

1/464856/2023

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

No. Labr/1108/(LC-IR)/22015(16)/67/2023 Date: 18/12/2023

ORDER

WHEREAS an industrial dispute existed between The Durgapur Institute of Advance Technology and Management, Rajbandh, P.O. - Durgapur-12, Dist. - Paschim Bardhaman and Mr. Saraj Kumar Dutta, S/o - Lt. Sisir Kumar Dutta, Monojpally, Dakbunglow, Kanksa, P.O. - Panagarh Bazar, Dist. - Paschim Bardhaman - 713148 regarding the issue, being a matter specified in the Second schedule to the Industrial Dispute Act, 1947 (14 of 1947);

AND WHEREAS the workman has filed an application under section 10(1B) (d) of the Industrial Dispute Act, 1947 (14 of 1947) to the Ninth Industrial Tribunal specified for this purpose under this Deptt.'s Notification No. 1085-IR/12L-9/95 dated 25.07.1997.

AND WHEREAS, the Ninth Industrial Tribunal heard the parties under section 10(1B) (d) of the I.D. Act, 1947 (14 of 1947) and framed the following issue dismissal of the workman as the "issue" of the dispute.

AND WHEREAS the Ninth Industrial Tribunal has submitted to the State Government its Award dated 30/11/2023 in case no. X-06/2017 under section 10(1B) (d) of the I.D. Act, 1947 (14 of 1947) on the said Industrial Dispute vide memo no. 202- I.T. dated 07/12/2023.

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/-
Assistant Secretary
to the Government of West Bengal

1/464856/2023

(2)

No. Labr/. 1108 1/(5)/(LC-IR)

Date : 18/12/2023

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

1. The Durgapur Institute of Advance Technology and Management, Rajbandh, P.O. – Durgapur-12, Dist. – Paschim Bardhaman.
2. Mr. Saraj Kumar Dutta, S/o – Lt. Sisir Kumar Dutta, Monojpally, Dakbunglow, Kanksa, P.O. – Panagarh Bazar, Dist. - Paschim Bardhaman - 713148.
3. The Asstt. Labour Commissioner, W.B. In-Charge, Labour Gazette.
4. The O.S.D. & E.O. 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 the request to cast the Award in the Department's website.



Assistant Secretary

No. Labr/. 1108 2/(2)/(LC-IR)

Date : 18/12/2023

Copy forwarded for information to:-

1. The Judge, Ninth Industrial Tribunal West Bengal, Durgapur, Administrative Building, City Centre, Pin – 713216 with respect to his Memo No. 202- I.T. dated 07/12/2023.
2. The Joint Labour Commissioner (Statistics), West Bengal, 6, Church Lane, Kolkata – 700001.


Assistant Secretary


19/12/2023



**IN THE MATTER OF INDUSTRIAL DISPUTES BETWEEN MR.
SARAJ KUMAR DUTTA, S/O - LT. SISIR KUMAR DUTTA RESIDING AT
MONOJPALLY, DAKBUNGLOW, KANKSA, P.O - PANAGARH BAZAR,
DIST.-PASCHIM BARDHAMAN - 713148**

A N D

**DIRECTOR / MANAGER OF DURGAPUR INSTITUTE OF
ADVANCE TECHNOLOGY AND MANAGEMENT HAVING
REGISTERED OFFICE AT RAJBANDH, P.O- DURGAPUR - 12, DIST.-
PASCHIM BARDHAMAN.**

Case No. X-06/2017 U/s 10(1B)(d) of Industrial Disputes Act, 1947.

BEFORE THE JUDGE, NINTH INDUSTRIAL TRIBUNAL, DURGAPUR.

PRESENT

SRI SUJIT KUMAR MEHROTRA,

JUDGE, 9TH INDUSTRIAL TRIBUNAL

DURGAPUR.

APPEARANCE

**Ld. lawyer for the applicant/workman :- Mr. Chandan Banerjee
& Mr. Swapan Kumar Dutta**

Ld. lawyer for the O.P/Employer :- Mr. Chirodip Roy.

Date of Award --- 30.11.2023

The above named workman/applicant raises an Industrial Dispute between him and his employer i.e O.P. by filing a petition U/S 10(1B)(d) of the Industrial Disputes Act, 1947 (in short I.D. Act,) together with Form-S issued under the Industrial Disputes Rules 1958 issued by the Assistant Labour Commissioner, Bankura.

Facts as per applicant/workman pleading, to the instant germane, may be noted as follows:

- 1) That he was appointed by the employer on 11.03.2011 and he used to discharge his unblemished service towards employer from the date of his joining till the date of his illegal termination.

