I/207339/2022

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

No. Labr/ .693. /(LC-IR)/7L-03/17 Date: 18/07/2022.

ORDER

WHEREAS under the Government of West Bengal, Labour Department Order No. 537 - I.R /7L - 01/2004(Pt) dated 06.05.2008 the Industrial Dispute between M/s Ludlow Jute Mills, Prop. M/s. Ekta Limited, Village & Post - Chengail, Howrah, Pin. - 711308 and Sk. Mustaq Ahmed, Vill. & P.O. Chengail, (Aymapara), P.S.: Uluberia, Dist. Howrah, Pin. - 711308 regarding the issue mentioned in the said order, being a matter specified in the Second 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 08/07/2022 on the said Industrial Dispute vide memo no. 1008/ L.T. dated 08/07/2022.

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,
Sd/-
Joint Secretary
to the Government of West Bengal

No. Labr/693/1(5)/(LC-IR) Date: 12/07/2022.

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

1. M/s Ludlow Jute Mills, Prop. M/s. Ekta Limited, Village & Post – Chengail, Howrah, Pin. – 711308.
2. Sk. Mustaq Ahmed, Vill. & P.O. Chengail, (Aymapara), P.S.: Uluberia, Dist. Howrah, Pin. - 711308.
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, 11th 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: . . . . . /2022.

Copy forwarded for information to:

1. The Judge, Third Industrial Tribunal, West Bengal with reference to his Memo No. 1008 - L.T. dated - 08/07/2022.
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, 3rd Industrial Tribunal,
Kolkata.

Case No. VIII-132/2005

Award

Date - 08.07.2022

In the matter of an Industrial Dispute between Messrs Ludlow Jute Mills, Prop. M/s. Ekta Limited, Village & Post – Chengail, Howrah and their workman Sk. Mustaq Ahmed, Vill & P.O.-Chengail (Aymapara) Uluberia, Howrah, referred to this Tribunal vide Reference order No. 1461-I.R./I.R./7L-01/2004 (Pt.) dated 22.11.2005 read with Government Order No. 532-IR/IR/7L-01/04(Pt) dated 06.05.2008 of the Labour Department, I.R. Branch, Govt. of West Bengal.

I S S U E S

1. Whether the management is justified in terminating the services of the workman Mustaq Ahmed by way of refusal of employment with effect from 08.10.2002?
2. From which date the date of joining of the workman is to be counted?
3. What relief, if any, is he entitled to?

Issue included in terms of Hon'ble High Court's Order dated 07.02.2018 in W.P. N o.20314 (W) of 2006.

Whether the workman has abandoned employment or refused to take up engagement / employment?

The case of the workman/applicant is that he had been working in the Ludlow Jute Mills, Prop. M/s. Ekta Limited, Village & Post – Chengail, hereinafter referred to as the company, since 04.11.1988 but the mill management had recorded his name as Saiful Haque Molla son of Abed Ali Molla instead of Sk. Mustaq Ahmed s/o Sk. Sorab Ali and he was granted ESI card No. 9711470, Provident Fund No. 13659 and Token No. HC 3732. He continued to work in the name of Saiful Haque Molla prior to 1997, but thereafter, the mill management got his and his father's name corrected

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under inter-departmental memorandum dated 28.12.1996. The workman further states that his name was corrected in the ESI records at the behest of the mill management. The workman alleges that the mill management got his name corrected with intention to eat away his past service since 04.11.1988 and thereby get benefited by less payment of gratuity, provident fund and pension at the time of retirement. He further alleges that though the correction of his name prima facie appeared to be at his instance, it was actually at the behest of the mill management particularly the personnel department which innovated such plan to cause prejudice to him. He further states that his fellow workmen, though not concerned with the instant reference, raised the matter of unfair labour practice on the part of the mill management and a representation was made to the Hon'ble Chief Minister, Government of West Bengal through representation dated 09.01.2003. The workman further pleads that Saiful Haque Molla and Sk. Mustaq Ahmed are the same and single person working since 04.11.1988. The correction of name was effected in the year 1997 and he continued to work under the corrected name till 06.10.2002. 07.10.2002 being holiday on 08.10.2002 he was refused employment. He states that the refusal of employment to him on and from 08.10.2002 has caused hardship to him and since then he is unemployed. Such refusal amounts to illegal retrenchment for which he is entitled to reinstatement with all back wages and other benefits. He further submits that challenging his termination / retrenchment Ram Janam Majhi, MLA General Secretary of the National Union of Jute Workers raised industrial dispute espousing his case before the Labour Commissioner, but the same being fruitless he raised individual industrial dispute. The workman further pleads that due to inaction on the part of the office of the Labour Commissioner in the matter of the dispute raised by him, the workman along with the other workmen, having common cause, moved a writ petition being No. W.P.13633(W) of 2003 before the Hon'ble High Court seeking direction upon the statutory authorities to take cognizance of the industrial dispute raised by them through letter dated 19.05.2003 which ultimately resulted in the instant reference. The workman alleges that the termination of his service with effect from 08.10.2002 is arbitrary, unfair, unjust and violative of the provisions of the Industrial Disputes Act, 1947 as the juniors have been retained and the seniors were retrenched. The workman prayed for his reinstatement in service to his original post with all back wages and consequential benefits and also for treating his service continuous since 04.11.1988.

