

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

No. Labr/ 19 /LC-IR/ 22015(16)/2/2026

Date : 06-01-2026

ORDER

WHEREAS under Labour Department's Order No. Labr./934/LC-IR/22015(16)/112/2018 dated 17.10.2019 with reference to the Industrial Dispute between M/s. Hindustan Unilever Ltd., 63, Garden Reach, Kolkata – 700024 and its workman Sri Abhishek Mitra, S/o Sri Pankaj Mitra, N-274, Fatepur 2nd Sarani , Kolkata – 700028, 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 7th Industrial Tribunal, Kolkata.

AND WHEREAS the 7th Industrial Tribunal, Kolkata, has submitted to the State Government its Award dated 30.12.2025 in Case No. VIII-12/2019 on the said Industrial Dispute Vide e-mail dated 31.12.2025 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/ 19 /1(5)/LC-IR/ 22015(16)/2/2026

Date : 06-01-2026

Copy forwarded for information and necessary action to:

1. M/s. Hindustan Unilever Ltd., 63, Garden Reach, Kolkata – 700024.
2. Sri Abhishek Mitra, S/o Sri Pankaj Mitra, N-274, Fatepur 2nd Sarani , Kolkata – 700028.
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/ 19 /2(3)/LC-IR/ 22015(16)/2/2026

Date : 06-01-2026

Copy forwarded for information to :

1. The Judge, 7th Industrial Tribunal, Kolkata, with reference to e-mail dated 31.12.2025.
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 exists between M/s. Hindustan Unilever Ltd., 63, Garden Reach, Kolkata - 700 024 AND Their workman Sri Abhishek Mitra, S/o Sri Pankaj Mitra, N-274, Fatepur 2nd Sarani , Kolkata – 700028.

(Order of reference being No. G.O. No. Labr./934/(LC-IR)/22015(16)/112/2018 dated 17.10.2019 u/sec. 10 (2A) of the Industrial Disputes Act, 1947)

**IN THE SEVENTH INDUSTRIAL TRIBUNAL, KOLKATA
WEST BENGAL
New Secretariat Buildings, Kolkata**

**Present:
Miss Yogita Gaurisaria ,
Judge, Seventh Industrial Tribunal, West Bengal**

Case No. VIII-12/2019

This Award delivered on Tuesday, this the 30th day of December, 2025

A W A R D

The instant case has been initiated on 21.10.2019 on receipt of copy of Government order of reference being G.O. **Labr./934/(LC-IR)/22015(16)/112/2018** dated **17.10.2019** u/sec. 10(2A) of Industrial Disputes Act, 1947 from the Labour Department, IR Branch, Government of West Bengal referring an industrial dispute between M/s. Hindustan Unilever Ltd., 63, Garden Reach, Kolkata - 700 024 **AND** their workman Sri Abhishek Mitra, S/o Sri Pankaj Mitra, N-274, Fatepur 2nd Sarani , Kolkata – 700028 for adjudication of the matter and for submitting its Award to the State Government in respect of the issues mentioned below—

ISSUE(S)

- I) Whether the termination from service of Sri Abhishek Mitra, S/o Sri Pankaj Mitra, N-274, Fatepur 2nd Sarani , Kolkata – 700028 by the management of M/s.

Hindustan Unilever Ltd., 63, Garden Reach, Kolkata – 700 024 is justified ?

II) To what relief, if any, the workman is entitled ?

1. **Case of the applicant-workman**

The facts of the case of the applicant-workman as per his written statement in nutshell is that-

(i) The applicant's father Sri Pankaj Mitra joined in the instant company in the year 1983 as a general workman and after giving satisfactory service to that Company, he retired from his service on 28.02.2015 at the age of 60 years. The instant company usually and conventionally recruits its Non-Technical Workers from the qualified son/daughter of the retired or existing workers of that Company. In the year 2016 when the Company issued notification for recruitment of Non-Technical Workers, the applicant's father Sri Pankaj Mitra made an application to that company for recruitment of his son (the applicant herein). Pursuant to the said application, the Company called for interview of the applicant on 27.08.2016 and on that day the applicant duly appeared before the interview board and after succeed in that interview, the Company decided to appoint the applicant as a Trainee Workman in the Assistant Technical Trainee (ATT) Cadre under unskilled category w.e.f. 6th October, 2016.