**JUDGE
NINTH INDUSTRIAL TRIBUNAL
DURGAPUR**



- 2) That on 31.12.2015 at around 5.05 p.m. the General Manager (Administration) issued his transfer order and asked him to sign and receive a copy without allowing him to go through the contents of the letter but he did not receive the same.
- 3) That ultimately on 01.11.2016 he received the copy of the transfer order and there after submitted a request letter praying for revocation of the transfer order issued on 31.12.2015 but the G.M.(Admn.) asked him to sign on a blank paper and when he refused to comply with the same the G.M. t threatens him for termination from the service.
- 4) That on 18.01.2016 he joined in his new place of posting under the Project Manager of Gouri Devi Institute of Medical Sciences and Hospital but the Project Manager did not specify his nature of job. He repeatedly requested the superior officer to mention his duty in writing but instead of doing the same he was subjected to harassment by the Project Manager in connivance with the G.,M (Admn.) but he swallowed such harassment of his superior officer.
- 5) That on 13.07.2016 when he applied for salary to the G.M (Admn.) he forced him to sign on blank paper and illegally issued termination letter and thereby terminated his service.
- 6) That his service was terminated illegally without following the rules and regulations and by-laws and also without following the principles of natural justice and accordingly, he made several representations before the management of the O.P/employer but the same yielded no result so he raised an industrial dispute before the Conciliation Authority of Govt. of West Bengal. As conciliation proceedings did not yield any result he after obtaining the certificate of pendency under the Rules of 1958 filed the instant case U/S 10(1B)(d) of the I.D. Act and prays for an award of reinstatement alongwith the back wages / salary.



CR reveals that subsequent to filing of the impugned petition U/S 10(1B)(d) of I.D. Act this Tribunal put the O.P/employer to notice and after received of the same the O.P/employer contested the impugned case by filing its statement in writing as well as by adducing evidence. O.P/employer in its WS simply denies all the allegation of the applicant/workman and stated that the impugned petition is not maintainable under the I.D. Act before this Tribunal as the applicant was appointed as Executive(HR) and he does not come within the definition of workman as provided U/S 2(s) of the I.D. Act and prays for dismissal of the same.

CR reveals that after filing of the WS and list of documents by both the parties in terms of Industrial Disputes Rules 1958 this Tribunal framed the following issues on 18.05.2022:

- 1) Whether there exists relationship of workman and employer between the parties?
- 2) Whether the termination of the concerned workman and/or in accordance with the provisions of I.D. Act, 1947?

Evidence from the side of the Applicant/Workman

To establish his pleading case the applicant/workman examined himself as P.W.-1 and he did not examine any other witness from his side, but he produced the following documentary evidences:-

- 1) Appointment letter dated 27.03.2011 – Exbt. 1,
- 2) Confirmation letter dated 25.05.2012—Exbt.2,
- 3) Transfer order dated 01.01.2016--- Exbt.3,
- 4) Letter of revocation of transfer order dated 01.01.2016 --- Exbt.4,
- 5) Downloaded copy of e-mail dated 02.01.2016 regarding his sickness—Exbt.5,
- 6) Receipt copy of letter dated 13.07.2016 regarding payment of salary of workman for the month of June, 2016 – Exbt.6,
- 7) Termination letter dated 14.07.2016 ---Exbt.7,
- 8) Service Rules of the O.P/Employer --- Exbt.8,



- 9) Copies of 4(four) complaint letters dated 22.07.2016, 22.08.2016, 07.09.2016 and 15.02.2017 addressed to the DLC, Durgapur—Exbt.9(series),
- 10) Copy of Memo. no. 139/1 dated 20.02.2017 of ALC. Durgapur addressed to the G.M of O.P/employer—Exbt.10,
- 11) Copy of Memo.No.212/1 dated 15.03.2017 of ALC. Durgapur—Exbt.11,
- 12) Copy of the letter dated 22.08.2017 of ALC, Durgapur and Form-S—Exbt.12 and 13,
- 14) Copy of the F-P-4 dated 28.07.2017---Exbt.14,
- 15) Copy of the letter dated 16.07.2016 addressed to the G.M of O.P./employer ---Exbt.15,
- 16) Sealed envelope addressed to the G.M of O.P./employer ---Exbt.16.
- 17) Downloaded copy of e-mails dated 12.02.2016 and 30.06.2016—Exbt.17.

Evidence from the side of O.P./Employer

The O.P. employer examined its Deputy G.M (Commercial) namely, Mr. Lalan Kumar Bah as O.P.W-1 and the following documentary evidences have also been produced from its side:-

- 1) Authorisation letter of O.P.W-1—Exbt.A,
- 2) Computerised Generated pay slips for the month of April, May & June 2016 ---Exbt.B(series),
- 3) Office order regarding relocation of Project dated 30.12.2015---Exbt.C,
- 4) Applicant's letter dated 01.01.2016 for revocation of his transfer order ---Exbt.D,
- 5) Copy of the show-cause notice dated 01.01.2016—Exbt.E,
- 6) Copy of letter dated 21.06.2017 sent to the ALC, Durgapur---Exbt.F,
- 7) Copy of termination letter dated 14.07.2016---Exbt.G.



Argument of the Parties

It was argued from the side of the applicant/workman that although by virtue of appointment letter dated 27.03.2011 i.e Exbt.1 the applicant/workman was appointed in the post of Executive (HR) but from the nature of the job, as mentioned therein, and actual job performed by the applicant clearly proves that his nature of job was actually clerical in nature and it cannot be said that the same constitutes the work of any supervisory or managerial in nature.

