, “the workers employed by the contractor should be suitably skilled for the respective job requirement otherwise head of the concerned department shall have the right to disallow unsuitable workers and the contractor shall engage suitable number of supervisors to ensure safety at all places of work during execution of work”.

Admittedly, no such document showing appointment of all such 21 workmen by the contractor M/s Essar Engineers since 01.10.2003 could be produced by the concerned workmen during their evidence. Even no such authentic salary/wage slip could be produced by them and in this regard, it has already been discussed earlier that nothing about the contents of Exhibit-2 & Exhibit-3 can be relied upon as the same does not bear any signature or seal of issuing authority. However, from the above discussed documentary evidence of both applicant/workmen and OP No. 1, clearly it is established that the applicant themselves through their documentary evidence i.e., Exhibit-8, admitted that from the beginning Essar was with T.R.F and after two years Essar was with DPL Co-operative till 30.04.2014 i.e., for one day before the alleged date of retrenchment on 01.05.2014. However, from another document produced from the end of applicant/workmen as Exhibit-37 (collectively), it will appear that DPL issued repeat work

order in favour of M/s. DPEM Co-operative Society Ltd. for the period of eight months w.e.f. 01.08.2013 to 31.03.2014. From the documentary evidence of OP No. 1 Essar Engineers i.e., Exhibit-B, which is an agreement between M/s. DPEM Co-operative Society Ltd. and M/s. Essar Engineers it appears that there was an agreement between them to the effect that M/s. Essar Engineers will serve as a Sub-Contractor in the said work order given to the contractor M/s DPEM Co-operative Society Ltd. by DPL and in performing the job smoothly M/s. Essar Engineers would employ their own manpower (skilled, semi-skilled and labour) tools and tackles etc. In the said agreement it was also agreed by the parties that M/s. Essar Engineers will have to borne all responsibilities for performing the job with utmost satisfaction of DPL management with their manpower and all kinds of safety devices of their staff. All kinds of payment including statutory obligation of DPL is to be fulfilled by M/s. Essar Engineers. After receiving payment of DPL by M/s. DPEM Co-operative Society Ltd. the Sub-Contractor M/s. Essar Engineers would prefer their bill in favour of Secretary in duplicate for payment.

There is no pleadings either from the end of the applicant/workmen or from any opposite party i.e., M/s Essar Engineers or DPL that before 01.05.2015 any direct work order was issued by the DPL in favour of M/s. Essar Engineers to execute their work as a contractor but from Exhibit-C, it could be gathered that M/s. Essar Engineers was provided with work order as contractor by the DPL w.e.f. 01.05.2015 which was also conveyed through letter of intent dated 30.04.2015 (Exhibit-D) issued by the management of DPL in favour of M/s. Essar Engineers.

Whatever may be the position of OP-1 M/s. Essar Engineers, either as Sub-Contractor under DPEM Co-operative Society Ltd. or directly as a contractor under DPL, the contention of Exhibit-B i.e., agreement between the said DPEM Co-operative Society Ltd. and M/s. Essar Engineers clearly goes to show that the said agreement was executed on 01.01.2012 assigning the work for annual maintenance contract for wagon tippler, stacker, crusher etc. at CHP/DPPS Unit No. 3 to 6 of DPL to M/s. Essar Engineers as a Sub-Contractor to be executed by their own manpower. So, from these documentary evidence along with other documentary evidence, like Exhibit-8 and the evidence of OPW-1, clearly it is established that whatever may be the period of their employment with M/s. Essar Engineers as pleaded by the workmen, but in absence of any reliable convincing documentary evidence from their end there is no doubt that the concerned 21 applicant/workmen used to work under M/s. Essar Engineers since the beginning of January 2012 till 29.04.2014.

