

I/207018/2022

Government of West Bengal  
Labour Department, I. R. Branch  
N.S. Buildings, 12<sup>th</sup> Floor  
1, K.S. Roy Road, Kolkata - 700001

No. Labr/ 686 / (LC-IR)/11L-40/15Date: 15.07 .2022.**ORDER**

WHEREAS under the Government of West Bengal, Labour Department Order No. Labr/214/(LC-IR)/11L-40/15 dated 17/02/2016 the Industrial Dispute between M/s. Shree Jain Vidyalaya, 18D, Phushraj Bachawat Path (Sukeas Lane), Kolkata - 700001 and its workman Sri Arvind Kr. Hela (Madan Lal Hela), 8, Indian Mirror Stree, Kolkata - 700013 regarding the issue mentioned in the said order, being a matter specified in the Second / Third Schedule to the Industrial Dispute Act, 1947 (14 of 1947), was referred for adjudication to the Judge, Third Industrial Tribunal, West Bengal.

AND WHEREAS the Third Industrial Tribunal, West Bengal, has submitted to the State Government its award dated 29/06/2022 on the said Industrial Dispute vide memo no. 975 - L.T. dated - 29/06/2022.

NOW, THEREFORE, in pursuance of the provisions of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Governor is pleased hereby to publish the said award as shown in the Annexure hereto.

**ANNEXURE**

(Attached herewith)

By order of the Governor,



Joint Secretary  
to the Government of West Bengal

I/207018/2022

No. Labr/...../(LC-IR)

Date: 15-07-2022.

Copy, with a copy of the Award, forwarded for information and necessary action to:

1. M/s. Shree Jain Vidyalaya, 18D, Phushraj Bachawat Path (Sukeas Lane), Kolkata - 700001.
2. Sri Arvind Kr. Hela (Madan Lal Hela), 8, Indian Mirror Stree, Kolkata - 700013.
3. The Assistant Labour Commissioner, W.B. In-Charge, Labour Gazette.
4. The O.S.D. & E.O. Labour Commissioner, W.B. New Secretariate Buildings, 1, K. S. Roy Road, 11<sup>th</sup> Floor, Kolkata- 700001.
- ✓ 5. The Deputy Secretary, IT Cell, Labour Department, with the request to cast the Award in the Department's website.



Joint Secretary

No. Labr/...../(LC-IR)

Date: 15-07-2022.

Copy forwarded for information to:

1. The Judge, Third Industrial Tribunal, West Bengal with reference to his Memo No. 975 - L.T. dated - 29/06/2022.
2. The Joint Labour Commissioner (Statistics), West Bengal, 6, Church Lane, Kolkata -700001.



Joint Secretary

BEFORE THE THIRD INDUSTRIAL TRIBUNAL, WEST BENGAL

Present - Sanjeev Kumar Sharma,  
Judge, 3<sup>rd</sup> Industrial Tribunal,  
Kolkata.

**Case No. VIII-15/2015**

**Award**

**Date : 29-06-2022**

In the matter of an Industrial Dispute between Messrs Shree Jain Vidyalaya, 18D, Phushraj Bachawat Path (Sukeas Lane), Kolkata-700001 and its workman Sri Arvind Kr. Hela (Madan Lal Hela), 8, Indian Mirror Street, Kolkata-700013, referred to this Tribunal vide Reference order No. 365-I.R./11L-40/2015 dated 07.04.2015 read with Corrigendum Order No. 214-IR/IR/11L-40/15 dated 17.03.2016 of the Labour Department, I.R. Branch, Govt. of West Bengal.

**ISSUES**

1. Whether the refusal of employment of Sri Arvind Kr. Hela by the Mgt. of Shree Jain Vidyalaya w.e.f. 15.07.2013 is justified ?
2. If not, what relief Sri Arvind Kr. Hela is entitled to ?