It was also contended by the ld. lawyer that from the oral evidence of the applicant/workman and the documentary evidence it is clearly evident that the applicant / workman was subjected to different sorts of harassment by the higher official of the O.P/employer and as he did not comply with the illegal demand of the G.M (Admn.) he was illegally transferred on 01.01.2016 and subsequently, his service was also terminated without following By-laws of the O.P/employer as well as without following the settled principles of natural justice.

To consolidate his such argument the ld.lawyer took me through the contents of the appointment letter as well as transfer order and further submitted that although the applicant/workman was appointed in the post of Executive(HR) but he was transferred to the construction site having no relationship with his educational qualification on the basis of which he was appointed by the O.P/employer.

Ld. lawyer also argued that before issuance of the termination letter no show-cause notice was ever issued, no articles of charges were framed and no departmental enquiry was held by the O.P/employer, so the same clearly proves that the termination order was issued illegally without following the principles of natural justice and accordingly, the same is liable to be set aside and the applicant / workman be reinstated in his service with full back wages and benefits.

In support of his such argument ld. lawyer for the applicant/workman referred the following case-laws of the Hon'ble Supreme Court as well as various other Hon'ble High Courts:-



- 1) *Rammonohar Lohia General Hospital and Ors. Vs. Munna Prasad Saini and another*, Civil Appeal No. 5810 of 2018,
- 2) *Jeetubha Khansangji Jādeja Vs. Kutch District Panchayet* , Civil Appeal No.6890 of 2022,
- 3) *Pradeep S/o- Raj Kumar Jain Vs. Manganese Ore(India)Ltd. and Ors*, Civil Appeal No.7607 of 2021,
- 4) *S.K. Verma Vs. Mahesh Chandra and another*, 1983 SCC (4) 214,
- 5) *Abdul Gani Vs. the G.M* , 1988(1) Kar LJ 58,
- 6) *A.S. Reghvendra Vs. Bharat Airtel Ltd.*, 2020 LLR 527 as decided by the Hon'ble Karnataka High Court,
- 7) *The state of Rajasthan and Ors. Vs. Sri Lala Ram Nama* , 2020 LLR 535 as decided by the Hon'ble Rajasthan High Court,
- 8) *M/S Garrison Engineer (Central) Vs. M.J. Prasad and ors.* Delhi High Court.

Per contra, it was argued from the side of the O.P/employer that the instant case is not maintainable under the provisions of the I.D. Act as the applicant is not a "workman" in terms of Sec.2(s) of the Act, 1923 as he was appointed in the supervisory post of Executive(HR) and he was also discharging the duties which are supervisory and managerial in nature. It was also contended by the ld. lawyer in his oral and written argument that the Exbt.1 and Exbt.2 clearly prove that the applicant was appointed and working in the post of Executive.

Issue No.1 :-

Although the instant issue speaks about existence of relationship of workman and employer between the parties but to consider the maintainability of the instant case under the provisions of Act, 1947 it is very much essential to firstly determine whether the above named applicant comes within the purview of "workman" under the provisions of Act, 1947.

As I have already mentioned herein above that the O.P./employer in its WS as well as while making oral and written argument assailed the applicant's claim of being a workman under the provisions of the Act, 1923 mainly on the



ground that he was appointed and working as Executive (HR) in the O.P./establishment since the date of his appointment till the date of his termination from the service, so to consider the merit of such pleading case of the O.P./employer we are to firstly deal with the relevant provisions of law as well as the pronouncement of various judgements by the Hon'ble Supreme Court and other Hon'ble High Courts.

The terms "workman" has been defined in sec. 2(s) of the Act, 1947 in the following manner :-

Sec.2(s) of the I.D.Act., 1947 provides as under :-

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

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



On bare perusal of the above provisions it is clear that a person is not included in the definition of a workman if he comes under any of the category as mentioned in Clause (i) to Clause (iv) of the above provisions of law. That apart, from Clause (iv) of sec.2(s) of the Act, 1947 it is apparent that framers of the legislatures have put ,(,) in between the word "supervisory" capacity and draws wages exceeding ten thousand rupees. During the course of argument the ld. lawyer for the O.P./employer submitted that the person does not come within the purview of workman if he comes under either of the category i.e his being employed in a supervisory capacity or draws wages exceeding ten thousand rupees per mensem as the comma indicates that the sentence should be read in disjunctive manner.

Although no argument has been made from the side of applicant on that aspect but it does not mean that the tribunal should accept the argument of the other side as sacrosanct and has no power to discuss merit of such argument in the light of settled proposition of law.

In my considered view, to consider the merit of the argument of the O.P./employer we are to read the entire clause as a whole to give effective meaning of the same with the object of the Act, 1947 as it is the golden rule of interpretation of a statute that the words of a statute prima facie be given their ordinary meaning. It is yet another rule of construction that when the words of the statute are clear, plain and unambiguous, the courts are bound to give effect that meaning in respect of the circumstances. Besides that, the conventional way of interpreting a statute is to seek the intention of its maker and apply that on the facts of the case at hand. An interpretation of the statutory provisions which defeats the intent and the purpose for which the statute was enacted should be avoided.

