

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

No. Labr/ 71 /LC-IR/ 22015(16)/18/2026

Date : 15.01.2026

ORDER

WHEREAS an industrial dispute existed between M/s Lalbaba Seamless Tubes Pvt. Ltd. & 2 Ors. having their registered office at Bardhayaghata, Debhog, Dist. Purba Medinipur, Pin -721 657 Kolkata - 700141 and its workman Shri Rabindra Nath Giri, S/o Lt. Harekrishna Giri, Vill. Bardhanyaghata, P.O. Debhog, P.S. Bhabanipur, Dist. Purba Medinipur, Pin-721657, regarding the issues, being a matter specified in the second schedule of the Industrial Dispute Act' 1947 (14 of 1947);

AND WHEREAS the 2nd Labour Court, Kolkata has submitted to the State Government its Award dated 11.12.2025 in Case No. 04/2015 on the said Industrial Dispute Vide e-mail dated 06.01.2026 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/ 71 /1(5)/(LC-IR)/ 22015(16)/18/2026

Date : 15.01.2026

Copy forwarded for information and necessary action to :-

1. M/s Lalbaba Seamless Tubes Pvt. Ltd. & 2 Ors. having their registered office at Bardhayaghata, Debhog, Dist. Purba Medinipur, Pin -721 657 Kolkata - 700141.
2. Shri Rabindra Nath Giri, S/o Lt. Harekrishna Giri, Vill. Bardhanyaghata, P.O. Debhog, P.S. Bhabanipur, Dist. Purba Medinipur, Pin-721657.
3. The Asstt. Labour Commissioner, W.B. In-Charge, Labour Gazette.
4. The OSD & EO Labour Commissioner, W.B., New Secretariat Building, 11th Floor, 1, Kiran Sankar Roy Road, 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/ 71 /2(3)/(LC-IR)/ 22015(16)/18/2026

Date : 15.01.2026

Copy forwarded for information to :-

1. The Judge, 2nd Labour Court, N. S. Building, 1, K.S. Roy Road, Kolkata - 700001 with reference to e-mail dated 06.01.2026.
2. The Joint Labour Commissioner (Statistics), West Bengal, 6, Church Lane, Kolkata - 700001.
3. Office Copy.


Assistant Secretary
to the Government of West Bengal

In the matter of an Industrial Dispute between (1) M/s Lalbaba Seamless Tubes Pvt. Ltd. & 2 Ors. having their registered office at Bardhayaghata, Debhog, Dist. Purba Medinipur, Pin. 721 657 Kolkata - 700141 and its workman Shri Rabindra Nath Giri, S/o Lt. Harekrishna Giri, Vill. Bardhanyaghata, P.O. Debhog, P.S. Bhabanipur, Dist. Purba Medinipur, Pin. 721657.

Case No. 04/ 2015 / U/S 2A(2) of The Industrial Disputes Act 1947

Before the Judge, 2nd Labour Court, West Bengal at Kolkata

Present : MD. RUKNUDDIN (J.O. Code :- WB-0978)

Judge, 2nd Labour Court, West Bengal.

A W A R D

Dated 11th December 2025

Shri Balai Paul, Ld. Advocate ----- for Applicant

Shri Parijat Das ----- Ld. Advocate for O.P. / Management

The applicant/workman's case :-

1. The applicant /workman's case in short is that M/s. Lalbaba Seamless Tubes Pvt. Ltd. is an establishment within the meaning of Section 2 of the West Bengal Shops and Establishment Act, 1965 and is also an industry within the meaning of Section 2(j) of the Industrial Disputes Act, 1947 and the employees employed therein are 'workmen' within the meaning of Section 2(s) of the Industrial Disputes Act, 1947. having its registered office located at Bardhayaghata, Debhog, Dist. Purba Medinipur, Pin. 721 657 and workman came in employment role on and he was working at the factory as a workman of the aforesaid company without an iota of blemish and/or any adverse report was ever recorded against the applicant/workman on any point of time during his tenure of service.
2. The further case of the workman is that the Lalbaba Seamless Tubes Pvt. Ltd. is a highly prosperous unit and earns huge profit every year out of the business conducted by the management of the said Company. It employs about workmen in running the administration of the said business including Officers, Supervisors, Clerks, Durwans, Skilled, Semi-skilled, unskilled etc. It does not follow the laws of the land and indulges in unfair labour practices and victimisation is so far as administration of disciplines is concerned. It does not follow the laws of

the land and indulges in unfair labour practices and victimisation is so far as administration of disciplines is concerned. It does not tolerate trade unionism and/or any type of association of employees/workmen and always tries to punish the leading trade union and/or association activists operating in the organisation by hook or by crook.