The case of the workman is that he was appointed as water carrier and sweeper on 28.07.2008 by Shree Jain Vidyalaya, hereinafter referred to as the School. Since his appointment he has been continuously working in the School as permanent workman. On 09.07.2013 Commercial Establishment Employees Association (Cal) of which the workman is a member, submitted a charter of demand before the school authority. The school reacted very aggressively against such submission of the charter of demand and refused employment to its nine workmen by denying them to resume their duties. When the school authority realized the gravity of situation it made discussions with the union's representatives and decided to allow the nine workmen to resume their duties, but ultimately the school authority allowed only eight workmen to resume their duties excepting him as he was one of the members of the union. On 15.07.2013 when he went to join his duty the Secretary of the school Mr. Binay Chand Kankaria told him that his service was terminated but he did not disclose any reason for such termination of his service. Despite illegal termination of his service on 15.07.2013 the workman

Contd...

regularly went to the school to approach the authority to allow him to join his duty but to no effect. On 10.08.2013 when the workman again went to approach the school authority for his reinstatement in service he was physically assaulted by the teacher-in-charge Arun Kumar Tiwari, Assistant Teacher Radheshyam Mishra and Secretary of the school Vinod Chand Kankaria. He was ousted from the school by applying physical force and therefore the workman lodged complaint at the Hare Street P.S. The workman alleged that the termination of his service on 15.07.2017 is illegal and invalid as the school did not comply the provisions of the I. D. Act and no domestic enquiry was held. He further alleged that he was a permanent workman of the school but since inception the school management attempted to disown him as a permanent workman. He had been working in the school continuously and uninterruptedly since 28.07.2008. The workman was harassed by the school authority periodically and therefore he made several representations dated 18.09.2013, 20.11.2012 and 30.08.2013 to different authorities like District Inspector of Schools, Regional P.F. Commissioner (C & R) and E.S.I. Authority to ventilate his grievances. The National Commission of Scheduled Castes issued letter to the District Inspector of Schools asking him to take necessary steps regarding the refusal of work to the workman. The P.F. Commissioner requested the Regional P.F. Commissioner to take necessary action against the school authority for non-deduction of EPF amount from him. The workman further stated that the deducted provident fund amount from him was deposited to Shree Jain Education Trust and therefore the workman by his letter dated 04.04.2013 raised protest asserting that he was the employee of Shree Jain Vidyalaya and had no nexus with the Trust and he refused to accept the cheque sent to him by the Trust. By his letter dated 20.05.2013 the workman raised his objection before the Labour Commissioner as he was denied medical allowance, HRA and washing charges. On 02.09.2013 the union submitted letter before the Deputy Labour Commissioner stating that the workman was the permanent workman of the school and had been in continuous service till his illegal termination. Protesting his illegal termination of service by the school management the workman sent letter dated 05.09.2013 to the school authority. He also sent letter to the Deputy Labour Commissioner to raise industrial dispute on 11.12.2013. The conciliation meeting was held but no settlement could be arrived at due to adamant attitude of the school authority. The workman

further stated that he is also known as Madan Lal Hela and he was not gainfully employed anywhere after the termination of his service.

The school contested the case by filing written statement. The school divided its written statement in Part-I and Part-II. Part-I challenged the maintainability of the case while Part-II dealt with the merits of the case. The school challenges the maintainability of the reference mainly on the ground that the workman was not their employee and the union named in this case was not recognized by the school. It also challenges the order of reference on the ground that the same has been passed without application of mind.

The case of the school is that the workman was an employee of Shree Jain Education Trust (in short Trust), a separate entity which has no connection with the school. The workman was never employed by the school and there existed no employer-employee relationship between the school and the workman. The school denied all the material averments and allegations made in the claim statement of the workman. It is further stated that there is no union in the school and the union named by the workman has no locus standi to submit any charter of demand on behalf of the employees. Since the workman was not an employee of the school there is no question of terminating his service on 15.07.2017 by the school. According to school the workman has come before the Court with unclean hands and concocted story of termination of his service and he is not entitled to get any relief.

It is pertinent to mention here that in the original reference received by this Tribunal the workman was stated to be represented by Commercial Establishment Employees Association (Cal) Regd. O.9209- 8, Indian Mirror Street, Kolkata-13, but in the corrigendum dated 17.03.2016 the representation of the workman by the union was done away with. Initially the union filed the claim statement on behalf of the workman, but after the corrigendum issued by the Government the workman filed claim statement on his own. Similarly, the school also filed fresh written statement after the filing of fresh claim statement by the workman.