The Hon'ble Supreme Court in the case of Kerala Fisherman Welfare Fund Board Vs. Fenci Food, Civil Appeal No.3058 of 1995 observed that it is the settled proposition that progressive and beneficial legislation must be

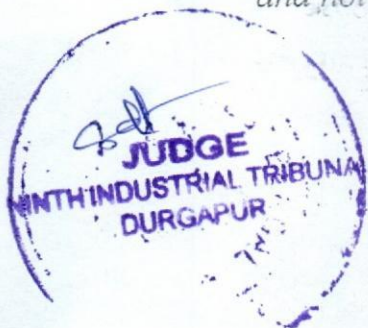


interpreted in favour of the beneficiaries when it is possible to take two views of any provision.

Our Hon'ble High Court in the case of **Badsha Mia Vs. Rajjab Ali**, AIR 1946 Cal 348 also observed that the primary object of interpreting a statute is always to discover intention of legislature.

The Hon'ble Apex Court in the case of **S.K. Verma Vs. Mahesh Chandra and another (Supra)** while interpreting the ambit of the word "workman" under the Act, 1947 had the occasion to deal with the object of the Act, 1947. It observed that "It is a trite to say that the Industrial Dispute Act is a legislation initiated to bring about peace and harmony between labour and management in all industry and for that purpose, it makes provision for the investigation and settlement of industrial dispute. It is, therefore, necessary to interpret the definition of "industry", "workman", "industrial dispute" etc. so as not to whittle down, but to advance the object of the Act. Disputes between the forces of labours and management are not to be excluded from the operation of the Act by giving narrow and restricted meanings to expressions in the Act. The Parliament could never be credited with the intention of keeping out of the purview of the legislation small bands of workmans who, though not on the managerial side of the establishment, are yet to be denied the ordinary rights of the forces of labour for no apparent reason at all"

The bone of contention of the said case was that whether a Development Officer of LIC is workman under the provisions of sec.2(s) of the Act, 1947 or not. In the said case the employer / establishment took the plea that as the appellant was appointed and working as Development Officer LIC, so he is not a workman in terms of sec.2(s) 1947. But, the Hon'ble Apex Court taking into consideration of the object of the Act, 1947 as well as number of other cases decided by it observed that it is the nature of duties which should be the determining factor in considering whether an workman is a workman or not and not the nomenclature of his post.





The Hon'ble Supreme Court in the case of *Arkal Govind Raj Rao Vs. Siba Gigs of India Lt d, Bombay*, AIR 1985 SC 985 also discussed the term "workman" under the Act 1947 and in para 6 observed that "where an workman has multifarious duties and question is raises whether he is a workman or someone other than a workman". The court must find out what are the primary and basic duties of the person concerned and if he is incidentally asked to do some other work, must not necessarily be in tuned with the basic duties then additional duties cannot change the character and status of the person concerned. In other words, dominant purpose of employment must be first taken into consideration and the gloss of some additional duties must be rejected while determining the status and character of the person.

It further observed in para 16 of the said judgement hat "The test that one must employ in such a case is what was the primary, basic or dominant nature of duties for which the person whose status is under enquiry was employed. A few extra duties is hardly be relevant to determine his status. The words like managerial or supervisory have to be understood in their proper connotation and their mere use should not be detract from the truth". It also observed that different in salary is hardly decisive, nor the designation of a clerk by it is decisive. Focus is to be on the nature of duties performed.

The Hon'ble Gujarat High Court and in the case of *Natvarlal U Modi Vs. Ahemedabad District Co-op. Milk Producers Union Ltd.*, 2005 LAB, IC 321 had the occasion to interpret the word "workman" as provided in sec.2(s) of the Act, 1947 and reiterated the view of the Hon'ble Apex Court by observing that mere designation is not decisive but it is the nature of the duty which is important and relevant for determination whether a person is a workman under the Act, 1947 or not.

In this regard, we may also refer the case of *Vishakantaiah T.N Vs. management of Mysore Petrochemical Ltd., Raichur* and another reported in 2005 LAB IC 581 wherein the Hon'ble Karnata High Court took all the above discussed Hon'ble Supreme Court's decisions and other decisions of the other



Hon'ble High Courts' and held that the broad intention of the legislature is to take entire labour forces and exclude managerial forces. The designation of a workman is not of much importance and what important is the nature of duties being performed by him. The determinative factor is the main duty of the concerned workman and not some other work incidentally done. In other words, what is in substance the work which the workman does or what is substance he is employed to do.

The Hon'ble Karnataka High Court laid down the following guiding principles to be followed when the status of a workman is disputed under the I.D. Act, 1947 touching jurisdictional issue of the tribunal. The same are as follows:-

- 1) The court shall adopt a pragmatic and not pedantic approach.
- 2) What the court has to see is, what is the primary or substantial duty which the person is performing. Is the said work maintainable, administrative or supervisory in nature?
- 3) What is the remuneration paid for?
- 4) Then to consider which side of the line they fall labour or management, then to consider whether there are any good reason for moving them over one side to other.
- 5) In arriving at the conclusion, the nomenclature attached to the designation should not blur the mind of the court.
- 6) Similarly, some additional or incidental duties attached to the main work should not be given undue weightage.
- 7) Substantial, duties performed by the person should be referred by the terms of the order of appointment, terms of contract if entered into, oral evidence and such other materials the court deem fit to rely on.