It has already been discussed earlier that since 01.05.2014 i.e., after the alleged retrenchment of the workmen M/s. Essar Engineers was directly awarded with a work order as a contractor by the DPL for a period of one year. So, from the evidence on record it is clear that since 01.05.2014 M/s. Essar Engineers became a direct contractor under DPL but before that period they used to work as a Sub-Contractor under DPEM Co-operative Society Ltd. in respect of work order awarded in favour of main contractor DPEM Co-operative Society Ltd. However, from Exhibit-J, it appears that even after getting such work order directly from DPL the contractor M/s. Essar Engineers had no choice to deploy their own man power when another contractors' workers association in the name and style as DPL Contractors Workers' Association submitted their letter to M/s. Essar Engineers with a list of 28 manpower for their deployment for execution of the work order awarded to M/s. Essar Engineers by the DPL w.e.f. 01.05.2014 vide DPL LOI No. PP/178 Dated 29/04/2014.

However, Shri Chandan Kumar Das, a witness of M/s. Essar Engineers as OPW-1 not only stated in his evidence-in-chief that by virtue of agreement dated 01.01.2012 their company worked till April of 2014 and thereafter said contractual agreement ceased to exist by the Principal Employer but also admitted that the job of the Company was totally contract oriented job and the Principal Employer gave them total number of person to be employed to execute the said contracted work. It was also admitted by him that the decision as to who is to be retained and who is to be removed was solely their discretion and the Principal Employer had no role to play on it. He also admitted that the contract under which they engaged those 21 workmen as cease to exist and after cessation of the said contract they have no relation with DPL.

The evidence of Shri Tanmoy Mondal (OPW-2) a witness of DPL stated that since the work order was issued by DPL in favour of contractor M/s. DPEM Co-operative Society Ltd. and it was assigned by the said contractor to a Sub-Contractor M/s. Essar Engineers then M/s. DPEM Co-operative Society would be the Principal Employer of the manpower engaged by the Sub-Contractor M/s. Essar Engineers and accordingly DPL being the added OP has no role to play with those manpower of the Sub-Contractors about their engagement and disengagement. During his cross-examination this OPW-2 clearly stated that DPL never deposited PF contribution in respect of that manpower of contractor or Sub-Contractor.

Shri Sailesh Saraf, another witness of M/s. Essar Engineers as OPW-3, in his evidence stated that M/s. DPEM Co-operative Society Ltd. for the work order of DPL used to provide work to M/s. Essar Engineers as their Sub-Contractor till 30.04.2014 and thereafter since 01.05.2014 M/s. Essar Engineers started working as contractor with DPL

by participating tender process being LI bidder. The said contracted work was not a continuation of earlier work done by M/s. Essar Engineers till 30.04.2014. In his evidence he further stated that in respect of the said work order dated 16.07.2014, effective from 01.05.2014 M/s. Essar Engineers received a list of manpower for 28 persons from 'DPL Contractors Workers Association' as per decision of 'DPL Contractors Workers Association' and DPL the contractor M/s. Essar Engineers had no option but to execute the specific work order with those 28 manpower which was approved by DPL by granting license dated 31.07.2014 for that purpose. However, he could not say whether the said Workers Union can be termed as Principal Employer or not for that 28 manpower. During cross-examination it was also revealed by him that the workers were working in the plant of DPL from time to time under different contractors as provided by the said workers union. So, the contractor may be changed but the workers are used to work in the plant under different contractors through the said workers union. It was admitted by him that their concern M/s. Essar Engineers used to pay PF Contribution of the workers with the endorsement of DPEM Co-operative Society Ltd. and all those 21 workers used to work on no work no pay basis. In this regard Shri Moloy Chakraborty, a witness of applicant workmen as PW-2, in his evidence admitted that for such contracted work DPEM Co-operative Society Ltd. used to pay M/s Essar Engineers and they used to get their wages as the same was deposited in their bank account by M/s Essar Engineers. PW-1 Shri Shyamal Chakraborty admitted in his evidence that their salary was paid by M/s Essar Engineers and M/s Essar Engineer used to take ESI subscription from their salary. Although he stated that M/s. Essar Engineers took their PF subscription and deposited it with DPL but could not say whether as per statute PF is to be deposited with DPL or not.