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Workman also filed additional written statement stating that he was terminated illegally without any charge-sheet or domestic enquiry and that there was no question of abandonment of service as after the termination of service the workman made written representation to the management and thereafter raised industrial dispute and also that there was no event of refusing to take the engagement / employment by the workman as the management never reinstate him and also that since termination of his service he was not gainfully employed anywhere.

The company contested the case by filing written statement. Gist of the case of the company is that one Saiful Haque Molla was a budli worker in the jute mill but he stopped reporting to his duty sometimes in 1996 and thereafter the present applicant started to work in his place by impersonating him in connivance with some unscrupulous staff of the company. Similarly, during the same period, one Sk. Moymur also started working impersonating another budli worker namely Fariduddin Khan and when the company asked for the details of the said Fariduddin in order to elevate him to the status of special budli, the said Sk. Moymur got his details incorporated in the ESI records and got his name enrolled in special budli register of the company fraudulently. Anticipating similar prospect, the applicant and many others impostors of ex-budli workmen got their names and details incorporated in the ESI record in the place of the names and details of the ex-budli workers by unscrupulous means. When a section of the union of the workers of the mill raised the matter of employment of impostors in the mill with the labour authorities the applicant and other impostors sensing trouble and possible police action against them disappeared for months together abandoning their budli employment. When the things settled down over a period of time the impostors reappeared and created a fuss. They raised their purported industrial dispute with the Asst. Labour Commissioner, Ulberia alleging refusal of employment without first raising the same with the company. As the conciliation officer kept their purported dispute under wraps for sometime the applicant and his companions moved writ petition being W. P. No. 13633 (W) of 2003 before the Hon'ble Court against the Government, it's officers and the company. Since there was serious labour trouble in the company at that time and its senior officers being busy to meet the crisis the writ petition escaped the attention of the company and it learnt about the same only on receiving a copy of the Hon'ble Courts order dated 13.09.2004 from the learned advocate for the applicant. On 01.12.2004 the Asst.

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labour commissioner, Uluberia issued notice to the company for holding conciliation proceeding on 13.12.2004. The company wished to prefer appeal against the order in W. P. No. 13633 (W) of 2003 and informed the Asst. Labour Commissioner accordingly urging him to take no further step in the matter of conciliation proceeding. By writing a letter to the company on 31.12.2004 the Asst. Labour Commissioner refused to accept the prayer of the company and fixed 10.01.2005 for joint meeting. On 10.01.2005 the company wrote letter to the Asst. Labour Commissioner stating that there were some errors in the order of the Hon'ble Court and the time of two months fixed by the Hon'ble Court was expired. The company preferred appeal against the order of the Hon'ble Court before the Division Bench of the Hon'ble Court which the Hon'ble Court disposed of on 09.02.2005 modifying the Hon'ble Court's order dated 13.09.2003 to the extent that the conciliation officer should give an opportunity of hearing to the parties and decide on the basis of the materials placed before him and submit a report within two months from the date of communication of the order in accordance with law to his own wisdom and discretion without being influenced by any observation made by the Hon'ble Court and he should consider as to the existence of industrial dispute or otherwise on the basis of the materials placed before him and submit his report to the State Government. The Hon'ble Court further directed that on submission of the failure report, if any, by the Conciliation Officer the State Government should form an opinion within a period of two months from the date of submission of report and take appropriate steps as envisaged in law. The company communicated the order of the Division Bench of the Hon'ble Court to the Conciliation Officer on 11.03.2005 by furnishing xerox copy of the certified copy of the Hon'ble Court's order. Despite receiving the xerox copy of the Hon'ble Court's order the Conciliation Officer took no step and after a long time on 03.05.2005 he issued memo. calling upon the parties to attend conciliation proceedings on 11.05.2005 before the Deputy Labour Commissioner, Howrah. The company appeared before the Deputy Labour Commissioner on 11.05.2005 and presented a letter to him stating that the dispute raised by the applicant was not an industrial dispute as per law and the applicant and other eight persons had abandoned their budli employment after detection of the fact that they procured the employment by impersonating ex-budli employees. The company also stated in the letter that the applicant did not raise the dispute with the company first in terms of the decision of the Hon'ble Supreme Court

