

I/583460/2024

Government of West Bengal  
Labour Department, I. R. Branch

N. S. Building, 12<sup>th</sup> Floor, 1, K.S. Roy Road, Kolkata – 700001

No. Labr./ 1189 / (LC-IR)/22015(15)/75/2019

Date : 09-12-2024

ORDER

WHEREAS an industrial dispute existed between (1) The General Manager , West Bengal Power Development Corporation Limited, Kolaghat Thermal Power Station, P.O. Mecheda, District - Purba Medinipur, Pin-721137, (2) The Senior Manager (HR & A), Kolaghat Thermal Power Station, West Bengal Power Development Corporation Limited, Kolaghat Thermal Power Station, P.O. Mecheda, District - Purba Medinipur, Pin-721137, (3) M/s. The Partner, "United Construction" Engineering & Government Constructor K.T.P.P , P.O. Mecheda, District - Purba Medinipur, Pin-721137 & (4) The Provident Fund Commissioner, Salt Lake City, DK-Block, Sector-II, Kolkata - 700091 and their workman Sri Gajendranath Ghora, Village – Ramchandrapur, P.O. – Burarihat, P.S. – Kolaghat, District – Purba Medinipur, Pin – 721137 regarding the issues being a matter specified in the second schedule of the Industrial Dispute act, 1947 (14 of 1947);

AND WHEREAS the workman has filed an application directly under sub-section 2 of Section 2A of the Industrial Dispute act, 1947 (14 of 1947) to the Second Labour Court specified for this purpose under this Department Notification No. 101- IR dated 2.2.12;

AND WHEREAS the said Second Labour Court has submitted to the State Government its Award dated 27.09.2024 in Case No. 06/15 on the said Dispute vide E-mail dated 04.10.2024.

NOW, THEREFORE, in pursuance of the provisions of Section 17 of the Industrial Disputes 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,

  
Assistant Secretary

to the Government of West Bengal

No. Labr/ 1189 /1(8)/(LC-IR)/ 22015(15)/75/2019

Date : 09-12-2024

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

1. The General Manager , West Bengal Power Development Corporation Limited, Kolaghat Thermal Power Station, P.O. Mecheda, District - Purba Medinipur, Pin-721137.
2. The Senior Manager (HR & A), Kolaghat Thermal Power Station, West Bengal Power Development Corporation Limited, Kolaghat Thermal Power Station, P.O. Mecheda, District - Purba Medinipur, Pin-721137.
3. The Partner, "United Construction" Engineering & Government Constructor K.T.P.P , P.O. Mecheda, District - Purba Medinipur, Pin-721137
4. The Provident Fund Commissioner, Salt Lake City, DK-Block, Sector-II, Kolkata - 700091.
5. Sri Gajendranath Ghora, Village – Ramchandrapur, P.O. – Burarihat, P.S. – Kolaghat, District – Purba Medinipur, Pin – 721137
6. The Asstt. Labour Commissioner, W.B. In-Charge, Labour Gazette.
7. The OSD & EO Labour Commissioner, W.B., New Secretariat Building, 11<sup>th</sup> Floor, 1, Kiran Sankar Roy Road, Kolkata – 700001.
8. The Deputy Secretary, IT Cell, Labour Department, with the request to cast the Award in the Department's website.

  
Assistant Secretary

No. Labr/ 1189 /2(3)/(LC-IR)/ 22015(15)/75/2019

Date : 09-12-2024

Copy forwarded for information to :-

1. The Judge, Second Labour Court, N. S. Building, 3<sup>rd</sup> Floor, 1, K. S. Roy Road, Kolkata - 700001 with reference to his E-mail dated 04.10.2024.
2. The Joint Labour Commissioner (Statistics), West Bengal, 6, Church Lane, Kolkata - 700001.
3. Office Copy.

  
Assistant Secretary

**THE SECOND LABOUR COURT, KOLKATA**

IN THE MATTER OF

Application No. 06/15 Under Section 2A (2) Industrial Dispute Act, 1947

ON

**REFERENCE OF DISPUTE BY INDIVIDUAL WORKMAN**

=====

**SHRI GAJENDRANATH GHORA**

**VERSUS**

1. THE GENERAL MANAGER

WEST BENGAL POWER DEVELOPMENT CORPORATION LIMITED,

KOLAGHAT THERMAL POWER STATION,

P.O. MECHEDA, DISTRICT- PURBAMEDINPUR, PIN-721137.