(ii) On 06.10.2016, the Company issued the appointment letter to the applicant asking him join in the post on 6th October, 2016 and pursuant to the said appointment letter, the applicant joined in the said post on the said date. It appears from the said appointment letter that the one year training period will be divided into six month

each towards (a) Orientation and Skill training, (b) on the job intensive skill training. It has also been disclosed in the said appointment letter that the applicant's learning will be reviewed at the end of each 6 monthly phase and his appraisal shall be decided whether he will be retained for the next phase of training or whether his training needs to be extended. In the 1st phase the applicant succeeded and he was directed to complete the second six- month phase.

(iii) In the 2nd phase, the training period has been for improving for skill oriented i.e. to regulate the different product machinery, but the applicant for the maximum period was forced to engage outside the machinery operation, which might not help to improve his skill of operating machinery. The applicant further case is that for the sake of argument the applicant must be competent to improve his skill if he was always engaged in operation product machinery.. But, inspite of this, the applicant was able to improve his skilling capacity as required by the Company. But malafidely, the management gave a notice to the applicant on October 5, 2017 extending his training period for 1 month to give satisfactory performance. During the said extended period, the applicant improved his skill level more better and satisfactory as required by the Company.

(iv) The Company with malafide intention, issued an illegal termination letter releasing the applicant from his traineeship on the ground of unsatisfactory performance in the end of stipulated training period. In the appointment letter dated 06.10.2016. it is clearly stated that the training period may be extended upto 2 months. But without extending 2 months period, the Company

illegally extended only 1 month , which is illegal and arbitrary. The applicant further stated that the applicant was given all the benefits treating him as a permanent worker, such as contributory EPF, 20% bonus, incentive, HRA, participation of the Trade Union Election of the Company during training period on September, 2017. The applicant further stated that the said release letter was issued malafidely on 3rd November, 2017, inasmuch as the father of the applicant and some persons formed a new trade union in the name of Hindustan Unilever Permanent Workers' Union (HULPWU) affiliated to Indian National Trinamool Trade Union Congress (INTUC) in the year 2013 and to take revenge, the Company has taken such illegal decision.

(v) The applicant further stated that the OP/Company has been established more than 100 years ago but during that period, the Company never released any workman while in his training period like the applicant in such way. As such, it is presumed that the applicant's release order is totally with malafide intention.

(vi) The applicant stated that the release order dated 03.11.2017 is bad, illegal, arbitrary, malafidly and deprivation of the applicant's right of survival and it should be set aside and prayed for resuming the applicant in his service and for arrears with all benefits as he was in service.

2. **Case of the OP/Company**

(i) The OP/Company stated that the written statement submitted by the applicant contains various statements and allegations and contentions which are incorrect, baseless and misleading.

(ii) The Company stated that the order of Reference dated 17.10.2019 under the Industrial Disputes Act, 1947 is not maintainable ---

- (a) since the severance of employer – employee relationship as per stipulation mentioned in the contract of employment does not come within the purview of retrenchment as defined under Section 2(oo) of the Industrial Disputes Act, 1947.
- (b) since the action of the management is covered under Section 2(oo) of the said Act of 1947.
- (c) in the absence of retrenchment as defined under Section 2(oo) of the said Act of 1947, and there does not arise any question of existence of an industrial dispute as defined under Section 2(k) of the said Act.
- (d) since in the instant matter, Section 2A of the said Act has got no manner of applicability as the action taken by the management is covered under Section 2(oo) (bb) of the said Act of 1947.
- (e) since the applicant being a Trainee never had any right to any post in the organization.
- (f) since the non-renewal of traineeship after expiry of the period as per the stipulation in that behalf in the letter of appointment , on the ground of unsatisfactory performance, by no stretch of imagination would come within the purview of the said Act, 1947.
- (g) is unsustainable in law since the Conciliation Officer has mechanically acted in initiating the conciliation proceedings as

the action taken by the management does not come within the purview of retrenchment as defined under Section 2(oo) of the said Act.