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in ***Sindhu Resettlement Corporation Limited Vs. Industrial Tribunal, Gujarat***, reported in ***1968 Vol. (1) LLJ 834***. It was also stated that the applicant was a budli workman and excepting one workman all the other workmen including the applicant were budli workers having no guaranteed right of employment as per law as well as the extant rules of engagement of budli workers. The company pleads that there was no further sitting of the conciliation proceedings and no further move for more than a month due to which company wrote a letter to the Principal Secretary, Labour Department on 16.06.2005 informing the fact to him and further requesting him that if any failure report was submitted in the matter he might not take any action on the basis of the same without affording reasonable opportunity of being heard to the company. The company further pleads that sometime in the late November, 2005 it received order of reference. According to the company the order of reference made by the appropriate government is bad in law, perverse, illegal and a product of total non-application of mind and the purported dispute is not an industrial dispute and it does not come within the purview of Section 2A of the I.D. Act. The company further pleads that the issue of date of joining of the workman in the company was not a matter of dispute and cannot be deemed to be an industrial dispute under Section 2A of the I. D. Act. The Conciliation Officer submitted the purported failure report ignoring the direction of the Division Bench of the Hon'ble Court. It further pleads that the appropriate government also ignored the direction of the Division Bench of the Hon'ble High Court relating to formation of opinion as to the existence of industrial dispute and expediency to refer the matter to the Tribunal for adjudication. The company further pleads that in the issue framed in the order of reference the expressions "termination of service" and "refusal of employment" have been used in the same breadth which is not permissible in law and cannot co -exist together as there is severance of jural relationship in termination of service while there is no such severance in refusal of employment. The company further pleads that on receipt of the order of reference the company filed a writ petition before the Hon'ble Court and the Hon'ble Court was pleased to remand back the matter to this Tribunal under Order dated 07.02.2018 adding another issue - "Whether the work man have abandoned employment or refused to take up engagement / employment". The company denies and disputes the claims and allegations made by the applicant in his written statement and pleads that the applicant was not in permanent employment having guaranteed

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right of employment as such there was no requirement of issuance of show-cause/charge-sheet against him and also that the applicant not being in continuous service within the meaning of section 25B of the I. D. Act is not entitled to the protection of the provisions of the Act. The company prays for passing an award in its favour holding that the applicant is not entitled to any relief.

The workman examined himself as PW-1 and brought the following documents on record in support of his case:

1. Copy of the letter of ESI addressed to the company as Exhibit-1;
2. Copy of an affidavit of the applicant before Notary Public as Exhibit-2;
3. Copies of pay slips as Exhibit-3;
4. Copy of letter dated 08.07.2003 of the applicant addressed to the Labour Commissioner as Exhibit-4;
5. Copies of identity cards of the applicant issued by ESIC and the company as Exhibits-5 and 5/a respectively;
6. Copy of PF statements of the applicant for the years 2001-2002 and 1997-1998 as Exhibit-6;
7. Copies of letters dated 27.06.2003 and 27.05.2003 of the applicant addressed to the Labour Commissioner, Kolkata as Exhibit-7 and 7/a respectively;
8. Copy of letter dated 18.08.2003 of the Asst. Labour Commissioner, Uluberia addressed to the company as Exhibit-8;
9. Copy of letter dated 29.10.2004 of the Asst. Labour Commissioner addressed to the company as Exhibit-9;
10. Copy of letter dated 01.12.2004 of the Asst. Labour Commissioner addressed to the company as Exhibit-10;

The company on the other hand examined its Senior Manager (Personnel) Sri Prakash Manna as OPW-1, Sri Binod Kumar Singh, security personnel of the company as OPW-2 and Sri Bhola Prasad, ex-security personnel of the company as OPW-3.

The company brought the following documents on record :

1. Xerox copy of certified standing orders of the company as Exhibit-A;
2. Xerox copy of application of Saiful Haque Molla for registration of budli/casual/temporary employment as Exhibit-B.
3. Xerox copy of application of Fariduddin Khan for registration of budli/casual/temporary employment as Exhibit-C.

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4. Xerox copies of letters dated 12.08.2002 of the company addressed to the Officer-in-Charge of Uluberia P.S. as Exhibit-D;
5. Xerox copies of letters dated 18.08.2002 of the company addressed to the Officer-in-Charge of Uluberia P.S. as Exhibit-E;
6. Xerox copies of letters dated 14.09.2002 of the company addressed to the Officer-in-Charge of Uluberia P.S. as Exhibit-F;
7. Xerox copy of letter dated 10.01.2005 of the company addressed to the Assistant Labour Commissioner, Uluberia as Exhibit-G;
8. Xerox copy of judgment and order passed by Division Bench of the Hon'ble High Court, Calcutta in MAT No.132 of 2005 and CAN No.443 of 2005 as Exhibit-H;
9. Xerox copy of letter dated 14.02.2005 of the company addressed to the Assistant Labour Commissioner, Uluberia as Exhibit-I;
10. Xerox copy of letter dated 03.05.2005 of the Assistant Labour Commissioner, Uluberia addressed to the company as Exhibit-J;
11. Xerox copy of letter dated 11.05.2005 of the company addressed to Deputy Labour Commissioner, Howrah as Exhibit-K and
12. Xerox copy of Writ Petition No.13633(W) of 2003 as Exhibit-L

Decision with reasons

Learned advocate for the company during the arguments submits that the claim of the applicant that his name was wrongly recorded by the company contradicts his own claim that he and Saiful Haque Molla are the names of one and single person. He exclaims that how the son and father both could have two names. He contends that the applicant never raised the matter of alleged incorrect recording of his name by the company at any point of time and therefore his claim that the company itself corrected his name in ESI record is highly unbelievable. He submits that the allegations that the company intentionally recorded his name wrongly in order to eat of his past service benefits is incorrect and fanciful as there is nothing on record to show that there was any protest against alleged wrong recording of name at any point of time. He points out that in Exhibit-B Saiful Haque Molla signed in Bangla while the applicant in his deposition signed in English which proves that the applicant and the said Saiful Haque Molla are two different persons and the applicant is an impostor. He submits that the