3. The further case of the applicant/workman is that he was appointed on or about 22.06.2011 in the post of Un-skilled worker after duly holding interview through their Contractor M/s Haldia Construction (Opp. Party 2). He was asked to join at Lalbaba Seamless Tubes site on 22.06.2011. He further states that Opposite Party No. 2 stated in the said appointment letter that the terms and conditions of wages and other facilities is given as per principal employer schedule.
4. The further case of the applicant is that all on a sudden like a bolt from the blue the management of the Opp. Party No. 1 Company terminated the service of the applicant workman, after serving the Company continuously about 4 (four) years, unjustifiedly and illegally on 31.12.2014 without any reason whatsoever and without offering him any opportunity of self defence which is a blatant violation of the principles of natural justice.
5. The further case of the applicant is that he states that he maintained good, clean, spotless, meritorious and blemished record during the tenure of his service since the date of his appointment till the date of unjustified and illegal termination of his service w.e.f. 31.12.2014 and he had been discharging his duties to the entire satisfaction of his superiors and the management of the Company.
6. The applicant states that the Company is in the habit of indulging unfair labour practice and trying to deprive the workman to get the statutory right and his legitimate dues and/or benefits.
7. The further case of the applicant is that before termination of the workman was not asked to explain his conduct, if any. The Company did not even care to substantiate the allegations, against the workman through properly constituted domestic enquiry. And the workman has terminated from his service and the Company has not given any opportunity to defend his case and the workman had informed over phone that he had terminated from the service as because wanton, arbitrary, capricious and vindictive.
8. The further case of the applicant is that the applicant along with other terminated workmen by their letter dated 03.01.2015 urged upon the Opp. Party No. 1 Company to withdraw such unjustified and illegal termination of service and reinstate him in his service. But the Company did not pay any heed to his request.
9. The further case of the applicant is that no other terminated workmen on 05.01.2015 to the Deputy Labour Commissioner Government of West Bengal, Basudevpur, Khanjanchak, Haldia, Purba Medinipur for his intervention and taking necessary action. He further states that the Assistant Labour Commissioner, Haldia by his letter dtd. 06.01.2015 convened a meeting on 07.01.2015.

10. The further case of the applicant is that the reminders were given to the Deputy Labour Commissioner, Haldia on 13.01.2015 and 15.01.2015 but no effective result came out from the Conciliation Officer and after waiting for over 45 days, applicant begs to file this instant petition before Honour's Court for adjudication of the instant case on merit as per provision U/s 2A(2) of the Industrial Disputes Act, 1947.
11. It is further stated that the applicant from the date of unjustified and illegal termination of service he is out of employment and has been passing on great hardship with his family. The last drawn wage was Rs.9081/- per month.
12. It is stated that the monthly wages were paid to the applicant by the principal employer Opp. Party No. 1 through the Opp. Party No. 2 Company from the date of appointment, thereafter through the Opp. Party No. 3 Company from January, 2011. He further states that contract system is sham and camouflage as because the management of the Company used to appoint different contractors and the same worker are working under them.
13. It is stated that workman begs to submit that the purported termination of his service is both unjustified and illegal on the following amongst other –

GROUNDS

1. FOR THAT before the purported termination of the Applicant from the services of the Company no show cause notice or charge sheet was served upon workman to explain his conduct, if any. The workman was not allowed to get any scope and opportunity to defend himself.
- II. For that the Principles of Natural Justice and fair play have been denied to workman in the present case.
- III. For that the Order of termination has been passed actuated by improper motive, grudge and malice and with the motive to victimise the poor petitioner workman.
- IV. For that the order of termination is wanton, capricious, arbitrary and vindictive.
14. The further case of the applicant is that he begs to submit that the purported termination of his service is in essence a case of retrenchment as defined under section 2 (oo) of the Industrial Disputes Act, 1947 and in the case of retrenchment the Company did not observe the statutory precondition as provided in section 25F of the Industrial Disputes Act, 1947.
15. It is stated that the termination of service of the workman is void ab initio, irregular, illegal and inoperative and he entitled to reinstatement with full back wages and other consequential benefits as if no action was taken by the Company against workman.
16. It is stated that the applicant maintained a good, clean, spotless, meritorious and unblemished record during the tenure of his service under the Company. Never any show cause notice, charge sheet, warning or any form of allegation was brought

against the workman and/or was served upon him to explain his conduct if any at any time during the period of his service is manifestly vindictive, wanton, capricious, arbitrary and devoid of any principles of Natural Justice. The petitioner claim for reinstatement with full back wages and other consequential benefits cannot be denied to the workman.

17. It is further stated that the workman craves leave to add, alter, amend, vary rescind and file supplementary statement of case and to adduce both oral and documentary evidence on or before hearing.

Under the circumstances stated above the applicant prays for an Award –

- (a) Directing the Company to reinstate the workman in the service of the Company at his substantive post with full back wages and other consequential benefits and facilities and/or
- (b) Any other relief or reliefs which may deem fit, proper and justified.

The Opposite Party's case :-

1. Opposite party Company appeared and filed written statement in this matter ipso facto denying and disputing contentions of the applicant/workman and it is stated that the application under section 2A(2) of the Industrial Disputes Act 1947 of workman contained various statements and/or allegations and/or contentions which are baseless, incorrect and misleading.
2. It is further contended by O.P. Company that the application is neither maintainable in law nor in fact.
3. It is stated by the O.P. Company that the application is barred by the principle of estoppel, waiver and acquiescence.
4. It is further stated that the applicant has no cause of action to file the instant case.
5. It is stated that save and except what has been categorically admitted to be correct in this written objection all other allegations made in the plaint are denied being false and incorrect and the applicant is put to the strictest proof thereof.
6. It is stated that the fact of the instant case is that the applicant is not a direct employee of the O.P. No. 1. The O.P. No. 2 M/s Hal;~~dia~~ Construction, is a contractor appointed by the O.P. No. 1 for completion of certain specific projects/jobs and the said contractor for its own interest recruits skilled/unskilled labours for completion of the specific projects/jobs and those labours are paid by the Contractors and not by the O.P. No. 1.
- 6a) It is stated that sometimes it happens that such skilled/unskilled labours hops from job of one contractor to another contractor for financial gain but the job may be of the same Company. Such labours are in no way responsibility of the O.P. No. 1. They are purely temporary labours of the contractors and they are at all habituated to continuous job in a fixed manner.
- 6b) It is further stated that the instant case even the applicant has admitted in Para

No. 12 of the application that he received salary first from O.P. 2 from his date of appointment up to Dec. 2011 and since January 2012 and he received salary from O.P. – 3 which supports the contention of the answering O.P. – 1 as made above.