(h) as the same suffers from suppression and/or distortion of material facts.

(iii) The OP/Company further stated that by a letter dated 06.10.2016 , the applicant was appointed as Trainee Workman in Assistant Technical Trainee (ATT) cadre under unskilled category w.e.f. 6th October, 2016 for an initial period of one year.

(iv) The OP/Company further stated that being a professionally run company, the management of the O.P./Company strictly follows the policy of performance appraisal in full knowledge of the employee concerned and accordingly the performance of the applicant was also assessed in “ Performance Appraisal Trainees”. The same also bears his signature along with appraiser , Appraiser’s Line Manager and other authorities of the factory. The OP/Company further stated that the applicant had full knowledge about his deficiencies and/or the reasons for his unsuitability. Although the management has got every right to discontinue the traineeship of the applicant, after the stipulated period as mentioned in the letter of appointment dated 06.10.2016, his traineeship was extended for a period of one month with a view to afford him an opportunity to improve his performance but the same was of no effect. The extension of Traineeship was also as per the stipulation in the contract of employment. The OP/Company further stated that since the performance of applicant did not improve, the management was left with no other alternative but to issue him a letter dated 03.11.2017

regarding non-renewal of the traineeship as per the stipulation of the letter of appointment being the contract of employment.

(v) The OP/Company denied and disputed the allegations or statements made by the applicant/workman in his several paragraphs.

(vi) The OP/Company specifically denied that the management of the company “usually and conventionally recruits its Non Technical Workers” from the offspring of the existing or retired employees. It stated that it is fundamental that in case of any recruitment, the same has got a co-relation with the requirement and as such the O.P. being professionally run company never believes in recruiting anyone on hereditary basis.

(vii) The OP/Company stated that since during the training period, the performance of the applicant was not satisfactory in nature, the management decided to extend the traineeship by another period of one month commencing from 06.10.2017. This decision was taken strictly in terms of letter of appointment issued to him.

(viii) The OP/Company stated that the second phase training period is for improving the skill and/or to regulate the different product machinery as alleged or at all. It is explicitly clear from the said letter of appointment that the applicant was engaged in the Assistant Technical Trainee (ATT) cadre under unskilled category w.e.f. 06.10.2016 for a period of 1 year and that during the said period of training, there was a review process at the end of six monthly phase. And that , the performance during the training period would be appraised by the appraiser based on which his retention for the next phase of training would be decided. And that,

in the event, the training is extended during any of the second phase, such extension will not be for a period of more than two months in each instance and lastly, retention in employment is subject to satisfactory completion of training during the extension period and not otherwise.

(ix) The OP/Company further stated that the applicant was engaged under “unskilled category” and as such, the allegation of being engaged outside the machine operation is of no consequence and hence denied. It further stated that after being appointed under unskilled category, the contention of the applicant about improving his skill of machine operation is an imaginary one and as such all the contentions in this regard are of no consequence and hence denied.

(x) The OP/Company further stated that it is absolutely incorrect to allege that the management with a malafide intention gave notice on 05.10.2017 for extension of his training period for one month on the ground of unsatisfactory performance. It stated that the appraisal sheets bear the signature of the applicant which leave no room for any doubt that he was in full knowledge about his performance being unsatisfactory in nature. There is no substance behind the contention that during the extended period of training, he improved his skill upto the satisfaction of the management as wrongly stated or at all. The recordings made in the appraisal forms clearly testify that his training and/or performance during the period in question was far from satisfaction. The OP/Company stated that the material recordings of the relevant appraisal forms are to the following effect

:

Period of appraisal	Remarks of the appraiser	Recommendation/ Final Outcome
Qtr. March, 2017	He should improve his nature of work and improve his learning capability.	N/A
Qtr. June, 2017	Improving but not upto the mark. Should improving very fast.	Need to be discontinued.
Performance Appraisal- Trainees	Improvement is very slow.	Training period extended for a month.
Final Performance Appraisal Trainees -	As per the terms of employment , his traineeship is due on 06.10.2017. As a last opportunity we extended his one month traineeship. In this context , he neither developed , nor he improved any skills.	Termination of contract of employment.