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applicant himself abandoned his budli employment out of fear as agitation was going on due to the working of impostors in the mill and therefore there was no question of any show-cause notice, charge-sheet or domestic enquiry. He adds that a budli worker is not entitled to the protection of I. D. Act. On this point he cites the decisions of the Hon'ble Supreme Court in ***Karnataka State Road Transport Corporation Vs S. G. Kotturappa*** reported in ***AIR 2005 SC 1933***, ***Bangalore Metropolitan Transport Corpn. Vs T. V. Anandappa*** reported in ***2009 LLR 659,*** and ***Prakash Cotton Mills Vs Rashtriya Mill Mazdoor Sangh*** reported in ***SCLC (1980-90) Vol. 1 page 542***. He further submits that the applicant being a budli worker cannot claim regularization. On this score, he cites the decision of the Hon'ble Supreme Court in ***Secretary, State of Karnataka Vs. Uma Devi*** reported in ***2006 (109) FLR 826.*** He contends that the applicant has failed to prove that he worked continuously for 240 days preceding one year of the alleged termination. In order to get protection of section 25F of the I. D. Act it is incumbent upon the applicant to show that he worked for 240 days in terms of section 25B of the Act. The applicant did not produce documents to substantiate his plea that he worked for 240 days as required by law as burden to prove the fact lies on him. On this score he cites the decisions of the Hon'ble Supreme Court in ***Range Forest officer Vs S .T. Hadimani*** reported in ***2002 Lab. I. C. 987***, ***Municipal Corporation Faridabad Vs Durga Prasad*** reported in ***2008 (1) C. L. R. 1081***, R. ***M. Yalatti Vs Asst. Executive Engineer*** reported in ***2006 (108) F. L. R. 213, Essen Denki Vs Rajiv Kumar reported in (2002) 8 SCC 400, M.P. Electricity Board Vs. Hariram*** reported in ***(2004) 8 SCC 246*** and ***Gloster Ltd. Vs State of WB*** reported in ***2013 (4) CHN 488.*** Learned advocate also raises the issue of maintainability stating that no dispute was raised with the company as the applicant straightaway made application before the Conciliation Officer which is contrary to the settled position of law laid down in the case of ***Sindhu Resettlement Corporation Vs. Industrial Tribunal, Gujarat,*** reported in ***1968 (16) FLR 307.*** He submits that the applicant must had made demand from the company as the security guard who refused him might had done so without knowledge of the employer. He further contends that the issue No.2 framed in the reference is not within the domain of the Industrial Tribunal as only termination or cessation of employment amounts to industrial dispute under Section 2A of the Industrial Disputes Act, 1947. He further contends that every refusal of employment does not amount to retrenchment as refusal of employment may be lockout u/s 2(l) of

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the I. D. Act. The learned advocate submits that the alleged refusal of employment does not amount to retrenchment under Section 2(oo) of the I. D. Act as the applicant never turned up after the alleged date of refusal. On this score he cites the decision of the Hon'ble Supreme Court in ***Punjab Land Development & Reclamation Corporation Ltd. Vs. Presiding Officer, Labour Court, Chandigarh*** reported in ***1990 (II) CLR 1.*** He submits that the Conciliation Officer submitted the failure report without application of mind in a mechanical way ignoring the directions in the order of the Division Bench of the Hon'ble High Court and the Govt. also made the reference without application of mind. He further submits that the applicant in any case cannot claim full back wages as the employer company is not at all responsible for delay in this case because the writ petition filed by the company in 2006 was pending before the Hon'ble Court. He submits that full back wages in all cases is not the rule and on this score he cites the decisions of the Hon'ble Supreme Court in ***UP State Brassware Corporation Ltd. Vs. Udaynarayan Pandey*** reported in ***2006 I CLR 39*** and ***Metropolitan Transport Corporation Vs. V. Venkatesan*** reported in ***2009 III CLR 1***. Learned Advocate for the company concludes his argument with submission that applicant worked as a budli worker impersonating ex-budli worker namely Saiful Haque Molla fraudulently and he has failed to establish that he worked for 240 days preceding the date of the alleged refusal as such he is not entitled to any relief in this reference.

Learned advocate for the applicant on the other hand argues that the Tribunal being a creature of the statute cannot go beyond reference and also cannot enter into the question of validity of the reference. In support of his contention he cites the decision 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 Karnataka High Court in ***Vinayaka CNC Centre Pvt. Ltd. Vs. Presiding Officer – 5*** reported in ***2019 – III – LLJ – 711 (Kant.)*** and of the Hon'ble Calcutta High Court in ***Mecon Limited Vs State of West Bengal*** reported in ***2001 (1) CHN 333.*** He further submits that the refusal of employment is certainly an industrial dispute in the light of the amendment of Section 2A in West Bengal. On this point, he cites the decision of the Hon'ble Calcutta High Court in ***Jagdamba Motors Vs. State of West Bengal*** reported in ***2009 (4) CHN 67.*** He further submits that the company had filed writ petition before the Hon'ble Court where it wanted the framing of additional issue to the effect that