In order to support his case, the workman examined himself as PW-1 and Sri Ashok Kumar Chatterjee as PW-2. He brought the following documents on record :-

1. Copy of cash voucher dated 05.12.2008 as Exhibit-1;
2. Copy of notice of Shree Jain Vidyalaya dated 15.05.2009 as Exhibit-2;

3. Copy of letter of Assistant Municipal Returning Officer to the workman as Exhibit-3;
4. Copy of identity card issued by KMC as Exhibit-4;
5. Copy of letter of the school to D.I. of school as Exhibit-5;
6. Copy of cash voucher dated 21.07.2012 as Exhibit-6;
7. Copy of union's letter to School dated 31.07.2012 as Exhibit-7;
8. Copy of union's letter to school dated 11.09.2012 as Exhibit-8;
9. Copy of union's letter to Addl. Chief Commissioner of P.F. as Exhibit-9;
10. Copy of letter of Assistant Regional P.F. Commissioner to Regional P.F. Commissioner as Exhibit-10;
11. Copy of union's letter to the school on charter of demand as Exhibit-11;
12. Copy of letter of the workman to Shree Jain Education Trust as Exhibit-12;
13. Copy of union's letter to Labour Commissioner as Exhibit-13;
14. Copy of workman's letter to the school as Exhibit-14;
15. Copy of letter of the Assistant P.F. Commissioner to the workman as Exhibit-15;
16. Copy of union's letter to the Deputy Labour Commissioner as Exhibit-16;
17. Copy of union's letter to the O.C., Hare Street P.S. as Exhibit-17;
18. Copy of proceeding of Regional P.F. Office as Exhibit-18;
19. Copy of union's letter to the Regional Director, ESI as Exhibit-19;
20. Copy of workman's letter to the O.C., Hare Street P.S. as Exhibit-20;
21. Copy of workman's letter to the D.I. of School as Exhibit-21;
22. Copy of letter of Capt. Jainarayan Prasad Nishad, MP addressed to the C.M. of W.B. as Exhibit-22;
23. Copy of letter of the workman to the Labour Commissioner as Exhibit-23;
24. Copy of letter of workman to the school as Exhibit-24;
25. Copy of letter of workman to the Director, National Commission of Scheduled Caste as Exhibit-25;
26. Copies of letters dated 26.09.2013 and 19.11.2013 of National Commission of Scheduled Caste to D.I. of Schools as Exhibits-26 and 26/1 respectively;
27. Copy of letter workman's letter to Dy. Labour Commissioner as Exhibit-27;
28. Copy of union's letter to Regional Director, ESI as Exhibit-28;
29. Copy of letter of workman to Deputy Labour Commissioner as Exhibit-29;

30. Copy of affidavit of workman as Exhibit-30;
31. Copy of letter of workman and four others to O.C., Hare Street P.S. as Exhibit-31;
32. Copy of appointment letter of Sri Ashok Kumar Chatterjee as Exhibit-32;
33. Copy of P.F. papers of Sri Ashok Kumar Chatterjee as Exhibit-33;
34. Copy of Golden Jubilee papers of school as Exhibit-34;
35. Copy of voter card of Sri Ashok Kumar Chatterjee as Exhibit-35; and
36. Copies of Bank statement and cancelled cheque of Sri Ashok Kumar Chatterjee as Exhibit-36.

The school examined its President Sri Binod Chand Kankaria as OPW-1 and Sri Prem Kumar Singh, Social Security Officer of ESIC, Kolkata as OPW-2 and brought the following documents on record:-

1. Signatures of workman Arvind Kr. Hela on loan application dated 02.04.2012 and a voucher dated 14.04.2012 as Exhibits-A & A/1;
2. Copy of loan application dated 02.04.2012 as Exhibit-B;
3. Copies of monthly salary receipts of the workman issued by Shree Jain Educational Trust as Exhibit-C;
4. Copy of letter dated 22.04.2013 addressed to the workman and copy of postal receipt as Exhibits-D & D/1;
5. Copy of letter dated 28.03.2013 addressed to the workman by Shree Jain Educational Trust as Exhibit-E
6. Copy of letter dated 19.06.2013 addressed to the workman by Shree Jain Educational Trust as Exhibit-F;
7. Copy of letter dated 06.03.2013 addressed to the workman by Shree Jain Educational Trust as Exhibit-G;
8. Copy of P.F. statement of the workman for the year 2013-'14 as Exhibit-H;
9. Copy of inspection report of Prem Kumar Singh, SSO, ESIC as Exhibit-I;
10. Copy of letter dated 06/08.07.2013 addressed to the workman by Shree Jain Educational Trust as Exhibit-J;
11. Copies of salary register from April, 2008 to May, 2013 of Secondary and Higher Secondary School of the teaching and non-teaching staff of the school as Exhibit-K series;

12. Copies of cash book relating to teaching and non-teaching staff of the school from the year 2008 – 2012 as Exhibit-L series;
13. Copies of attendance register of fourth class staff of the school as Exhibit-M series; and
14. Copies of specimen vouchers of payment of salary and other expenses of various teaching and non-teaching staff of the school Exhibit-N series.