2. THE SENIOR MANAGER (H-R & A),

KOLAGHAT THERMAL POWER STATION,

WEST BENGAL POWER DEVELOPMENT CORPORATION LIMITED,

KOLAGHAT THERMAL POWER STATION,

P.O. MECHEDA, DISTRICT- PURBAMEDINPUR, PIN-721137.

3. THE PARTNER, "UNITED CONSTRUCTION"

ENGINEERING & GOVERNMENT CONSTRUCTOR K.T.P.P.

P.O. MECHEDA, DISTRICT- PURBAMEDINPUR, PIN-721137.

4. THE PROMIDENT FUND COMMISSIONER,

SALT LAKE CITY, DK-BLOCK, SECTOR-II, KOLKATA- 700091.

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**Appearance**

MR/MRS- **Rananeesh Guha Thakurta** , LD Advocate for the Applicant.

MR/MRS-, **Ranjoy De**, LD Advocate for the Opposite party 1,2

MR/MRS-, **Samajit Kumar Ghosh** LD Advocate for the Opposite party 4

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<b>REFERENCE</b>	Dispute raised by individual workman within the meaning of Section 2A (2) as applicable to the State of West Bengal .
<b>POWER OF THIS COURT TO ENTERTAIN THE CAUSE IN HAND</b>	Section 7 of Industrial Dispute Act,1947 Read with Entries under 2 <sup>nd</sup> Schedule to the Industrial Dispute Act  AND  DEPT Notf No. 101-IR/12L-14/11dated 2 <sup>nd</sup> February 2012 in Partial modification of Dept Notf no 1085- IR dated 25-07-1997
<b>PROCEDURE ADOPTED IN DEALING WITH THE CASE</b>	<b>Karnataka state Road Corporation</b> <b>Vs</b> <b>SmtLakshidevamma and another (2001)5 SCC 433</b>  <i>Locus cassisus</i> on the point that strict rules of evidence and procedure shall not govern the proceedings under the Industrial Dispute Act,1947.
<b>BINDING NATURE OF AWARD</b>	Dispute being raised individually, shall only bind the parties herein( <b>Section 18 of the Industrial Dispute Act</b> )
<b>COMPLAINCES</b>	Copies of award be submitted to appropriate government for publication. ( <b>Section 15 of the Industrial Dispute Act</b> ) .

PRESENT: MISS SREEJITA CHATTERJEE

JO CODE: WB001252

**DATE OF AWARD : 27 .09 .2024**

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*“The mortality of justice at the hands of law troubles the judge’s conscience and points an angry interrogation at the law reformer...”*

*The humanist rule that procedure should be handmaid, not the mistress, of legal justice compels consideration of vesting a residuary power in judges to act ex-debito justitiae where the tragic sequel otherwise would be wholly inequitable...”*

**KRISHNA IYER J**

## **1) EXORDIUM**

The persistent ideals of restrictive interpretations of Labour statutes are at once a contradiction of object intended to be served under Labour Jurisprudence. Constantly arrested by procedures and its legal ramifications, since the advent of various legislations, this truth, now, that necessity of clarifications on overlapping area through harmonious construction, begins to be justified.

This is being effected by new insights into the laws. The increasing demand of purposive interpretation cannot long be resisted and shut up in the brilliant shell of limited interpretations, by those who confuse it with technicalities and reason it with faithful repetition.

The solution indubitably lies in organising myriad forms of lucid interpretations, by commissioning treatises on the subject and furthering a purposive construction.

The present application U/S 2A(2) of the Industrial Disputes Act 1947, seeks to redress an individual dispute of the applicant, though the subject invites this court’s discussions on certain overlapping and unattended areas under Industrial Laws, in order to arrive at an end.

## **2) FACTS BY THE APPLICANT**

The contest emanates from the averment in W/S of the applicant that he was a workman employed for the purpose of coal clearing and coal breaking at CHP in KOLAGHAT THERMAL POWER STATION. He was employed under the “immediate *recommendation*” of the United Construction. The United construction is submitted to be the immediate employer of the applicant since 1996. The company is placed under administrative control of the Power Department of the Government of West Bengal and suggesting an inference therefrom, it is stated to be an instrumentality within the meaning of State **under article 12 of the Constitution of India**.