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whether the workman voluntarily abandoned his employment / engagement and therefore the employer-employee relationship between the company and the applicant stood admitted. He further submits that raising of dispute with the employer first is not a *sine qua non* for raising industrial dispute and existence of the industrial dispute as a matter of fact is only relevant and on this score he cites the decision of the Hon'ble Supreme Court in ***Sambhunath Goyal Vs. Bank of Baroda*** reported in ***1978 (1) LLJ 484,*** and of the Hon'ble Calcutta High Court in ***WWA, Cossipore English School Vs. State of West Bengal*** reported in ***2018 (4) CHN (Cal.) 718.*** He further contends that when the applicant did everything in his control to get back his employment he cannot be said to have abandoned his employment and his livelihood. The poor workman is before this Tribunal to get his employment back and he has no intention to abandon his service. On this point he cites the decision of the Hon'ble Supreme Court in ***G.T. Lad Vs. Chemicals & Fibers India Ltd.*** reported in ***1979 Lab. I.C. 290.*** He contends that the company has not produced any material to show that on which date the applicant abandoned his service. No notice was served upon the applicant. He further submits that if the applicant was an impostor how he was allowed to work in the company for such a long time. He further submits that the company never took any legal step including the lodging of FIR against the applicant on the ground that he was an impostor and he entered into the employment fraudulently. He further submits that if the applicant was a budli worker there was no question of his joining or abandonment of employment. He contends that it is the admitted case of the company that the applicant was working from the year 1996 to 2002 and therefore he must be presumed to be a permanent workman. He further submits that no attendance register or salary register has been filed by the company. He submits that the applicant being permanent employee there is no need to prove that he worked for 240 days in the year preceding the termination of his service. He further submits that the applicant was refused employment without service of any notice or show-cause which is totally against the principles of natural justice as the company could not take away the livelihood of the applicant by simply refusing employment to him. In support of his contention he cites the decision of the Hon'ble Supreme Court in ***D.K. Yadav vs. J.M.A. Industries Ltd.*** reported in ***1993 (II) LLJ 696***. He further submits that the workman has been wrongfully refused employment and he was not gainfully employed anywhere as such he is entitled to get the relief of reinstatement with back wages. On this score, he cites

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the decisions of the Hon'ble Supreme Court in ***Deepali Gundu Surwase vs. Kranti Junior Aadhyapaka Mahavidyalaya*** reported in ***(2013) 10 SCC 324, Hindustan Tin Works Pvt. Ltd. Vs. Employees of M/s Hindustan Tin Works Pvt. Ltd.*** reported in ***(1979) 2 SCC 80*** and in ***Mackinnon Mackenzie and Company Limited vs. Mackinnon Employees' Union*** reported in ***(2015) 2 SCC (L & S) 66.*** He concludes his argument submitting that the company wrongfully deprived the applicant of his employment and therefore he is entitled to the relief of reinstatement with full back wages.

Learned advocate for the company in reply submits that the case of ***Sambhunath Goyal*** is factually distinguishable from this case as in that case charge-sheet was issued and reply was given. Regarding ***WWA, Cossipore English School*** case he submits that in that case also the dispute was known to the employer. He adds that the Division Bench of the Hon'ble Court in Mat. 132 of 2005 (Exhibit-H) has been pleased to hold that Sindhu resettlement is a good law.

Dealing first with the point of maintainability we find that in ***Jagdamba Motors*** case, the Hon'ble Calcutta High Court observed that the Hon'ble Supreme Court in ***Avon Services Production Agencies (P) Ltd. Vs Industrial Tribunal*** reported in 1***979 (1) SCC 1***, ruled that the decision in ***Sindhu Resettlement*** case turned purely on the facts of the case. In ***Sambhu Nath Goyal*** case the Hon'ble Supreme Court held that the Act nowhere contemplated that a dispute would come into existence in any particular or specified or prescribed manner and for coming into existence of an industrial dispute a written demand was not a sine qua non unless of course in public utility service because section 22 forbids going on strike without giving a strike notice. In ***Cossipore English School*** the Hon'ble Calcutta High Court also opined that raising a demand with the employer was not a *sine qua non* for an industrial dispute to come into existence. We therefore find that factual existence of dispute is the foundation of coming into existence of an industrial dispute irrespective of the fact whether formal demand has been raised with the employer or not. In this case we find from the evidence of the company that there existed a dispute in the mill of the company. Exhibits-D, E and F speak of a grave situation prevailing at the mill of the company a little before the alleged date of refusal of employment. Alleging inaction on the part of the Asst. Labour Commissioner, Uluberia, the applicant and others filed writ petition before the