### **Decision with reasons**

In the course arguments learned advocate for the school submits that there was no relationship of employer and employee between the school and the workman as such there arises no question of refusal of employment to the workman as alleged. Referring to the exhibits-A, A1, B, C and H the learned advocate submits that the documents establish that the workman was an employee of the Trust. Pointing at Exhibit-I, visit note of OPW2, Social security officer of ESIC WB he submits that the document clearly establish that the workman is an employee of the trust and he has no relationship with the school. He further submits that the Salary register and attendance register of the school (Exhibits-K series and M series) nowhere show the name of the workman. Referring to the cross-examination of PW2 the learned advocate submits that the witness did not file any document to substantiate his version that the workman was a permanent employee of the school as sweeper cum water carrier. He contends that in absence of the relationship between the workman and the school the reference is itself bad in law due to total non-application of mind and the same is not maintainable. He also submits that the reference suffers from non-joinder of parties.

Learned advocate for the workman, on the other hand, submits that evidence of PW2 coupled with exhibit-32 establish that PW2 was a permanent employee of the school. A permanent employee of the school has deposed on oath that the workman was permanent employee of the school. He adds that Exhibits-1, 2, 3, 4, 5 and 6 clearly prove that the workman is a permanent employee of the school. He submits that there is no explanation that how the school produced exhibits-A, A1, B and C and the documents are not proved by the trust authority. Referring to Exhibit-I, he questions that how a statutory

authority can prepare such report on the pad of the school. Pointing at the evidence of OPW2 he submits that the witness had no knowledge that whether he was empowered under the provisions of ESIC Act or Rules to prepare the visit note on the letter head of a party. He contends that the visit note has been prepared in a biased manner and the same is not believable. The learned advocate further contends that issue referred in this case is whether the refusal of employment of the workman by the mgt. of Shree Jain Vidyalaya w.e.f. 15.07.2013 is justified or not and therefore the tribunal has to confine itself to the issue. He submits that in the light of the issue in reference the tribunal cannot go into the question of existence or non-existence of employer-employee relationship between the school and the workman. He contends that the tribunal cannot go beyond the reference and it cannot question the validity of reference. To support his contention, the learned advocate cites the decisions of the Hon'ble Supreme Court in **National Engineering Industries Ltd. Vs. State of Rajasthan** reported in (2000) 1 SCC 371, of the Hon'ble Calcutta High Court in **Mecon Ltd. Vs. State of W.B.** reported in 2001(1) CHN 333 and of the Hon'ble Karnataka High Court in **Vinayaka C. N. C Centre Pvt. Ltd. Vs Presiding Officer-5** reported in 2019-III-LLJ-711 (Kant). He further contends that the refusal of employment amounts to termination and on this score he cites the decision of the Hon'ble Calcutta High Court in **Jagdamba Motors Vs. State of W. B.** reported in 2009 (4) CHN 71. Learned advocate further contends that the materials on record shows that the workman was under direct control and supervision of the school he must be held to be an employee of the school and in support of his contention he cites the decision of the Hon'ble Supreme Court in **Bharat Heavy Electrical Ltd. Vs State of U.P.** reported in 2003 III CLR 188. He further submits that the school terminated the service of the workman without complying the mandatory provisions of section 25F of the I. D. Act illegally and therefore the workman is entitled to the relief of reinstatement with full back wages. In this connection he cites the decisions of the Hon'ble Supreme Court in **Hindustan Tin Works Pvt. Ltd. Vs. Employees of M/s Hindustan Tin Works Pvt. Ltd.** reported in (1979) 2 SCC 80, **Mackinnon Mackenzie and Company Ltd. Vs Mackinnon Employees**

**Union** reported in (2015) 4 SCC 544 and **Deepali Gundu Surwase Vs. Kranti Junior Aadhyapaka Mahavidyalaya** reported in (2013) 10 SCC 324.

In reply learned advocate for the school cites the decision of the Hon'ble Supreme Court in **Novartis India Ltd. Vs. State of W. B.** reported in 2009 LLR 113.