(xi) The OP/Company further stated the applicant was well aware of his unsatisfactory performance and that the forms relating to Performance Appraisal – Trainees “ leave no room for any doubt that he was well aware of his unsatisfactory performance as those bear his signatures. In fact, he was time and again verbally apprised of by the management about his non-performance. Moreover, on several occasions, he was counselled for improving his performance but the same was with no effect. In the instant case, the non-renewal of traineeship has been done as per the stipulation in the letter of appointment.

(xii) The OP/Company further stated that the applicant cannot claim extension for a period of two months as a matter of right. In fact, the expression cannot be a for a period “ more than 2 months “ clearly recognizes the right of the management to extend the period of training to such a time period, at its discretion and the same should not go beyond the time period of two months. Therefore, no illegality has been committed by the management in extending his

period of training for one month after the expiry of one year from 06.10.2016 and as such the allegation of arbitrariness is of no consequence and hence denied.

(xiii) The OP/Company further stated that the statutory benefits enjoyed by the applicant can never confer any status that of a permanent employee. The factum of his engagement as “ Assistant Technical Trainee “ (ATT under unskilled category for an initial period of one year and subsequent extension of traineeship as per the stipulation mentioned in the letter of appointment including discontinuation thereof leave no room for any doubt that he was never a permanent employee. A trainee does not have any right for employment. Moreover, when the applicant with his eyes open has accepted the traineeship admitting the stipulations mentioned in the said letter of appointment, he is stopped from contending otherwise. It is fundamental that his participation in the trade union cannot confer any right for claiming the status of a permanent workman. Rights and obligations of the member of a trade union are governed by the Constitution of the said Union which has got nothing to do with the employment status of the said person. In fact, the letter of appointment issued in favour of a person is the only determining factor regarding his employment status and not otherwise.

(xiv) The OP/Company further stated that the management is not afraid of formation of any trade union rather always appreciates the constructive trade unionism. It is unfortunate that the applicant has tried to cover up his unsatisfactory performance during the traineeship by leveling false allegations. The allegation of taking

revenge is purely imaginary in nature, having no substance in any manner what so ever, hence, denied.

(xv) The OP/Company further stated that there is no substance behind the allegation that no trainee has ever been released on the ground of unsatisfactory performance. A non performer does not have any concomitant right to claim his continuation disregarding the performers. The materials on records leaves no room for any doubt that applicant's performance during traineeship was far from satisfaction and as such the management was left with no other alternative but to release him from his traineeship in terms of the stipulations mentioned in his letter of appointment.

(xvi) The OP/Company further stated that the instant case filed by the applicant is not maintainable in law and as such he is not entitled to any relief in any manner whatsoever.

3. **EVIDENCES**

(i) Evidences for the Applicant/Workman

In support of his case, the applicant Abhishek Mitra examined himself as PW-1 and was cross-examined. Sri Pankaj Mitra, father of the applicant was examined as PW-2 and cross-examined.