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Hon'ble Court being Writ petition No. W. P. 13633 (W) 2003 impleading management of the mill as a party. The applicant and other writ petitioners sought issuance of writ against the Labour authorities to expedite the proceeding regarding the industrial dispute raised by them before the Asst. Labour Commissioner, Uluberia. They had also stated that their services were wrongfully terminated and their relief was reinstatement. Now, the company did not contest the writ petition for their own reasons. Subsequently the company preferred appeal before the Division bench of the Hon'ble Court challenging the order passed in W. P. No. 13633 (W) 2003. We therefore find that the matter of alleged termination of employment and the demand of reinstatement of the applicant and others was very much known to the company. Had the company reinstated them the dispute would have come to an end but the company did not reinstate the applicant. Therefore, it cannot be said that there existed no industrial dispute. In view of the facts and circumstances of the case and the materials appearing on record it is found that the dispute was well known to the company before the actual commencement of the conciliation proceeding. Thus, in spirit there appears no deviance from the legal proposition laid down in ***Sindhu Resettlement*** case. Considering the facts and circumstances and the position of law, the contention of the company that the reference is not maintainable as the dispute was not first raised with it is not acceptable. During arguments learned advocate for the company also challenged the validity of the reference on the grounds of non-application of mind, power to frame issue No. 2 and that refusal of employment did not amount to retrenchment under Section 2(oo) of the I. D. Act. Now, during the pendency of the case the company had filed writ petition before the Hon'ble Court challenging the validity of the reference being W. P. No. 3132 (W) of 2006. The Hon'ble Court was pleased to dispose of the writ petition along with W. P. No. 20314 (W) of 2006 and other writ petitions filed by others with direction to include the issue "Whether the workmen have abandoned employment or refused to take up engagement / employment ?" in the reference. When the validity of reference was challenged by the company before the Hon'ble Court, I find no justification of raising the same before this tribunal. In ***Vinayaka CNC Centre Pvt. Ltd.,*** referred to by applicant, the Hon'ble Karnataka High Court held that if dispute was an industrial dispute as defined in the Act, it's factual existence and expediency of

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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. We have found that there existed an industrial dispute. It is an admitted position that the applicant worked in the mill of the company as such there well existed relationship of employer and employee. In the light of the facts and circumstances of the case and the law enunciated in the cases of ***National Engineering*** and ***Mecon Limited***, I am not inclined to accept the arguments over the validity of the reference. Thus, the reference is found to be valid.

According to section 2(oo) of the I. D. Act, retrenchment means termination by the employer of the service of a workman for any reason whatsoever otherwise than the exceptions enumerated in it. The case of the workman certainly does not fall under any of the exceptions in the section. After insertion of the term 'refuses employment' and 'refusal of employment' in section 2A of the Act by West Bengal Act 33 of 1989 w.e.f 08.12.1989, the refusal of employment by any employer is deemed to be an industrial dispute. The contention of the company that the alleged refusal of employment is not retrenchment and it is a lockout is not acceptable in the light of the decision in the case of ***Jagdamba Motors*** when factually the alleged refusal of employment resulted in actual cessation of the employment of the applicant and it is no case of the company that the refusal of employment was made for a temporary period. The decision in ***Punjab Land Development & Reclamation Corporation Ltd. Vs. Presiding Officer, Labour Court, Chandigarh*** where the Hon'ble Supreme Court held that retrenchment means termination by the employer of the service of a

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workman for any reason whatsoever except those expressly excluded in the section 2 (oo) of the I. D. Act is of no help to the company.

According to the company the applicant is an impostor who started working in the place of ex-budli worker Saiful Haque Molla from sometime in 1996. Company's plea that upon raising of the matter of working of impostors in the company's mill by a section of worker's union the then Addl. Labour Commissioner, Govt. of WB had held meeting with the company and the concerned unions and the matter went up to the Hon'ble Labour minister and at that time the applicant and other impostors sensing trouble and to avoid possible police action is not substantiated by any cogent evidence. No document regarding raising of such matter by a section of workers or holding of such meeting is filed. We find from the evidence of OPW1 that no action was taken against the alleged impostors by the company on getting knowledge of impersonation of ex-budli worker Saiful Haque Molla by the applicant. The company did not lodge any FIR against the applicant. Exhibits-D, E and F do not whisper of any impostor. On the other hand, the applicant has filed copy of letter dated 17.05.1997 of R. R. Branch Regional office of the Employees State Insurance Corporation which has been marked as Exhibit-1. It is found from Exhibit-1 that the name and father's was changed from Saiful Haque Molla S/o Abed Ali Molla to Sk. Mustaq Ahmed S/o Sk. Sorab Ali retaining the same ESIC No. The letter is addressed to the company with subject- Correction in the record of insured person Sk. Mustaq Ahmed. It is found that the change in the name was effected in ESIC record on the basis of the company's letter dated 14.05.1997. The receiving endorsement on Exhibit-1 shows that the letter was received by the company on 25.05.1997. There is nothing on record to show that the company ever raised any issue with the ESIC authority regarding the change of the name and particulars of the worker in the ESIC record despite getting knowledge of such change. No complaint in this regard was made to any labour authority rather it is found that the applicant continued to work in the company till October 2002. Applicant has filed copies of his pay slips (Exhibit-3) PF statements (Exhibit-6) issued by the company. He also filed his identity cards issued by the company (Exhibit-5/a) and the ESIC (Exhibit-5). OPW1 in his examination-in-chief stated that exhibit-1, 2, 5 and 5/a were manufactured documents but the company did not produce their records to substantiate their