The contention of the school that the reference is bad in law due to non-application of mind is not tenable in view of the decisions in the cases of **Vinayaka CNC Centre Pvt. Ltd., National Engineering Industries Ltd.** and **Mecon Limited** referred to by the Id. Advocate for the workman.

In **Vinayaka CNC Centre Pvt. Ltd.**, the Hon'ble Karnataka High Court held that if dispute was an industrial dispute as defined in the Act, its factual existence and expediency of making a reference in circumstances of a particular case are matters entirely for Government to decide upon, and it will not be competent for the Court to hold reference bad and quash proceeding for want of jurisdiction merely because there was, in its opinion no material before Government on which it could have come to an affirmative conclusion on those matters and if the Government, on the basis of the material is of the prima facie opinion that an industrial dispute exists, no fault could be found in the reference. In the case of **National Engineering Industries Ltd.**, the Hon'ble Supreme Court held that High Court can entertain a writ petition impugning a reference on the ground of non-existence of an actual or apprehended industrial dispute but the industrial tribunal, a creation of statute which gets jurisdiction on the basis of reference cannot go into the question of validity of reference.

In **Mecon Limited** case the Hon'ble Calcutta High Court held, "It is now settled position of law that in making a reference under section 10 of the Act, the appropriate Government does an administrative act and the fact that it has to form an opinion as to the factual existence of an industrial dispute as a preliminary step to the discharge of its function does not make it less administrative act. The Court cannot therefore canvass the order of reference closely to see if there was any material before the Government to support its conclusion as if it was a judicial or quasi judicial determination."

Therefore, the challenge to the validity of the reference raised by the school before this Tribunal cannot be entertained, but when it is the specific plea of the school that the workman was not the employee of the school and there existed no relationship of employer and employee between them, it is the duty of the Tribunal to decide the

relationship between the parties on the basis of the materials placed on record in view of the proposition laid down in the case of **Mecon Limited**.

The case of the workman is that he was a permanent employee of the school and had been working in the school since his appointment on 28.07.2008. In order to substantiate his claim the workman relies on Exhibits-1 to 6. Exhibit-1 is a voucher dated 05.12.2008 of the school showing payment of advance of Rs.3000/- to the workman. Exhibit-2 is a notice dated 15.05.2009 of the school regarding the retention of the staff of the school named therein which includes the name of the workman also. Exhibit-3 is the letter of Assistant Municipal Returning Officer addressed to the workman showing his address as the address of the school engaging him as water carrier at polling station. Exhibit-4 is the identity card issued by the Assistant Municipal Returning Officer in favour of the workman showing that he was deputed as water carrier at the polling premises in the school. Exhibit-6 is letter dated 06.06.2012 of the Secretary of the school addressed to the D.I. of Schools whereby the workman was authorized to receive G.D.A. bill for the month of May, 2012 of Rs.1,82,251/- from the D.I. Office and Exhibit-6 is a voucher of the school dated 21.07.2012 showing payment of advance of Rs.500/- to the workman. The engagement letter and the identity card issued by the Assistant Municipal Returning Officer (Exhibits-3 & 4) can hardly be treated as evidence of the relationship of employer and employee between the school and the workman as there is no material before this Tribunal that the services of the workman were requisitioned by the Municipal Returning Officer from the school, but Exhibits-1, 2, 5 & 6 appear significant as they tend to establish connection between the school and the workman. In his evidence the OPW-1 stated that the Exhibits-1, 2 & 6 are forged documents, but he did not describe the particulars and manner of the alleged forgery by the workman on the contrary he admits the authorization of the workman to collect the GDA bill from D.I. Office on behalf of the School. The witness alleged that the workman forged Exhibit-2 by incorporating his hand writing therein, but he did not challenge the issuance of such notice by the school nor he produced the original notice which is supposed to be in possession of the school. With regard to Exhibit-4 the version of OPW-1 is that the workman was authorized to receive the GDA bill after taking verbal permission from the trust as no employee of the school was available on that day. The authorization was made on 06.06.2012. Exhibit-B is the loan application dated 02.04.2012 made by the workman

to the Secretary of the Trust requesting Rs.10,000/- as loan for repairing of his house. A voucher of Rs.10,000/- dated 19.04.2012 showing payment of advance to the workman by the Trust is also on the same page (Exhibit-B). The workman admitted his signatures on the loan application as well as on the voucher (Exhibits-A and A1). Exhibit-C are the salary vouchers dated 22.02.2013 for the month of January, 2013 and dated 01.03.2013 for the month of February, 2013. The vouchers bear the signatures of the workman.