7. It is stated that the instant application under section 2A(2) of the W.B.I.R. 1958 filed by the applicant suffers in nullity as Hon'ble Court has no jurisdiction to try the case.
8. It is further stated that the statements made in Para No. 1 and 2 are substantially denied by the O.P. – 1 as the petitioner is not the direct employee of the O.P.-1 nor his name appears in any record of the O.P.-1 including Payroll Sheet nor he was even under direct command of O.P.-1 as such he cannot claim to be a direct employee of O.P.-1 as such applicant's claims are all false, baseless, unfounded, manufactured and harassing in nature, designed by the petitioner for his wrongful gain.
9. It is stated that the statement/facts made in the paragraph no. 3 of the said application are totally false, baseless and unfounded in nature and having no iota of truth. The applicant was interviewed by the O.P.-2 and the letter of appointment was also issued by the O.P.-2 and O.P.-1 had/has no connection either with the interview or terms of the appointment letter. Thus the O.P.-1 never directly appointed applicant of the instant petition. So no liability, compensation or reinstatement whatsoever may be incurred upon the O.P. – 1.
10. O.P. Company further stated that the statements made in paragraph no. 5 of the said application are all false and concocted for the purpose of this false Suit. The applicant is put to the strictest proof of the same.
11. It is further stated that the allegations/averments made in the paragraph no. 6 to 8 of the said application are all denied being utter false and a cock and bull story for the purpose of drawing sympathy of the Ld. Court. It is also stated that the O.P.-1 is in habit of indulging unfair labour practice and depriving the workmen to get their statutory right and legitimate dues and/or benefits. It is false to allege that the O.P.-1 has any relation in the matter of termination of the Applicant or any process thereof as the applicant was never the direct employee of the O.P.-1. The grievance he might have for his retrenchment from the service is in between him and the Contractor i.e. O.P.-2 & 3. The Plaintiff is put to the strictest proof of the allegations made in the paragraphs under reply.
12. It is further stated that the averments made in paragraph nos. 9 & 10 of the said application regarding the conciliation proceedings are substantially correct but it is utter false to allege that no effective result came out from the conciliation officer and the Conciliation Officer held meeting in presence of all parties and on hearing them the said Officer dropped the proceedings. The applicant is put to the strictest proof of the allegations made in the paragraphs under reply.

13. The O.P. Company further states that the averments made in paragraph nos. 11 & 12 of the said application amply proves that the O.P. 2 & 3 are responsible for his job and O.P. 1 has no liability for re-instatement of the applicant to his substantive post as claimed by the petitioner nor the same is maintainable. Hence, the instant application be dismissed.

14. It is stated further that the Grounds as specified in paragraph nos. 13 to 16 of the said application are all false and vexatious and as such denied. It is once more repeated that the applicant was never a direct employee of the O.P.-1 but a contract labour working for different contractors and they often change their allegiance from one contractor to another according to their own benefits and this Applicant is one such man who was once an employee of O.P.-2 and thereafter of O.P.-3 and at no point of time the Applicant was in the direct Payroll of the O.P.-1. O.P.-1 has already learnt from DLC, Haldia Office that due to the bad market many contractors released some of it's workers at the termination of contract tenure on 31st Dec. 2014 which was for one year. DLC requested the contractor and he paid all dues along with the retrenchment benefit and whatever benefits he may seek, he has to seek the same from the contractors and not from O.P.-1.

15. It is stated that Respondent O.P. No. 1 reserves right to file additional W.S. on submission of addition document by Petitioner.

Hence it is prayed to the Hon'ble Judge to dismiss the said application in limine and pass such other necessary order as you may deem fit and proper.

ISSUES :-

1. Whether this application u/s 2A(2) of the Industrial Disputes Act, 1947 is maintainable in its present form and prayer ?
2. Whether there is any jural relationship between the applicant and the O.P. No. 1?
3. Whether the termination of service of the applicant Shri Bidyut Giri w.e.f. 31.12.2014 as claimed is justified?
4. To what other relief/reliefs, if any, the applicant is entitled to as per law and equity?

EVIDENCE ON RECORD

Workman's evidence :-

From the substantive evidence of the P.W.-1 Sri Rabindra Nath Giri who happens to be the applicant of this instant application it is clear that ;-

- a) This applicant had appeared before an interview before the O.P. No. 1 for getting service and was thereafter appointed by the O.P. No.2 M/s Haldia Constructions to work for the O.P. No. 1 vide the Exhibit-1. Thereafter the same was transferred under M/s Mallick Enterprise.