version. OPW1 did not challenge the copies of PF statement (Exhibit-6) and pay slips (Exhibit-3) filed by the applicant. Company's plea that the change in the ESIC record of the applicant was effected in collusion with some unscrupulous staff does not stand to any reason as there is nothing on record to indicate that any such unscrupulous staff was identified and proceeded against by the company. Manipulating the workers record with the company is certainly a grave matter but no action whatsoever was taken by the company. In the circumstances it is unthinkable that the change was effected in the ESIC record by some staff of the company without company's authorization. No doubt the affidavit of the applicant cannot conclusively establish that Saiful Haque Molla S/o Abed Ali Molla and Sk. Mustaq Ahmed S/o Sk. Sorab Ali is one and same person but when the company accepted it and effected the change of name in the ESIC record as well as its own records and continued to take work from him for years after years it does not lie, at least in the company's mouth, that the applicant is an impostor. The argument that the applicant never raised the issue of wrong recording of his name also does not appear plausible because so long he was getting work and wages there was no occasion of raising any dispute. The company needed labour and the applicant needed work. OPW2 and OPW3 are also employees of the company. It is found from their evidence that the applicant was well known to them. There is nothing in the evidence of OPW2 and OPW3 to indicate that the applicant had wrongfully procured job in the company. Had the applicant committed fraud with the company the other regular staff of the company must have known it. Moreover, the refusal of employment to the applicant was not on the ground of the alleged impersonation. It is found that the plea of alleged impersonation by the applicant has been raised after the date of refusal of employment to the applicant. In view of the facts and circumstances and materials appearing on record the company's assertion that the applicant is an impostor and he had been working by impersonating Saiful Haque Molla holds no water.

Now, the applicant claims to be a permanent worker of the company but according to the company he worked as budli worker only and abandoned his employment sometimes in 2002.

Exhibit-B standing in the name of Saiful Haque Molla S/o Abed Ali Mshows that he was appointed as budli worker on 04.11.1988. In his examination-

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in-chief on affidavit the applicant (PW1) claimed that he was a permanent employee of the company but he did not file any appointment letter to show that he was appointed as a permanent worker. The pay slips (Exhibit-3) filed by him show that he earned different amounts of wages in different months. Similarly, the PF statements (Exhibit-6) also show different contributions in different months. Thus, Exhibits-3 and 6 do not support the applicants case that he was a permanent employee of the company.

In ***Karnataka State Road Transport Corporation,*** referred to by the company, where the workman had not completed 240 days of service during the period of 12 months preceding termination as contemplated in section 25F read with section 25B of the I. D. Act, the Hon'ble Supreme Court held that the budli workers did not acquire any legal right to continue in service and they were not even entitled to the protection under the I. D. Act. The proposition laid down was followed in the case of ***Bangalore Metropolitan Transport Corpn.*** In ***Prakash Cotton Mills*** case also the Hon'ble Supreme Court held that budli workmen had no right to claim compensation on account of closure. The decisions in ***Karnataka State Road Transport Corporation, Bangalore Metropolitan Transport Corpn.*** and ***Prakash Cotton Mills*** have been followed in ***Gloster Limited*** case. The case of ***Uma Devi*** relate to public employment by Government and its instrumentalities as such it is not relevant to the present case.

Now, the question is whether the applicant completed 240 days' work in the 12 months preceding his alleged termination or not.

In the light of the proposition of law appearing in the cases of ***Range Forest officer, Municipal Corporation Faridabad, R. M. Yalatti, Essen Denki, M.P. Electricity Board*** and ***Gloster Limited*** the burden to prove the fact that he worked for 240 days during the period of 12 months preceding the alleged refusal of employment squarely lies upon the applicant.

The applicant deposing as PW1 nowhere stated in his evidence that he worked for 240 days or more during the period of 12 months preceding the refusal of employment.

It is found that the company was employing about 3000 employees on an average. An employer is legally liable to pay contributions to ESI fund and PF for all workmen whether contract labour or casual/temporary or permanent employee,

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therefore, mere recording of the name of the applicant in the ESIC and PF records does not make him a permanent employee. Exhibit-3 the xerox copies of payslips in the name of the applicant can hardly be relied upon to conclude that the applicant worked for 240 days during the period of 12 months preceding 08.10.2002. No other document has been produced by the applicant to establish his plea. The applicant did not make any application for direction upon the company to produce their salary and attendance registers as such there is no scope for drawing adverse inference against the company for non-production of the same. In view of the facts and circumstances and the materials on record I am constrained to find that the applicant has failed to prove that he was a permanent employee of the company.

Now, we find from the written statement of the company and the evidence of OPW1 that one Sk. Moymur, against whom similar allegations of impersonation have been made, was given the status of special budli with guaranteed employment in the mill for 220 days in a year and he was recognized as such by the company. Applying the principles of natural justice and rule of parity the applicant who is similarly circumstanced and has served the company for a long period of time must be held to be a special budli having guaranteed right of employment for 220 days in a year. Thus, the applicant is held to be a special budli worker of the company since 14.05.1997 when the company wrote letter to ESIC for changing the name of the applicant in ESIC record.

In the case of ***D. K Yadav*** the Hon'ble Supreme Court held that the cardinal point that has to be borne in mind, is that in every case, is whether the person concerned should have a reasonable opportunity of presenting his case and the authority should act fairly, justly, reasonably and impartially. It is not so much to act judicially but is to act fairly, namely the procedure adopted must be just, fair and reasonable in the particular circumstances of the case. In other words, application of the principles of natural justice that no man should be condemned unheard intends to prevent the authority to act arbitrarily affecting the rights of the concerned persons.

Evidently, the no notice was issued upon the applicant before refusal of employment to him in accordance with the certified standing orders of the

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company and no opportunity was given to him by the company. Therefore, the refusal of work to the applicant by the company is found unjustified.