The journey of the workman's case begins from the alleged submission of charter of demands by Commercial Establishment Employees' Association (Cal) on 09.07.2013 as depicted in his claim statement, but no copy of such charter of demands is filed. Exhibit-7 is a copy of charter of demands which is dated 31.07.2012. Documents filed by the workman do not include any charter of demands submitted by the association before the school on 09.07.2013. Looking at Exhibit-7 we find that the charter of demand was submitted much before 09.07.2013. Therefore, the story of the workman that the school authority refused employment to nine workmen including himself as the instant reaction of the submission of the charter of demand is found unsubstantiated. The workman pleaded that out of the nine workmen, eight were allowed to resume duty excepting him as he was a member of the union but he did not state the names of the eight workmen nor he has produced any document to show his subscription to the union. There is no material on record that the union in question was a recognized union in respect of the school. None from the union has come to depose to support the plea of the workman. The workman through his letter dated 20.05.2013 addressed to the school (Exhibit-14) made demand of payment of Medical Allowance, HRA and washing charges which was replied by the school through letter dated 19.06.2013 (Exhibit-F) denying the employer-employee relationship with him. Such correspondence also contradicts the claim of the workman that his service was terminated by the school on 15.07.2013. The workman has not produced any document to show that he was drawing salary at the rate of Rs. 7000/- per month from the school as claimed by him in Exhibit-14.

Exhibit-31 is the copy of complaint submitted by the workman along with Dwarka Das, Arjun Ram and Raj Kumar Das to the Officer-in-Charge of Hare Street P.S. on 24.03.2013. The allegations made in the complaint are very serious in nature attracting the penal provisions of law but the fate of the complaint has not come before

this Tribunal. The complaint before police with such serious allegations against the OPW-1 and other functionaries of the school on 24.03.2013 is found inconsistent with the workman's version that he was refused employment by the school on 15.07.2013 as an instant reaction to the submission of charter of demand by the union. Be that as it may in the instant proceeding we are to confine ourselves to the issues referred in this case. The attendance register of class IV employees of the school bears the names and signatures of Dwarka Das, Arjun Ram and Raj Kumar Das, the co-complainants in the complaint submitted before the O.C., Hare Street P.S. on 24.03.2013 but the signatures of the workman are not found on the attendance register. It is found from the evidence of OPW-1 that Arjun Ram is still working in the school.

Much has been argued over Exhibit-I but the fact remains that OPW-2 visited the school on the basis of the complaints made by the union on behalf of the workman to the ESIC authorities. The functions of social security officer under ESIC Act have been described in Section 45 of the Act. In view of the provisions of Section 45 of the ESIC Act there appears no illegality by OPW-2 in visiting the school premises in pursuance to the complaint received by the authority. The preparation of visiting note on the pad of the school is not of much significance. Moreover, the conclusion made by SSO under ESIC Act cannot be binding on this tribunal as the tribunal has to arrive at a conclusion as to the relationship between the parties independently on the basis of the evidence and materials on record.

PW-2 is found to be a teacher who retired from the school on 31.12.2009. The witness claimed that he served the school up to 14.07.2010 by way of extension of service. According to the witness the workman was a permanent worker of the school, but he did not disclose that how he acquired the knowledge that the workman was holding a permanent post in the school. Moreover, when the witness retired on 04.07.2010 and his address being at Howrah he is not supposed to know the events taking place in the school after 04.07.2010. The witness submitted his letter of appointment (Exhibit-32).

Now, the workman claims to be a permanent workman of the school and claims protection of section 25F of the I. D. Act. Crux of his grievance is that his service has been terminated in contravention of section 25F of the I. D. Act, 1947. Evidently the workman has not filed any appointment letter. It is an admitted position that the school and the trust are separate entities. According to the workman the genesis of the dispute