The following documents were marked as Exhibits on his behalf—

<u>Serial No.</u>	<u>Description</u>	<u>Exhibit No.</u>
1.	Photocopy of letter of retirement of Pankaj Mitra dated 02.02.2015 .	Exbt.-1
2.	Photocopy of letter of the applicant /trainee workman issued by OP/Company dated 06.10.2016	Exbt.-2
3.	Photocopy of letter of non renewal of	Exbt.-3

	traineeship dated 03.11.2017	
4.	Photocopy of pay slip for the month of August 2017	Exbt.-4
5.	Photocopy of Annual Return of the Union for the year ended 31 December, 2012	Exbt.-5
6.	Photocopy of the Draft Electoral Roll dated 23.08.2017.	Exbt.-6
7.	Photocopy of Certificate of Appreciation of applicant issued by OP/Company	Exbt.-7

(ii) Evidences for the OP/Company

In support of its case, Md. Sanaullah Mallick, the HR Manager of the OP/Company was examined as PW-1 and cross-examined.

The following documents were marked as Exhibits on behalf of OP/Company —

<u>Seri al No.</u>	<u>Description</u>	<u>Exhibited date</u>
1.	Xerox copy of Performance appraisal of applicant for quarter March 2017 dated 08.04.2017 (on admission during cross-examination of PW-1)	Exbt-A
2.	Xerox copy of Performance appraisal of applicant for June 2017 dated 30.06.2017 (on admission during cross-examination of PW-1)	Exbt- B
3.	Xerox copy of extension of applicant Traineeship for another period one month dated 05.10.2017. (on admission during cross-examination of PW-1)	Exbt-C
4	Xerox copy of Performance appraisal of applicant as to extension period (on admission during cross-examination of PW-1)	Exbt-D
5.	Xerox copy of Performance appraisal of applicant (on admission during cross-examination of PW-1)	Exbt-E
6.	Letter of Authorisation of OPW-1 to depose on behalf of OP/Company	Exbt-F

4. The Ld. Advocate for the applicant as well as OP/Company filed written notes of arguments in support of their respective case.

The Ld. Advocate for the applicant relied on the following citations in support of the case of the applicant –

1. Judgment delivered by Hon'ble Apex Court in SLP(C) Nos. 8788-8789 of 2023 (2024 INSC 309) (Sandeep Kumar vs GB Pant Institute of Engineering & Ors.)
2. Judgment delivered by Hon'ble Apex Court in SLP(C) No. 11685 of 2011 (2024 INSC 620) (Swati Priyadarshini Vs State of Madhya Pradesh).

The Ld. Advocate for the OP/Company relied on the following citations in support of the case of the OP/Company –

1. (1994) 2 SCC 323 (M. Venugopal Vs Divisional Manager, LIC)
2. 2020 SCCOnLine Cal 3343 (Christopher Minj vs Andaman & Nicobar Administration & Ors)
3. (1997) 8 SCC 461 (LIC & Anr vs Raghavendra Seshagiri Rao Kulkarni)
4. (2010) 14 SCC 416 (Paramjit Singh vs Director Public Instruction (Schools) & Ors.)

DECISION WITH REASONS

Issue No. 1 & 2 :

- **Whether the termination from service of Sri Abhishek Mitra, S/o Sri Pankaj Mitra, N-274, Fatepur 2nd Sarani , Kolkata – 700028 by the management of M/s. Hindustan Unilever Ltd., 63, Garden Reach, Kolkata – 700 024 is justified ?**
- **To what relief, if any, the workman is entitled ?**

5. Both the issues are interlinked and involves common discussions, as such both the issues are taken up together for sake of brevity and better appreciation.

6. The applicant categorically averred that he was appointed as Assistant Technical Trainee (ATT) cadre under unskilled category. Perusal of Exhibit-2 being the appointment letter also proves that he was appointed for the post of "Trainee Workman" in the Assistant Technical Trainee (ATT) cadre under unskilled category.

The definition of workman as laid down under section 2(s) of the Industrial Disputes Act, 1947 lays down definition of workman as under-

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

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

the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature.

The definition of workman clearly includes the apprentice also. It includes the person employed to do any unskilled work even for hire or reward.

Thus, this Tribunal has no hesitation to hold that the applicant is a workman within the definition of workman under section 2(s) of the Industrial Disputes Act, 1947 as amended.