Coming to the issue of abandonment of employment or refusal to take up engagement / employment by the applicant, we find that the company took the plea on the ground that the applicant and others disappeared sensing trouble and possible police action. We have already found that no action was taken against the alleged impostors by the company on getting knowledge of impersonation and the company never lodged any FIR against the applicant. In fact, the plea of impersonation by the applicant was raised much after the date of refusal of employment. On the other had the applicant who admittedly worked in the company had all along been desperately trying to get his employment back resorting to the forums available in law. It is no case of the company that the name of the applicant was removed from its roll due to his long unauthorized absence. There is nothing on record to show that the company offered employment to the applicant which he refused. In ***G. T. Lad Vs Chemical and Fibres Ltd.,*** referred to by the applicant, the Hon'ble Supreme Court observed that abandonment and relinquishment of service is always a question of intention and normally such an intention cannot be attributed to an employee without adequate evidence in that behalf. As there was no action against the applicant by the company there could not be any reason for the applicant to sense trouble or police action as alleged. In the circumstances I find no reason to hold that the applicant abandoned his employment or he refused to take up engagement / employment.

In ***UP State Brassware Corporation Ltd.,*** referred to by company, the Hon'ble Supreme Court held that no precise formula could be laid down as to under what circumstances payment of entire back wages should be allowed and also that payment of back wages is not automatic and it depends upon the facts and circumstances of each case.

In the case of ***Metropolitan Transport Corpn.,*** referred to by company, also the Hon'ble Supreme Court, relying upon the decision in ***UP State Brassware Corporation Ltd.,*** held that even if the Court finds it necessary to award back wages, the question would be whether back wages should be awarded fully or only partially (and if so the percentage) and that depends upon the facts and circumstances of each case.

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In the cases of ***Deepali Gundu Surwase*** and ***Mackinnon Mackenzie and Company Limited*** full back wages were allowed as the termination of service was found in contravention of law. In ***Hindustan Tin Works*** case the Hon'ble Supreme Court held that full back wages would be the normal rule and the party objecting to it must establish circumstances necessitating departure and at that stage the tribunal would exercise its discretion keeping in view all the relevant circumstances. In the circumstances of that case the Hon'ble Supreme Court was pleased to allow 75% of back wages. In ***Deepali Gundu Surwase*** the Hon'ble Supreme Court held that the cases in which the Tribunal finds that the employer has acted in gross violation of the statutory provisions and / or the principles of natural justice or is guilty of victimizing the employee then the Tribunal concerned would be fully justified in directing full back wages. It was also held that the employee had to plead or at least make a statement before the adjudicating authority that he was not gainfully employed or was employed on lesser wages. In ***Mackinnon Mackenzie and Company Limited*** the principle culled in the case of ***Deepali Gundu Surwase*** regarding the payment of back wages was followed. In the cases of ***Hindustan Tin Works, Mackinnon Mackenzie and Company Limited*** and ***Deepali Gundu Surwase*** the employees were undisputedly permanent employees and their services were terminated violating the mandatory provisions of I. D. Act. In the present case, the applicant is found to be a special budli worker only and not a permanent worker. As a special budli the applicant had right to employment for 220 days only in a year as such he had to take some other job on the remaining days of the year. The termination of special budli employment of the applicant in this case is in contravention of the procedure prescribed in the certified standing orders of the company as the applicant not being a permanent employee is not entitled to the protection of Section 25F of the I. D. Act.

Having considered the entire facts and circumstances and the evidence and materials appearing on record and also considering the nature of employment of the applicant I hold that reinstatement of the applicant as a special budli in the company with back wages applicable to special budli at the rate of 25 per cent from 08.10.2002 till his reinstatement would be just and proper.

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Thus the issues in this case are answered as follows :-

Issue No. 1 – The management is not justified in terminating the service of the applicant Sk. Mustaq Ahmed by way of refusal of employment with effect from 08.10.2002.

Issue No. 2 - The date of joining of the applicant is 04.11.1988 as a budli worker and since 14.05.1997 he became a special budli.

Issue included in terms of Hon'ble High Court's Order dated 07.02.2018 in W.P. No.20314 (W) of 2006 – The applicant did not abandon his employment and he did not refuse to take up engagement / employment.

Issue No. 3 - The applicant is entitled to reinstatement as special budli with back wages applicable to special budli at the rate of 25 per cent from 08.10.2002 till his reinstatement.

All the issues stand disposed of accordingly.

Hence, it is,

Ordered

that the applicant Sk. Mustaq Ahmed is entitled to reinstatement in the mill of the company as special budli with back wages applicable to special budli at the rate of 25 per cent from 08.10.2002 till his reinstatement.

Messers Ludlow Jute Mills, Proprietor Ekta Limited, Village & Post – Chengail, Howrah is directed to reinstate the applicant Sk. Mustaq Ahmed as special budli and pay 25% of back wages from 08.10.2002 till his reinstatement as special budli within 60 days from the date of publication of this 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.

This is my award.

Dictated and corrected by me

sd/-

Judge

sd/-

(Sanjeev Kumar Sharma)
Judge
3rd Industrial Tribunal
Kolkata
08.07.2022