- b) The applicant had joined the service on 24.02.2011. That the O.P. No. 1 had issued the Exhibit – 2 and 3 which are respectively the Safety Training Certificate and the Gate Pass of the said concern. However no agreement was signed in between the applicant and the O.P. No. 1, 2 and 3 in regard to the service conditions, rules and wages.
- c) Since 24/02/2011 the applicant had been giving his service towards the O.P. No. 1 company and subsequently on 31/12/2014 the service of the applicant was terminated by the O.P. No. 1 without issuing any show cause notice or charge sheet upon this applicant.
- d) The applicant along with other co-workers had written a letter marked as exhibit – 4 to the Deputy Labour Commissioner, Haldia and had also send a representation vide exhibit – 5 to General Manager, M/s Lalbaba Seamless Tubes stating the fact that all of them were illegally dismissed from their service and were not given advanced notice. They had also requested for reinstatement.
- e) It is stated that the applicant along with other co-workers had also issued the exhibit 6 that is a letter to the Deputy Labour Commissioner, Basudevpur, Khanjanchak, Purba Medinipur in regard to their sudden termination of service with a further prayer for his interference in the said matter. However, no proper action was taken from his end.

That after conclusion of the P.W.-1 even after giving several opportunities the O.P. No.- 1 had not adduced any evidence to negate the claim of the applicant. Accordingly, the evidence of O.P. No. -1 was closed and the matter was fixed for argument.

ARGUMENT MADE BY THE PARTIES

In the argument made by the Learned Counsel for the applicant the Ld. Counsel had highlighted the fact that this applicant had appeared before an interview before the O.P. No. 1 for getting the instant service and was thereafter appointed by the O.P. No. 2 M/s Haldia Constructions to work for the O.P. No. 1 vide the Exhibit-1. Thereafter the same was transferred under M/s Mallick Enterprise. That the applicant had joined the service on 24/02/2011 and the O.P. No. 1 had issued the Exhibit-2 and 3 which are respectively the Safety Training Certificate and the Gate Pass of the said concern. That this applicant since 24/02/2011 had been giving his service towards the O.P. No. 1 company and subsequently on 31/12/2014 without

issuing of any show cause notice or prior notice of one month the service of the applicant was terminated by the O.P. No. 1.

That after the sudden termination the applicant along with other co-workers had written a letter marked as exhibit-4 to the Deputy Labour Commissioner, Haldia and had also send a representation vide exhibit -5 to General Manager, M/s Lalbaba Seamless Tubes stating the fact that himself along with all the other co-workers had also send the exhibit 6 which is a letter to the Deputy Labour Commissioner, Basudevpur, Khanjanchak, Purba Medinipur in regard to their sudden termination of service with a further prayer for his interference in the said matter. However, no proper action was taken from his end.

The Learned Counsel had further argued upon the factg that the O.P. No. 1 had adopted an unfair, camouflaged means and had appointed the O.P. No. 2 and 3 to appoint unskilled workmen to work for the same and had not made any direct agreement with the applicants. That apart from the exhibit – 1 no other documents were given to the applicant to substantiate their respective claims. The Learned Counsel further argued upon the point that the applicants were working for the O.P. No. 1 since 06/01/2011 and were terminated on 31/12/2014 and have thus given a service to the O.P. No. 1 for 456 days. The Learned Counsel this prays for Justice.

DECISION WITH REASONS

For proper adjudication of the matter all the issues are taken up separately for coming to a just decision of the instant matter :-

1) Whether this applicatio0n u/s 2A(2) of the Industrial Disputes Act, 1947 is maintainable in its present form and prayer?

That from the application filed by the applicant, the written statement filed by the O.P. No. 1 the witnesses in the present matter, the exhibits and other materials on the record it is clear that the applicant was a contract labour appointed by the O.P. No. 2 and 3 to work for the O.P. No. 1. The system of employment of contract labour lends itself to various abuses and the question of its abolition had been under the consideration of the Government for a long time. Accordingly, in the Second Five Year Plan, the Planning Commission made certain recommendations, namely undertaking of studies to ascertain the extent of the problem of contract labour, progressive abolition of system and improvement of service conditions of contract labour where the abolition was not possible. Thus, it is clear that the **Contract Labour (Regulation and Abolition) Act of 1970** was enacted with a view to abolish wherever possible or practicable the employment of contract labour. This Act is a piece of social legislation for welfare of labourers and to be construed liberally. The primary

object of the Act is to prevent exploitation of contract labourers by contractor or establishment where the arrangement to engage labourers through contractor is a mere camouflage. However, such question of fact is what that is to be determined in the present case.

That, the section **2(b) of the Contract Labour (Regulation and Abolition) Act, 1970** defines a workmen who shall be deemed to be employed as “contract labour” in or in connection with the work of an establishment when he is hired in or in connection with such work by or through a contractor, with or without the knowledge of the principal employer. That the term “Contract Labour” is a species of workmen who has been hired in or in connection with the work of an establishment by or through a contractor, with or without the knowledge of the principal employer. A workmen may be hired

- a) In an establishment by the principal employer or by his agent with or without the knowledge of the principal employer; or
- b) may be hired in connection with the work of an establishment by the principal employer through a contractor or by a contractor with or without the knowledge of the principal employer.

The Hon'ble Apex Court in Hussainbhai vs Alath Factory Thezhilali Union (1978)6SCC 257 and in Indian Petrochemicals Corp. Ltd. Vs Shramik Sena (1999)6 SCC 439 was of the opinion that where a workman is hired in or in connection with the work of an establishment by the principal employer through a contractor, the contractor merely acts as an agent so there will be master and servant relationship between the principal employer and the workman. But where a workman is hired in or in connection with the wok of an establishment or because he supplies workmen for any work of the establishment, a question might arise whether the contractor is a mere camouflage.