7. Now, I move on to the next bone of contention i.e whether the termination of service of applicant/workman by OP/Company is justified?

The Ld. Advocate for the OP/Company strenuously argued that the termination of applicant/workman is covered under Proviso (bb) of Section 2(oo) of Industrial Disputes Act, 1947, as amended, and as such, the termination of applicant/workman is fully justified.

The Ld. Advocate for the OP/Company relied on the judgment reported in (1994) 2 SCC 323 para 9 & 15 and also on judgment reported in 2020 SCC OnLine Cal 3343.

Sec.2(oo) is reproduced hereinbelow for sake of easy reference and better appreciation.

Sec. 2(oo) "retrenchment" means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action but does not include –

(a) voluntary retirement of the workman; or

(b) retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf; or

(bb) termination of the service of the workman as a result of the non-renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein; or

(c) termination of the service of a workman on the ground of continued ill-health.

The Ld. Advocate for the OP/Company drew attention to Sec. 2(oo) Proviso (bb) and argued that the termination of applicant is nothing but non-renewal of the contract of employment between the OP/Company and applicant/workman due to unsatisfactory performance of the applicant/workman in terms of the stipulation in the contract of employment.

The Ld. Advocate for the applicant/workman argued that the termination of service of the applicant/workman by the OP/Company vide letter dated 03.11.2017 (Exbt-3) is *per se* stigmatic which says terminated due to "unsatisfactory performance". As such, the same should have been preceded by a show cause notice and departmental enquiry which has not been resorted to by the OP/Company in the instant case. As such, the termination letter is bad and illegal.

8. Perusal of Exbt-2 reveals that applicant/workman was appointed on 06.10.2016 and his probation was for initial period of one year.

Exbt-C reveals that the traineeship of applicant was extended by another period of one month commencing from 06.10.2017.

This implies that one month extension expires on 05.11.2017.

It further reveals from Exbt-3 being termination letter that the same is dated 03.11.2017 and terminating services from closing hour of 05.11.2017.

The extension of one month vide Exbt-C clearly called for review of performance of applicant for the period from 06.10.2017 to 05.11.2017. Whereas, on the contrary, the termination letter itself is dated 03.11.2017 which implies that the applicant performance was not reviewed till closing hour of 05.11.2017 and the OP/Company beforehand formed a notion of terminating the service of applicant/workman without reviewing his performance for the period upto 05.11.2017. This itself deprived the applicant/workman of his right which accrued due to Exbt-C itself.

9. Looking at termination from another perspective is that Exhibit-3 reveals that the termination of applicant was due to “unsatisfactory performance”. The same is no doubt stigmatic in nature. The applicant/workman has not been provided with any opportunity to explain the same. It is undisputed that no show-cause has been issued in the instant case nor any domestic enquiry was held and on the basis of Exbt-3, the service of applicant was terminated.

It further reveals from D & E that the said appraisals are undated whereas it reveals from Exbt-A & B being appraisals are dated. What prevented the OP/Company from putting the date over Exbt-D & E remains unexplained. Exbt-3 reveals that services of applicant as terminated vide letter dated 03.11.2017 whereas his

performance was ought to have been reviewed upto closing hour of 05.11.2017, which has not been done in this case. The letter dated 03.11.2017 (Exbt-3) itself shows that the OP/Company has formed a preconceived opinion even before closing hour of 05.11.2017 and that too being stigmatic in nature. This raises doubt regarding the bonafideness of the OP/Company in termination of service of the applicant/workman.

10. The continuous service of the applicant/workman for more than 1 year is not in dispute. It thus implies that the applicant/workman has completed 240 days of continuous service as stipulated in Sec. 25B read with section 25 F of the Industrial Disputes Act.

11. The judgments relied by the Ld. Advocate for the OP/Company is of no help to the case of the OP/Company especially in view of the fact that the performance of applicant/workman was not reviewed upto closing hour of 05.11.2017 which was time given to applicant by the OP/Company vide letter dated 03.11.2017.