was that he was the member of the union but no subscription slip has been filed by him to show his such membership. The attendance register of the school does not bear his signatures though it bears signatures of Arjun Ram, Raj Kumar Das and Dwarka Das the co-complainants of the workman in exhibit-32. Workman claims that he has been continuously working in the school from 28.07.2008 till the alleged refusal of employment by the school on 15.07.2013 but only two slips one dated 05.12.2008 and another dated 21.07.2012 have been filed. It is no case of the workman that the school did not use to give salary slips to him and never allowed him to sign the attendance register. No such grievance has been ventilated in the charter of demand (Exhibit-7) allegedly submitted on 31.07.2012 though a number of grievances have been enumerated therein. In his statement of claim or evidence the workman did not disclose that at what salary he was appointed and what his last drawn salary was. At the same time, we find that the workman took loan of Rs. 10,000/- on 19.04.2012 (Exhibit-B) and drew salary for the months of January 2013 and February 2013 from the trust. The procurement of documents of the trust by the school was questioned during cross-examination of OPW1 but no explanation of the signatures of the workman thereon (Exhibits-A and A1) has been offered. Now the loan application (Exhibit-B) was made to the Trust on 02.04.2012 and the loan amount was paid on 19.04.2012 which is much before the alleged submission of the charter of demand by the union on 31.07.2012. Thus, it cannot be said that after the alleged submission of the charter of demand the School in connivance with the Trust created the loan application and loan receipt and obtained signatures of the workman thereon fraudulently. Record shows that the school filed their documents on 04.04.2016 but the workman in his examination-in-chief on affidavit sworn on 07.12.2016 did not controvert the loan application and receipts.

It is the common case of both the sides that the School and the Trust are two separate entities yet it is found that both are running from the same premises under the auspices of Shree S. S. Jain Sabha. The school was directed to produce its byelaws but it was not produced on the ground that the school does not have any byelaws and they have only rules regarding composition of school committee approved by the School Education Department, Govt. of W. B. The School produced documents (Exhibits-B, C, D, E, G, H and J) which are supposed to be in the possession of the Trust. In the circumstances it appears that the School and the Trust are sister concerns founded by

Shree S. S. Jain Sabha and though they may have their different administrative setup some sort of cooperation certainly exists between the two. Thus, deputing a staff of one concern to the other in some contingency cannot make him the employee of the other.

From the documents, exhibits-1, 2, 5 and 6, filed by the workman we find that the workman worked for school intermittently on certain occasions only. In absence of any appointment letter or any other cogent evidence to show that the workman was a permanent employee of the school, it is incumbent upon the workman to show that he worked for 240 days during the period of 12 months preceding the alleged refusal of employment in view of the proposition of law laid down in **Range Forest Officer Vs. H. D. Hadimani** reported in **AIR 2002 SC 1147**. There appears no material on record to show that the workman worked for 240 days in the period of 12 months preceding 15.07.2013. Only one voucher dated 21.07.2012 of Rs. 500/- (Exhibit-6) have been produced which does not establish that the workman worked for 240 days as required. During cross-examination of OPW1 on 13.06.2019 it was taken from the witness that he did not produce the salary and attendance register of the primary section of the school but the workman never pleaded and deposed that he was appointed in the primary section of the school. Moreover, the workman never demanded the production of the salary and attendance register of the primary section by the school. Had he made such demand, adverse inference against the school could have been drawn for non-production of the same. In view of the materials on record I am constrained to hold that the workman has failed to discharge his burden. The unilateral correspondences and complaints made by the workman with the school and other statutory authorities either by himself or through the union without satisfying the basic requirements cannot elevate him to the status of a permanent employee of the school.

This is not a case of principal employer and contractor as such the decision in **Bharat Heavy Electrical Ltd.**, referred to by the workman, has no manner of application in this case.

Since the workman has failed to substantiate the basic foundation of his allegations, the decisions in **Jagdamba Motors, Hindustan Tin Works Pvt. Ltd., Mackinnon Mackenzie and Company Ltd.** and **Deepali Gundu Surwase** cannot rescue the workman.

Having considered the entire facts and circumstances and the materials on record, I find that the workman having failed to establish that he was a permanent employee of the school, there is no question of termination of his service by the school and as such he is not entitled to get any relief in this case.

The issues are answered accordingly.

In result, the claim statement of the workman merits dismissal.

Hence,

it is,

ordered

that the claim statement of the workman is dismissed on contest but without any cost.

This is my award.

Let the copies of the Award be sent to the Labour Department, Government of West Bengal in accordance with the usual rules and norms.

Dictated & corrected by me

sd/-

Judge

sd/-

(Sanjeev Kumar Sharma)

Judge

3<sup>rd</sup> Industrial Tribunal

Kolkata

29.06.2022