From above discussed dictum of law, as pronounced by the Hon'ble Supreme Court and various Hon'ble High Courts it can be culled out therefrom that to consider the status of a workman of an industry it is not the nomenclature of the post to which he was appointed and was working as well as his remuneration but it is the nature of the duties being performed by him which



should be the sole determining factor for his status whether he is a workman under the purview of the Act, 1947 or not.

In view of such findings of the Hon'ble Apex Court as well as various Hon'ble High Courts I find no merit in the argument of the ld. lawyer for the O.P./employer that as the applicant / workman was appointed in the post of Executive (HR) and was drawing wages exceeding rupees ten thousand per mensem, so his status is not that of a workman under the Act, 1947. The status can only be determined from the nature of duties performed by the applicant/workman.

Now, let us consider the evidence of the parties to come to the findings whether the nature of the duties performed by the applicant / workman does make his status as a workman or not and/or whether the O.P./employer has been able to rebut applicant/workman's such claim in proving its pleading case that the applicant /workman was actually performing the work of a supervisory or managerial in nature.

From the evidence of both the parties as well as their pleading case it is the undisputed fact of this case that the applicant/workman was appointed in the post of Executive(HR) vide appointment letter dated 27.03.2011. Exbt.1 i.e appointment letter reveals about appointment of the applicant / workman in the said post in terms of his interview held on 26.02.2011. The appointment letter also clearly mentioned nature of jobs and responsibilities of the applicant/workman and condition no.3 specifically mentioned about the nature of works to be performed by the applicant/workman in the O.P/establishment. It provides that

- * Maintenance of workman database.
- * Maintaining /updating Leave Records.
- * Follow up of Confirmation Records statutory obligations - PF, ESIC, Prof Tax, Gratuity, LTA, Bonus, etc.
- * Wages and Salary Administration.
- * Handling the full and final settlement of the workmen.
- * Arranging and conducting interviews/Initial screening the candidates/helping in recruitment process.



- * Administration of all contract labour.
- * Conducting various welfare activities.
- * Community initiatives programme – organizing and participation.
- * Regular updating of communication challenge.
- * Prepare and submit all relevant HR letters/documents/certificates as per the requirements of workman's in consultation with the General Manager(Administration).

P.W-1 is the applicant/workman in his evidence –in-chief although nowhere stated about the nature of duties which he used to perform after his appointment by virtue of Exbt.1 but interestingly the same has been established by the employer in his cross-examination wherein he clearly stated that “My official duty was to type different documents, distributed the same amongst the different departments, maintaining the accounts of attendance of all the workmen and submitting monthly statement with the accounts department”.

O.P/employer did not produce any documentary evidence in support of its pleading case that the actual nature of duties being performed by the applicant/workman is supervisory or managerial in nature for the reason best known to it. This apart, its witness i.e O.P.W-1, who is none other than the Sr. Managerial staff in the rank Deputy General Manager (Commercial), in his entire evidence-in-chief nowhere denies such evidence in cross-examination of P.W-1. Furthermore, he in his entire evidence in chief nowhere specifically stated about the nature of duties entrusted to and being performed by the applicant/workman during the course of his employment under its establishment.

In my considered view, O.P/employer as well as its witness i.e O.P.W-1 would be the best person to prove that the applicant/workman was not only appointed in the post of Executive (HR) in its establishment but he was actually performing duties in the nature of supervisory or managerial in nature which makes him to fall in the side of the management of the industry and not in the side of labours of the industry.

As this tribunal is to decide the industrial dispute between the employer and workman under the provisions of the Act, 1947, so law does not require any of the parties to prove its pleading case beyond the degree of preponderance of



probabilities. A party's case succeeds if he is able to establish his pleading case by adducing or producing cogent and reliable evidence that his nature of duties was not actually supervisory or managerial in nature.

At this juncture, it is also pertinent to discuss about the nature of jobs and responsibility as mentioned by the O.P/employer in the appointment letter i.e. Exbt.1 in determining the status of the applicant/workman.

It is evident therefrom that the main job of the applicant/workman was to maintain database of the O.P/employer as well as other documents relating to the other workmen's service and none of the same speaks about any power entrusted to the applicant/workman for taking administrative decision regarding workers of the O.P/industry. None of the mentioned nature of jobs and responsibilities speaks about any duty or function of any supervisory or managerial of any industry. On the contrary, the mentioned nature of jobs established that same are in fact clerical in nature in the disguise of supervisory or managerial in nature. One of the nature of jobs although speaks about the administration of all contract labour but the said nature can be said incidentally nature of duties alongwith other 10(ten) specified nature of jobs performed by the applicant/workman in course of his employment under the O.P/employer.

O.P/employer in its WS simply denies the status of the applicant/workman as that of a workman touching the jurisdictional issue of the tribunal but it miserably failed to prove the same, which is liable to prove as per Sec. 101 of the Indian Evidence Act, 1872.