So, from the above discussed facts and circumstances, coupled with the above discussed evidences of the parties on record unequivocally it is established that with regard to work order awarded by the DPL in favour of the aforesaid contractors i.e., DPEM Co-operative Society Ltd. and M/s. Essar Engineers the DPL may be termed as a Principle Employer in respect of those work orders for the period of one year each but considering the clauses of those work orders and the aforesaid agreement between M/s. DPEM Co-operative Society Ltd and M/s. Essar Engineers in no way DPL can be held liable for any responsibilities towards manpower and their employment for the relevant period. So, in case of any termination or retrenchment of any manpower by the said contractor or its Sub-Contractor the DPL cannot be held responsible for the same as because each and every work order even the said agreement consists of the clauses to execute the work with the manpower of concerned contractor. In this regard applicant/workmen Shri Shyamal

Chakraborty in his evidence as PW-1, clearly admitted that the Gate Pass was issued by DPL for entry to work under the contractor. Accordingly, mere issuance of Gate pass for ingress and egress of the said manpower of the contractor to the place of work inside the compound of DPL cannot be a ground to determine that manpower as employee of the DPL.

However, mere production of ESI, Voter Card and Aadhaar Card of the applicant workmen as Exhibit-12 to Exhibit-32 respectively cannot establish that they were at any point of time employee of DPL.

So, keeping in view of the above discussed facts and circumstances and the materials on record it can safely be held that the Durgapur Projects Limited (DPL) being the added OP No. 2, has no role to play with the manpower of the contractor or Sub-Contractors about their engagement and disengagement. Only OP No. 1 M/s. Essar Engineers, whatever may be their position as Sub-Contractor or Contractor as they without any statutory notice by way of refusal without payment of any statutory compensation discontinued the employment of the concerned 21 workers of this case, who were employed under them for the period more than one year is responsible to pay lump sum compensation to those workers. Since the nature of the work of said OP No. 1 as Sub-Contractor or Contractor was time to time contract basis subject to availability of contract by way of tender or otherwise from any authority, either TRF, M/s. DPEM Co-operative Society Ltd. or from Durgapur Projects Ltd. for a limited period, then no provision for reinstatement with back wages for those discontinued workers can be available. Since, the applicant/workman could not produce any authentic wage /pay slip to show actually what amount they received per month from the OP No. 1 Employer M/s. Essar Engineers on account of their wages, then there is no other alternative but to make an order for a lump sum amount of compensation in effecting the provision of section 25F of Industrial Disputes Act, 1947.

So keeping in mind the relevant findings of the relevant decisions of the above referred citations of the parties, coupled with the above discussed factors, I am of the reasonable view that the refusal of employment of 21 workers, viz. Shri Shyamal Chakraborty and 20 others w.e.f. 01.05.2014 by M/s. Essar Engineers without serving any statutory prior notice and without payment of any compensation was not justified and accordingly, the concerned workers are entitled to get a lump sum compensation from the said OP No. 1 Employer M/s. Essar Engineers.

Accordingly, both the issues are adjudicated in part in favour of the applicant / workmen.

Hence, it is,

ORDERED

That the refusal of employment of 21 workers, viz. Shri Shyamal Chakraborty and 20 others w.e.f. 01.05.2014 by M/s. Essar Engineers without serving any statutory prior notice and without payment of any compensation was not justified.

The OP No. 1 M/s. Essar Engineers is accordingly directed to pay a lump sum compensation of Rs. 15,000/- (Rupees Fifteen Thousand only) each to the concerned 21 workmen within 60 days from this date.

This is my award.

Let a copy of this order be sent on line in PDF form to the Secretary, Labour Department, Government of West Bengal, N.S. Buildings through the dedicated e-mail for information and doing subsequent action as per provision of law.

Dictated & corrected by me.

Sd/-

Judge, Fourth Industrial Tribunal
Kolkata.
12.12.2025

Sd/-

Judge
Fourth Industrial Tribunal
Kolkata.