The Hon'ble Court further in Steel Authority of India vs National Union Waterfront Workers (2001)7 SCC 1 also highlighted the fact that if the answer is in affirmative in regard to the fact that the workman is hired in or in connection with the work of an establishment by the principal employer through a contractor, the contractor merely acts as an agent so thee will be master and servant relationship between the principal employer and the workman; the workman so hired will be in fact an employee of the principal employer; but if the answer is in the negative, the workman will be a contract labour.

The Hon'ble High Court of the Judicature of Gujarat in State of Gujarat vs Sarabhai Chiman Lal Sheth & Co. (1984)11 LLJ 334 (Guj) had opined that if the contractor is part and parcel of the work of the establishment, and is not a separate activity carried on by the contractor

for his own purpose, such work would be the work of that establishment. But in each particular case, it has to be seen as to what is the main purpose of the activity.

Section 1(4)(a) & (b) of the Contract Labour (Regulation and Abolition) Act, 1970 clearly specifies to whom the aforesaid Act is binding upon. It states that “(4)” It applies –

- a) to every establishment in which twenty or more workmen are employed or were employed, on any day of the preceding twelve months as contract labour;
- b) to every contractor who employs or who employed on any day of the preceding twelve months twenty or more workmen;

Provided that the appropriate Government may, after giving not less than two months' notice of its intention so to do, by notification in the Official Gazette, apply the provisions of this Act to any establishment or contractor employing such number of workmen less than twenty as may be specified in the notification.”

In the current scenario it seen from the exhibit 4 that his applicant alongwith many others were being appointed as contract labours to work for the O.P. No. 1 and had been working in the said concern (that is evident from the exhibit 2 and 3) for more than a period of twelve months. Neither any evidence were adduced by the O.P. No. 1 to show the fact that less number of workmen than that of the prescribed limit were working for the establishment nor any documents were produced before this Court to highlight the fact that the same does not fall under the category mentioned in the above mentioned section.

Furthermore section 7 of the Contract Labour (Regulation and Abolition) Act, 1970 clearly states that

“(1) Every principal employer of an establishment to which this Act applies shall, within such period as the appropriate Government may, by notification in the Official Gazette, fix in this behalf with respect to establishment generally or with respect to any class of them, make an application to the registering officer in the prescribed manner for registration of the establishment :-

(1) Every principal employer of an establishment to which this Act applies shall, within such period as the appropriate Government may, by notification in the Official Gazette, fix in this behalf with respect to establishments generally or with respect to any class of them, make an application to the registering officer in the prescribed manner for registration of the establishment”.

Provided that the registering officer may entertain any such application for registration after expiry of the period fixed in this behalf, if the registering

officer is satisfied that the applicant was prevented by sufficient cause from making the application in time.

(2) If the application for registration is complete in all respect, the registering officer shall register the establishment and issue to the principal employer of the establishment a certificate of registration containing such particulars as may be prescribed.”

Thus, from a reading of the above mentioned section it is clear that the O.P. No. 1 fall under the category of getting itself registered to appoint contract labour. No evidence or documents were produced by the O.P. No. 1 to show the fact that the same is registered under section 7 of the **The Contract Labour (Regulation and Abolition) Act, 1970** and a certificate as stated in the said Act had been obtained. Though the O.P. No. 1 had appeared in the instant case yet the same had not shown any authority to appoint contract labour. Thus, as per the principles of law if a document is being withheld or has not been produced; if produced would be un-favourable to the person who withholds the same.

Section 9 of The Contract Labour (Regulation and Abolition) Act, 1970 clearly states that No principal employer of an establishment, to which this Act applies, shall –

(a) In the case of an establishment required to be registered under section 7, but which has not been registered within the time fixed for the purpose under that section;

(b) In the case of an establishment the registration in respect of which has been revoked under section 8
employ contract labour in the establishment after the expiry of the period referred to in clause (a) or after the revocation of registration referred to in clause (b), as the case may be “

It is further seen that the O.P. No. 1 has not produced any document to show the fact that the same is being registered under the provisions of The Contract Labour (Regulation and Abolition) Act, 1970 and had appointed contract labours to work for their establishment. It is being admitted by the O.P. No. 1 in the written statement filed by them that they had appointed contract labours vide the Op. No. 2 and 3 to work for their establishment.

No documents were also produced before this Court to show the fact that the O.P. No. 1 being duly registered under the section 7 of The Contract Labour (Regulation and Abolition) Act, 1970 had an agreement with the O.P. No. 2 and 3 to supply contract labour to the establishment of the O.P. No. 1.

Section 12 of the Contract Labour (Regulation and Abolition) Act, 1970 clearly states that :-

“(1) With effect from such date as the appropriate Government may, by notification in the Official Gazette, appoint, no contractor to whom this Act applies, shall undertake or execute any work through contract labour except under and in accordance with a licence issued in that behalf by the licensing officer –

(1) With effect from such date as the appropriate Government may, by notification in the Official Gazette, appoint, no contractor to whom this Act applies, shall undertake or execute any work through contract labour except under in accordance with a licence issued in that behalf by the licensing officer”.

(2) Subject to the provisions of this Act, a licence under sub-section (1) may contain such conditions including, in particular, conditions as to hours of work, fixation of wages and other essential amenities in respect of contract labour as the appropriate Government may deem fit to impose in accordance with the rules, if any, made under section 35 and shall be issued on payment of such fees and on the deposit of such sum, if any, as security for the due performance of the conditions as may be prescribed”.

That, from a clear reading of the above mentioned section it is clear that a contractor who is to appoint contract labour under this act ought to have a license in such regard and has no authority to appoint a contract labour without issuance of a license from an appropriate authority as mentioned in the act. In the current scenario it is seen that neither the O.P. No. 2 nor the O.P. No. 3 had appeared in this instant case and had filed their respective license to show the fact that the same had license to appoint contract labour.