In absence of any evidence, not to speak of cogent and reliable, from the side of the O.P/employer to prove that the petitioner workman was actually performing the duties of supervisor in nature this tribunal has no reason to accept the Exbt.1 as biblical truth in determining status of the applicant/workman while considering the jurisdictional issue under the Act, 1947.

From my above discussion it is clear that the evidence from the side of the applicant/workman that he was not performing any work of supervisory or managerial in nature in the O.P/establishment is much more convincing and reliable than the mere denial in the form of pleading case by the O.P/employer



especially when the O.P/employer miserably failed to produce any documentary evidence to prove that the applicant/workman was actually performing the duty of supervisory or managerial in nature.

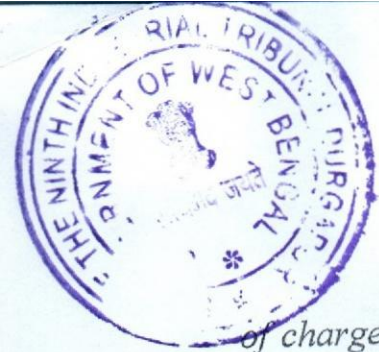
Applying the aforesaid edicts to the case at hand as well as the dictum of the Hon'ble Apex Court as well as various Hon'ble High Courts, I am of the view that the applicant/workman is a workman in terms of sec.2(s) of the Act, 1947. Consequently, he has been able to prove the Issue no. in his favour.

Issue No.2 :-

The instant issue relates to the alleged illegal manner of termination of service of the applicant/workman.

As per pleading case of the applicant /workman that on 31.12.2015 at around 5.05 p.m his transfer order was issued and he received the said order on 01.01.2016 and requested the G.M. (Admn.) for revocation of the same but the same yielded no result. It has further been averred by him that he was asked by the G.M. (Admn.) to sign on a blank paper but as he refused to sign he was threaten by saying that his service would have terminated. And finding no other alternative he joined in his new assignment on 08.01.2016 under the Project Manager of Gouri Devi Institute of Medical Sciences and Hospital. That on 13.07.2016 when the employer did not pay his salary he applied for the same to the G.M (Admn.) but the G.M.(Admn.) forced him to sign on blank papers and illegally issue a termination letter. He further averred that the management of the O.P/establishment illegally terminated his service without following the principles of natural justice and accordingly, prays for his reinstatement with full back wages.

On the other hand, the O.P/employer in its WS specifically averred that the applicant/workman never discharged his duty with diligent and care. Its WS is absolutely silent about the manner and/or procedure followed by it before issuance of the termination letter i.e. Exbt.7 of this case. Not only that, it has nowhere stated that before issuance of the termination letter of the applicant/workman its management issued show-cause notice, framed article



of charges, held domestic enquiry and gave opportunity of being heard to the applicant/workman. In other words, it is the undisputed facts of this case the O.P/employer did not follow the above mentioned principles of natural justice before terminating service of the applicant/workman.

But its witness i.e O.P.W-1 in para no.13 of the evidence-in-chief build up a complete new case from that of the pleading case of the O.P/employer by stating that the petitioner was handed over of show-cause notice vide letter dated 01.01.2016 for violation of the office order solely and exclusively on the ground that the petitioner has dared to cross /violated the mandates of the appointment letter dated 27.03.2011.

If for the sake of argument his such part of evidence-in-chief is also taken into consideration then too, the same would not amount to sufficient compliance of requirement of law to be followed by an employer before issuance of termination letter to its workman as O.P.W-1 in his entire evidence on oath nowhere stated what steps were taken after issuance of the alleged show-cause notice.

In other words, his evidence is absolutely silent about steps taken by the O.P. for compliance of the principles of natural justice in all the stages before terminating the service of the applicant/workman. On the contrary, O.P.W.1 in his cross-examination unequivocally stated that "There is no official record that before terminating the service of applicant/workman any show-cause notice was issued to him by our Co. or that any opportunity of being heard is provided to him". His such admission itself proves that the O.P/employer did not follow the mandate of law, as required to be essentially followed in case of terminating of service of a workman, as well as not following the principles of natural justice before terminating the service of the applicant/workman.

During the course of argument the ld. lawyer for the O.P/employer took me through the materials regarding transfer order of the applicant/workman as well as its non-compliance by the applicant/workman resulting into termination of his service. But, considering the fact that if the same be




accepted as proven fact, then too, the obligation is upon the O.P/employer to prove that same constitutes misconduct of service by holding domestic enquiry as per provisions of law.

Since, admittedly no domestic enquiry was held, so such argument does not warrant any further discussion.

As per the provisions of the Act, 1947 a workman's service can be terminated only in accordance with the service rules of an industry in which he was employed and those service rules certainly must be in consonance and/or based upon the principle of natural justice and not otherwise.