The OP/Company sought to seek shelter of Proviso (bb) of section 2(oo) of Industrial Disputes Act, 1947.

12. From the discussions made hereinabove, this Tribunal has no hesitation to hold that the OP/Company has failed to bring its case within the Proviso (bb) of Section 2(oo) of said Act. As such, the case of applicant/workman falls under section 2(oo) of the said Act and not covered under Proviso (bb).

13. This Tribunal finds that the OP/company has not conducted any disciplinary proceedings which is reflected from above Exhibits as well as deposition of witnesses. The mandate of Sec. 25F / Sec.

25N of the said Act has also not been complied with by the OP/Company.

The stand of the OP/Company of the said action covered under proviso (bb) does not hold water in view of sec. 2(oo) of the said Act and the action of the management amounts to retrenchment of the service of the applicant/ workman under section 2(oo) of the said Act.

The termination of services of the applicant/ workman vide letter dated 03.11.2017 falls within the definition of retrenchment as laid under section 2(oo) of the said Act, 1947 and does not fall within the proviso (bb) as provided under section 2(oo) of the said Act and is illegal termination of the service of the applicant/ workman since the OP/Company did not comply the statutory conditions precedent to retrenchment as laid down under section 25F or 25N of the said Act, 1947 being compulsory obligation on the company and the said retrenchment is illegal retrenchment.

14. In view of the aforesaid facts and circumstances and the settled position of the law , this Tribunal finds that the applicant/ workman has been able to prove his case by cogent and consistent evidence that his alleged termination vide letter dated 03.11.2017 is bad, illegal and unjustified and is liable to be set aside and that the applicant/Workman is entitled to reinstatement with full back wages alongwith consequential reliefs and the services of the applicant/ workman be deemed to be continuous service without any break.

The applicant/workman is entitled to all back wages alongwith consequential benefits including the benefit of revised

wages or salary if during the period there is revision of pay-scales with yearly increment, revised dearness allowance or variable dearness allowance Back wages should be calculated as if the applicant/workman continued in service uninterrupted. He is also entitled to leave encashment and bonus if other workmen in the same category were paid the same. The applicant/workman has been unlawfully kept out of service, therefore it is just that the OP/Company shall pay all the arrears as calculated according to the directions herein given with 10% interest from the date the amount became due and payable till realisation.

The Issue nos. 1 & 2 stands decided accordingly in favour of the applicant/workman.

Hence, it is

O R D E R E D

that the instant case being No. VIII-12/2019 u/s. 10(2A) of the Industrial Disputes Act, 1947 be and the same is allowed on contest but without any order as to costs against the OP/Company. The letter dated 03.11.2017 (Exhibit-3) is set aside being bad, illegal and unjustified.

The applicant/ workman is entitled to be reinstated in service with effect from 05.11.2017 with full back wages alongwith all other consequential benefits thereto arising out of such reinstatement and continuity of service and the service of the applicant/ workman shall be deemed to be continuous service without any break.

The OP/Company is directed to pay full back wages alongwith all other consequential benefits thereto arising out of such

reinstatement till the date of reinstatement and also other benefits being paid to other workman/ workmen under various beneficial, welfare and/or benevolent schemes of the OP/company. The OP/Company is further directed to ensure that the applicant/ workman is not deprived of the annual increments which fell due from time to time since 05.11.2017.

The OP/Company is also directed to pay all the dues and outstanding as directed by this Tribunal with interest @ 10% per annum within thirty days from the date of this order.

The aforesaid is the Award of this Tribunal passed in this instant case no. VIII-12/2019 u/s. 10(2A) of the Industrail Disputes Act, 1947..

The case no. VIII-12/2019 u/s. 10(2A) stands disposed of on contest.

The reference stands answered accordingly

Let copy of this Award be sent to the appropriate authority(ies) as envisaged under the law.

Dictated & corrected by me.

Judge

(Yogita Gaurisaria)

Judge

7thIndustrial Tribunal

Kolkata

30.12.2025