Now the question comes as to whether such a contract is sham and bogus or not. The Hon'ble Apex Court in Nilgiri Co-operative Marketing Society Ltd. vs State of Tamil Nadu 200 / (101) fIR 137 SC was of the opinion that while considering the relevant factors for reaching the conclusion that the contract is a sham and bogus contract, the principal which emerges is that the *prima facie* test for determination is the right of master to supervise and control the work done by the servant not only in the manner of directing work the servant is to do but also the manner in which he shall do the work.

In Mahanandi Coal Fields Ltd. Vs Presiing Officer, Industrial Tribunal 2017 (152) FLR 100 The Hon'ble Court was of the opinion that the proper test is whether or not the hirer had authority to control the manner of execution of the act in question. Further it is observed that the correct method of approach would be to consider

whether having regard to the nature of work there was due control and supervision by the employer.

Thus, keeping in view the above discussions in the present scenario it is evident on the record

- a) That this applicant though having the colour of a workmen was a contract labour who has been employed by the O.P. No. 2 and O.P. No. 3 who as stated were the contractors of the O.P. No. 1, the principal employer. The said contractors had been hiring contract labours to perform the work of O.P. No. 1.
- b) This applicant was hired by the O.P. No. 2 by executing the exhibit – 1. No documents were being filed by the O.P. No. 1, 2 and 3 to the fact that the same had complied with the provisions of Section 1(4)(a) & (b), Section 7, Section 9 and Section 12 of the Contract Labour (Regulation and Abolition) Act, 1970.
- c) Thus, in the absence of such documents it is clear that the O.P. No. 1 had no authority to appoint a contract labour and the O.P. No. 2 and 3 are merely the agents of the O.P. No. 1 who happens to be the principal in the instant case.
- d) The O.P. No. 1 was in absolute control over the applicant during his tenure of service in the O.P. No. 1 company and thus the right of master the O.P. No. 1 to supervise and control the work done by the servant the applicant in this case is not only in the manner of directing work the servant is to do but also the manner in which he shall do the work.

Thus, in conclusion it is clearly established that the applicant being a workman was hired in connection with the work of an establishment by the principal employer the O.P. No. 1 in this case; through a contractor the O.P. No. 2 and thereafter the O.P. No. 3, and as observed by the Hon'ble Apex Court the contractor had merely acted as an agent and so there will be a master and servant relationship between the O.P. No. 1 and the applicant. The applicant being a workman was hired in connection with the work of an establishment the O.P. No. 1 by a contractor (O.P. No. 2 and 3) because the same supplied workmen for any work of the establishment (M/s Lalbaba Seamles Tubes Pvt. Ltd.); accordingly, such a question of contract labour in the absence of any proper authorization is a mere camouflage to deceit the applicant from being in an employer employee relation with the O.P. No. 1

From the above discussion it can thus, clearly be said that there was an employer and employee, relation in between this applicant and the O.P. No. 1 and this application u/s 2A(2) of the Industrial Disputes Act, 1947 is maintainable in its present form and prayer. Thus, this issue is decided in favour of the applicant.

2. **Whether there is any jural relationship between the applicant and the O.P. No. 1?**

From the discussions made in regard to the Issue no. 1 it is quite clear that :-

- a) That this applicant though having the colour of a workmen was a contract labour who has been employed by the O.P. No. 2 and no. 3 who as stated were the contractors of the O.P. No. 1, the principal employer. The said contractors had been hiring contract labours to perform the work of O.P. No. 1.
- b) This applicant was hired by the O.P. No. 2 by executing the exhibit – 1. No documents were being filed by the O.P. No. 1, 2 and 3 to the fact that the same had complied with the provisions of Section 1(4)(a) & (b), Section 7, Section 9 and Section 12 of the Contract Labour (Regulation and Abolition) Act, 1970.
- c) Thus, in the absence of such documents it clear that the O.P. No. 1 had no authority to appoint **a contract labour and the O.P. No. 2 and 3 are merely the agents of the O.P. No. 1** who happens to be the principal in the instant case.
- d) The O.P. No. 1 was in absolute control over the applicant during his tenure of service in the O.P. No. 1 company and thus the right of master the O.P. No. 1 to supervise and control the work done by the servant the applicant in this case is not only in the manner of directing work the servant is to do but also the manner in which he shall do the work.

The application being a workman was hired in connection with the work of an establishment the O.P. No. 1 by a contractor (O.P. No. 2 and 3) because the same supplied workmen for any work of the establishment (M/s Lalababa Seamless Tubes Pvt. Ltd.); accordingly, such a question of contract labour in the absence of any proper authorization is a mere camouflage to deceit the applicant from being in an employer employee relation with the O.P. No. 1. From the above discussion it can thus, clearly be said that there was an employer and employee relation in between this applicant and the O.P. No. 1 and accordingly there is clearly a jural relationship between the present applicant and the O.P. No. 1. Accordingly, this issue is being decided in favour of the applicant.

3. Whether the termination of service of the applicant Shri Bidyut Giri with effect from 31.12.2014 as claimed is justified?