In absence of any service rules the same is to be governed as per provisions of the Industrial Employment (standing orders) Act, 1946. However, in any case the mandatory requirement of law is that before issuance of termination order the employer must comply with the requirement of principles of natural justice of informing the workman about the allegation against him inviting his explanation on those allegations and after due consideration of the same necessary order either accepting or rejecting the reason assigned by the workman is to be passed. If the show-cause of a workman is not accepted then the next steps to be followed by the employer is to conduct impartial domestic enquiry. If the domestic enquiry ended in findings against the workman as guilty of the articles of charge framed against him, then the appointing authority should issue 2nd show-cause to the workman specifying therein purported penalty to be imposed by him against him. After received of reply of show-cause from the workman the same is to be considered in the light of magnitude of proven charges as well as other factors which would justify the imposition of the penalty in terms of the service rules. But, the evidence in cross-examination of the O.P.W-1 clearly proves that no such procedure was adopted by the O.P/employer before termination service of the applicant/workman by virtue of Exbt. 7.

On the contrary, it is evident from the letter of termination i.e Exbt. 7 that the service of the applicant / workman was terminated as per clause 6 of the



appointment letter i.e Exbt.1 simply in lieu of one month salary is being paid to the applicant/workman.

Exbt.8 which is the service rules of the O.P/establishment in clause 2 clearly mentioned that the same comes into force on and from 01.01.2012 and shall apply to all employees employed in all units of RAHUL FOUNDATION established at different places in the country. Since admittedly the applicant was an employee/workman of a unit of Rahul Foundation, so those service rules regarding service his conditions are also applicable. Rule 10 defines what acts constitute misconduct, Rule 11 provides about penalties i.e minor penalty and major penalty. Removal, discharge and dismissal from service come under the heading of major penalties.

Rule 13 provides about the procedure for imposing major penalties. Sub-rule 1 provides that "No order imposing any of the major penalties specified in Clause (f) to (j) of Rule 10 shall be made except after an enquiry is held in accordance with this rule. No one shall be punished without giving opportunity of being heard". Sub-rule 2-3 empowers the disciplinary authority to held the enquiry itself for any imputation of misconduct or misbehaviour against an workman either by itself or by any appointing public servant and the procedure to be adopted in holding such enquiry.

But clause 6 of the appointment letter i.e Exbt.1 is not only in contravention of the said service rules of the O.P/establishment but it also contravene sec.25-F of the Act,1924 which speaks about retrenchment of a workman who completed service more than 240 days in a year in the establishment.

Moreover, no materials is placed before this tribunal from the side of the O.P/employer to prove that prior to issuance of termination letter i.e Exbt-7 one month's notice in writing indicating the reasons for retrenchment, which tantamounts to termination in terms of sec. 2(oo) of the Act,1947, has been given to the applicant/workman. Accordingly, there is gross also violation of



the sec. 25-F of the Act, 1947 from the side of the O.P/employer in procedure adopted for terminating the service of the applicant/workman.

At this juncture, it must be mentioned herein that it is not the case of the O.P/employer that the applicant/workman was not in continuous service from the date of his appointment i.e 27.03.2011 till the date of his termination which came into effect on 14.07.2016 by virtue of Exbt.7, so question of not attracting the provisions of Sec.25F does not arise at all..

In view of above discussed provisions of law as well as evidence of the parties I do not have any sort of hesitation to come to the findings that the termination of the service of the applicant/workman by virtue of Exbt.7 is not tenable in the eye of law. Consequently, it cannot be said that the service of the applicant/workman has been legally terminated vide Exbt.7 by his employer. Accordingly, the Exbt.7 has got no value in the eye of law. Therefore, the applicant/workman has been able to prove that his service was terminated illegally by his employer by virtue of Exbt.7.

Now, the question arises whether the applicant/workman is entitled to get the relief of his reinstatement, in the service with back wages and all other benefits, as prayed for, in his pleading or not.

So far as the matter of reinstatement in the service is concerned, once his tribunal came to the findings that the service has not been terminated in accordance with the provisions of the Act, 1947, so automatically the applicant /workman is entitled to get an order of its reinstatement in the service under the O.P/establishment. The only part which has to be considered by this tribunal is regarding his other prayer i.e his entitlement of getting all back wages and other consequential benefits which he could have got had his service was not illegally terminated by his employer.

During the course of argument it was argued from the side of the applicant/workman that he was illegally terminated from his service, so he is entitled to get the relief of not only reinstatement in his service but he is also entitled to get all the back wages and all other benefits. To substantiate his



such argument the ld. lawyer relied upon the case of *The State of Rajasthan and ors. Vs. Sri Lala Ram Nama (Supra)* of Hon'ble Rajasthan High Court and the case of *M/S Garrison Engineer(Central) Vs. M.J. Prasad and Ors., W.P (Civil)10809/2020* as decided by the Hon'ble Delhi High Court.

On the other hand, the ld. lawyer for the O.P/employer simply refuted such argument by submitting that as the applicant is not a workman under the ambit of Act of 1947, so question of his getting the relief, as prayed for, does not arise at all.

I have meticulously gone through the case laws as relied upon by the applicant/workman and found that those are distinguishable on the factual matrix with the facts of the case in hand.

However, the Hon'ble Supreme Court in the case of *Deepali Gundu Surwase Vs. Kranti Junior Adhyapak and Ors. (2013) 105 SCC 324* overruled its observation of consequential benefits and continuity of service made in the case of *J.K. Synthetics Ltd. Vs. K.P. Agarwal and Anr.(2007) 2 SCC 433*. Thereafter in the case of *Om Pal Singh Vs. Disciplinary Authority and Ors. (2020) 3 SCC 103* held that though reinstatement may be made, back wages or continuity of service or consequential benefits do not follow as a necessary consequence of signature.

From the above observation of the Hon'ble Apex Court it is crystal clear that where the termination of service is held to be unjustified or illegal consequential benefits and continuity of service and grant of back wages cannot be said to be a natural consequence of reinstatement. The Hon'ble Delhi High Court in the case of *M/S Garrison Engineer(Central)(Supra)* also took into consideration of all the above discussed Hon'ble Supreme Court's decisions and finally observed that consequential benefits and continuity of service cannot be automatically allowed in a case where termination of service is found to be illegal.

In other words, the nature of benefits to be awarded to a workman along with his reinstatement in the service depends upon facts and



circumstances of a particular case and there cannot be any strait jacket formula awarding consequential benefits in such cases.

Furthermore, to consider the entitlement of back wages and other benefits one must take into consideration recently decided case of the Hon'ble Apex Court i.e case of **Allahabad Bank and Ors. s. Avtar Bhusan Bhartiya, {Special Leave Petition(Civil) 32554 of 2018}** observed that 'An employee or workman whose service 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 or the Court of the first instance that he/she was not gainfully employed or was employed on lesser wages..... In the first instance, there is an obligation on the part of the employee to plead that he is not gainfully employed. It is only then the burden would shift upon the employer to make an assertion and establish the same".

Reverting back to the fact of the case in hand it must be mentioned herein that the applicant/workman nowhere pleaded or make any statement on oath before this Court that he was not gainfully employed or employed on lesser wages after the termination of his service by the O.P/employer. He in his pleading as well as in his examination-in-chief on affidavit simply prayed for relief of reinstatement in service and back wages. So, in absence of any pleading on that issue by the applicant/workman the question of shifting burden upon the O.P/employer to make an assertion and establish the same does not arise at all.

Moreover, the Hon'ble Supreme Court in the case of **K.V.Anil Mirtha and Another Vs. Sree Sankarcharya University of Sanskrit and Another (Civil Appeal) No.9068 of 2014** clearly observed that consequential effect of non-observance of the provisions of Sec.25-F of the Act,1947 may lead to grant of relief of reinstatement with full back wages and continuity of service in favour of the retrenched workman, the same would not mean that the relief would be granted automatically and the workman is entitled for appropriate relief for non-observance of the mandatory requirement of Section 25-F of the Act,1947 in the facts and circumstances of each cases. Thus, while granting



relief the Tribunal has to take into consideration the entire facts and circumstances of the case in hand.

At this juncture, it is pertinent to discuss herein that Section 11A of the Act, 1947 also empowers this tribunal to set aside the order of dismissal or discharge, if it is satisfied, and direct the reinstatement of the workman on such terms and conditions as it thinks fit or to give such relief to the workman including the award of any lesser punishment in lieu of discharge or dismissal as the circumstances against him require.

After taking into consideration of the above observation of the Hon'ble Apex Court as well other Hon'ble High Courts and the other materials, as discussed herein above, I am of the view that the same justifies the reinstatement of the applicant/workman in service in the post held by him at the time of his termination within one month from the date of publication of the award by the appropriate Govt. alongwith @25% of the back wages on and from the date of termination till the date of his actual reinstatement in service.

Thus, the instant issue is disposed of in favour of the applicant/workman accordingly.

In the result, the instant case succeeds on contest.

Hence, it is

Ordered

that the applicant/workman's petition U/S 10(1B)(d) of the Industrial Disputes Act, 1947 and /or the instant case is hereby allowed on contest against his employer i.e The Durgapur Institute of Advance Technology and Management, Rajbandh, Durgapur but without cost.

The order of termination/dismissal from the service of the applicant/workman vide termination letter dated 14.07.2016 (Exbt.7) is hereby declared as illegal, unjustified and set aside and he is reinstated in his service alongwith @25% of back wages from the date of his such termination.

Sd/- JUDGE
NINTH INDUSTRIAL TRIBUNAL
DURGAPUR

The employer / Institute of Advance Technology Management, which is one of the subsidiary of Rahul Foundation, is hereby directed to reinstate the applicant/workman-Mr. Saraj Kumar Dutta in its service in the post in which he was serving at the time of his termination alongwith @25% of back wages within the period of one month from the date of publication of the award by the appropriate Govt.

Sent a copy of this award to the Addl. Chief Secretary, Labour Deptt., Govt. of W.B. for information and necessary action.

D/C by me.

Sd/- Sri Srijit Kumar Melwala,
Judge, 30-11-23,

JUDGE
NINTH INDUSTRIAL TRIBUNAL
DURGAPUR

Sd/- Sri Srijit Kumar Melwala,
Judge, 30-11-23,

9th I.T., Durgapur

JUDGE
NINTH INDUSTRIAL TRIBUNAL
DURGAPUR