The applicant has appeared before an interview before the O.P. No. 1 for getting the instant service and was thereafter appointed by the O.P. No. 2 M/s Haldia Constructions to work for the O.P. No. 1 vide the Exhibit – 1. Thereafter the same was transferred under M/s Mallick Enterprise. That the applicant had joined the service on 24/02/2011 and the O.P. No. 1 had issued the Exhibit – 2 and 3 which are respectively the Safety Training Certificate and the Gate Pass of the said concern. That this applicant since 24/02/2011 had been giving his service towards the O.P. No. 1 company and subsequently on 31/12/2014 without issuing of any show cause notice or prior notice of one month the service of the applicant was terminated by the O.P. No. 1.

Section 25B of the Industrial Disputes Act states that “.... *A workman is said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorized leave or*

an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;

- 2) *Where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be continuous service under an employer –*
 - a) *For a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than –*
 - i) *One hundred and ninety days in the case of a workman employed below ground in a mine; and*
 - ii) *two hundred and forty days, in any other case;”*

In the present situation it is seen that this applicant was appointed in the service of the O.P. No. 1 on and from 06/01/2011 and his service was terminated 31/12/2014 and had been in service of the establishment for a period of three years eleven months and twenty six days (1456 days). Thus, it is proved that the present applicant was a workman who was working permanently under the opposite party Company. No notice was being issued by the O.P. No. 1 in regard to the termination of service by the O.P. No. 1.

Section 25F Of the Industrial Disputes Act, 1947 clearly lays down the conditions precedent to retrenchment of workmen

“Conditions precedent to retrenchment of workmen :- No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until –

- a) *the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expire, or the workman has been paid in lieu of such notice, wages for the period of the notice;*
- b) *the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months; and*
- c) *notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette”.*

Thus, in accordance to section 25F of the Industrial Disputes Act, 1947 the retrenchment of the applicant Sri Bidyut Giri is unjustified and in-operative. Accordingly, this issue is decided in favour of the applicant.

4) To what other relief/reliefs, if any, the applicant is entitled to as per law and equity?

The Hon'ble Aapex Court in Deepali Gundu Surwase Vs. Kranti Junior Adhyapak Mahavidyalaya (D.Ed.) and ors., reported in (2013) 10 SCC 324 was of the opinion that

- i) In cases of wrongful termination of service, reinstatement with continuity of service and back wages is the normal rule.
- ii) The aforesaid rule is subject to the rider that while deciding the issue of back wages, the adjudicating authority or the Court may take into consideration the length of service of the employee / workman, the nature of misconduct, if any, found proved against the employee/workman, the financial condition of the employer and similar other factors.
- iii) Ordinarily, an employee or workman whose services are terminated and who is desirous of getting back wages is required to either plead or at least make a statement before the adjudicating authority of the Court of first instance that he/she was not gainfully employed or was employed on lesser wages. If the employer wants to avoid payment of full back wages, then it has to plead and also lead cogent evidence to prove that the employee/workman was gainfully employed and was getting wages equal to the wages he/she was drawing prior to the termination of service. This is so because it is settled law that the burden of proof of the existence of particular fact lies on the person who makes a positive averments about its existence. It is always easier to prove a positive fact than to prove a negative fact. Therefore, once the employee shows that he was not employed, the onus lies on the employer to specifically plead and prove that the employee was gainfully employed and was getting the same or substantially similar emoluments.

Thus, keeping in mind the present market conditions it will be highly justified to pass an award of full back wages along with other consequential benefits if any to the applicant from the day his service was terminated (31/12/2014). Accordingly the applicant is entitled to get full back wages along with all other consequential benefits (if any) from 01/01/2015.

This court now carefully goes through the decisions held by the Hon'ble Courts in AIR 1992 Supereme Court 573 (C.E.S.C. Ltd. Vs. Subhassh Chandra Bolse & Others), 1978 SCR (3) 1073 (Hussain Bhai Vs Alath Factory Thozhilali Unikon, Kojhikode & Others), 2004) Supreme Court cases 126 (Ram Sinch & Others Vs. Union Territory, Chandigarh & Others).

The Hon'ble Courts were pleased to give emphasis on may factors in determining the relationship of the employer and employee. According to those referred decision, it can be mentioned clearly that

“in determining the relationship of employer and employee, no doubt “control” is one of the important tests but is not to be taken as the sole test. In determining the relationship of employer and employee, all other relevant facts and circumstances are required to be considered including the terms and conditions of the contract. It is necessary to take a multiple pragmatic approach weighing up all the factors for and against an employment instead of going by the sole “tests of control”. An integrated approach is needed. “Integration” test is one of the relevant tests. It is applied by examining whether the person was fully integrated into the employer’s concern or remain apart from and independent of it. The other factors which may be relevant are – who has the power to select and dismiss, to pay remuneration, deduct insurance contribution, organize the work, supply tools and materials and what are the ‘mutual obligations’ between them”.

Thus, keeping in view the above discussions and the Principles laid down by the Hon'ble Apex Court it can be clearly said that :-

- That this applicant was being employed by the O.P. No. 1 on and from 06.01.2011 as a contract labour vide the O.P. No. 2 and 3 who were having no proper authorization to appoint contract labour.
- Since such appointment being without proper authorization and the applicant being in absolute control of the O.P. No. 1 was deemed to be an employee by the applicant who had been rendering his service as an unskilled labour in the said concern.
- That the applicant had performed his duties towards the O.P. No. 1 till 31/12/2014 and the same was refused from his employment by the opposite party without following the provisions of The Industrial Laws.
- That the Opposite Party Company had failed to comply with the conditions laid Down u/s 25F(b) of the Industrial Disputes Act making the whole act of the opposite Party Company could not be properly justified by the same.
- The reason for retrenchment of service of the applicant by the Opposite party Company could not be properly justified by the same.
- The applicant was not working for gain for other employer in any other concern.

Hence, it is

ORDERED

The application u/s **2A(2) of the Industrial Disputes Act, 1947** be and the same is thus allowed on contest without costs. The Opposite Party was not justified in dismissing the applicant and is thus, directed to cause reinstatement of the applicant **Sri Bidyut Giri** at once. The applicant shall receive full back wages for the period from 01/01/2015 till the present date @**Rs.6,360/- per month** along with all other consequential benefits if any. The O.P. is directed to comply with the Award.

This is my award.

Let the copies of this award be sent to the concerned authority of the Government of West Bengal.

16. To prove the case, applicant – Rabindra Nath Giri examined himself as P.W.-1 and the applicant has filed the following documents which are marked as Exhibits as under :-

Exhibit-1	Copy of appointment letter issued by Haldia Construction (2 Pgs.)
Exhibit-2	Another Copy of the said letter (2 pgs.)
Exhibit-3.	Copy of safety training certificate
Exhibit-4	Copy of gate pass of Haldia Construction
Exhibit-4/1	Copy of gate pass of Lalbaba Seamless
Exhibit-5	Copy of ESI Certificate.
Exhibit-5/1	Another copy of ESI Certificate

Opposite Party's evidence :-

DECISION WITH REASONS :-

(1)Is this case maintainable in its present form and in law ?, (2) Whether the applicant was compelled to submit his resignation letter on 09.04.2014 under duress and intimidation with pressure as alleged ? and (3) Whether the letter dt. 09.04.2014 submitted by the applicant is deemed to be consequential effect of termination of service under the veil of forced resignation as alleged ?

17. My issue wise decision is as under :-
18. All these issues no. 1 to 3 are taken up together for discussion and adjudication as they are related with same set of facts and evidence.
19. On meticulous scrutiny of pleadings and evidence on records, I find that workman Rabin Sardar alleged that he was forced to submit his resignation letter on 09.04.2014 under duress and intimidation with pressure and workman Rabin Sardar as P.W.-1 is stated in his affidavit in chief that the “company forced the workman concerned and inform to discontinue my service by way of refusal of employment otherwise I will not get any statutory payment.”
20. Furthermore, P.W.-1 Rabin Sardar has also stated in his affidavit in chief that he compelled to submit his resignation letter on 06.11.2013 under duress, intimation with pressure, but he has not produced any independent witness nor any documentary evidence to substantiate his allegations that he was compelled to submit his resignation letter on 09.04.2014.
21. Furthermore, P.W.-1 Rabin Sardar has stated during cross examination that he cannot remember the date when the company did not allow him to resume his duty. However, it is clear from his affidavit in chief that he submitted resignation letter on 06.11.2013 but he alleged that the resignation was under duress, intimation and pressure. The workman has not produced any documentary evidence much less oral evidence of any other witness to establish that he was compelled to resign on 09.04.2014 from the service of opposite party company.
22. Moreover, the applicant/workman could not produce the copy of resignation letter. Moreso, if workman was compelled to resign from service then he should have filed a complaint or G.D.E. before the appropriate police station or appropriate authority regarding the forceful act of opposite party company, but the workman has not done any such act. Besides that there is no pleadings of the workman as to which officer of opposite party company M/s. Indo Thai Flexible Tubes Ltd. compelled him to submit resignation letter.
23. Thus, the allegation of the workman that he was forced to submit resignation letter under duress, intimation with pressure has not been proven. Therefore, the instant case of the applicant does not fall under Section 2A(2) of Industrial Disputes Act and as such, the instant application/case is not maintainable in its present form and law. Moreso, the workman has also failed to prove with cogent and substantial evidence that his resignation letter dated 09.04.2014 is forced resignation. Therefore, the workman has measurably failed to prove these issues with cogent and substantial evidence.
24. Accordingly all these issues no. 1 to 3 are answered in negative and decided against the workman and disposed of.

(4)Is the applicant entitled to get any relief as prayed for ? and (5)To what other relief or relieves the applicant is entitled to get ?

25. Both these issues are taken up together for discussion and adjudication for the same of brevity and convenience.
26. It is abundantly clear from discussion and decision of issue no. 1 to 3 and evidence on record that the workman/applicant has not been able to prove the fact that he was compelled to submit resignation under duress, intimidation with pressure and the instant case is not maintainable in its present form and law and the workman has also not proved that his resignation letter dated 09.04.2014 is amount to forced resignation.
27. Moreso, the issue no. 1 to 3 of this case has been decided against the workman / applicant, so applicant is not entitled to get any relief in this matter. Therefore, issue no. 4 and 5 are also liable to be decided against the workman.
28. Accordingly issue no. 4 and 5 are answered in negative and decided against the workman and disposed of.
29. Consequently, this case is deserved not to be allowed.

30. Hence, it is,

Ordered

That this proceedings being no. 04 of 2015 under section 2A(2) of Industrial Disputes Act 1947 is not **allowed on contest** and without any cost.

AND

This is my Award.

Let a certified copy of this order U/S 2A(2) of the Industrial Disputes Act 1947 be given free of cost to the parties and also a copy of the same be sent to Department concerned of Government of West Bengal for necessary action.

Announced in open court on 11.12.2025.

Dictated & Corrected by me.

Md. Ruknuddin
Judge
2nd Labour Court, West Bengal

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Judge
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