It is averred that at joining, his service was confirmed on the basis of school leaving certificate, Voter I D card, Ration card which manifests his date of birth as 11.01.1959. The OPNO 3 however wrongly recorded his date of birth as 01.01.1955. This was consequently incorporated and wrongly recorded in the gate pass/ identity card issued by OP NO 1 & 2, leading to the peril, from which the present cause follows.

On detection of the mistake, it was brought to the notice of authorities. OP NO3 requested OPNO4 that is Provident Fund Commissioner, to record correction to that effect in the Provident Fund Account vide letter WB/CA/C4811dated 14/3/2012 and also to open Provident Fund Account with current date of birth, but never themselves acted on it.

The opposite party No. 4 corrected the mistake and intimated the OP NO2 (that is Senior manager (HR& A) Thermal Power Station) and Opposite Party No. 3 'United construction' vide letter number A/015/WB/34811/Gr24/435 Dated 24.12.2013 and letter no A/015/WB/34811/13-14/Gr24/42 dated 5/3/2014 respectively.

There was similar representation before "*Nomination and Declaration form for an unexempted/exempted establishment*", in connection with Employees' Pension Scheme which stood corrected on 11.01.1959 against P.F A/c No WB/CA/34811/25.

It is the plea of the applicants that security checking pass bearing no SCP ID NO. 50001084 W.C.I. 150305/41/14/8600000576 issued on 16.08.2014, contained mention of date of birth as 1<sup>st</sup> January 1955 and validity of the same was till 30 October 2014. Applicant made representation on 09.10.2014 and 5.6.2014, to concerned authorities for the rectification but in vain for the obvious reason that on 31<sup>st</sup> October 2014, security passes were renewed with the same mistake.

In view of repeated submissions followed by reluctance of opposite parties herein to act thereon, the applicant was constrained to serve the letter dated 05/11/2014 through his Ld Advocate though the same was returned with the postal mark as "*refused*".

The OP No. 2 and OP NO 3 having failed to make corrections in the security pass, the applicant approached the Hon'ble High Court through writ petition no 31625(W) of 2014. The Hon'ble Court granted him liberty to approach appropriate authority and it was held that OP NO 3 is not a Govt undertaking. Unfortunately, during pendency of the said writ, service of applicant was prematurely terminated on 31<sup>st</sup> December 2014.

It is their plea that the above facts can be said to be refusal of employment of the applicant, emanating from applicant's earlier retirement and he is entitled to hundred percent back wages with consequential relief treating the date of birth as 11<sup>th</sup> January 1959 instead of 1<sup>st</sup> January 1955.

3) The appearance of **Opposite party No. 1 and 2** was recorded in **Order no 2 dated 24<sup>th</sup> June 2015**.

The appearance of **Opposite party No. 4** was recorded in **Order no 3 dated on 20<sup>th</sup> July 2015**.

**Opposite party No. 3**, having failed to appear in spite of several opportunities, and the record was fixed on **exparte vide order No. 6 dated 7<sup>th</sup> October 2015**.

**4) FACTS BY OP NO 1 AND 2 (THE GENERAL MANAGER ,WEST BENGAL POWER DEVELOPMENT CORPORATION LLMITED AND THE SENIOR MANAGER (HR & A), KOLAGHAT THERMAL POWER STATION)**

The op deprecates all the above.

It is the plea of the opposite party No. 1 and 2 that the reference is not maintainable as the applicant is not a workman within the meaning of **Section 2(S) of the Industrial Dispute Act 1947** and therefore there is no employer relationship. In consequence whereof, there is no industrial dispute and no question of refusal of employment.

It is averred that they might be an instrumentality of the state but the applicant does not employ any privity of contract between them. There is no denial of the working of applicant on the recommendations of United Constructions.

It is further averred that Opposite party No. 2 never asked the applicant to submit School Certificate, Voter I Card, Ration Card as he is not their employee and he was not placed at their direct service. Hence there arises no occasion of recording the date of birth in absence of relationship of employer and employee. Only the immediate employer that is United Construction, can be held liable for this. The KOLAGHAT THERMAL POWER STATION cannot be fastened with the status of concerned authority in this given situation. The security pass has nothing to do with employment.

The contentions are misconceived and liable to be rejected *inlimine*.

**5) FACTS BY OP NO 4(PROVIDENT FUND COMMISSIONER)**

It seems that they are formal and necessary party appearing in the official capacity and deposing on the facts of the incorporations into PF account.

It is clarified by the OP NO 4 that M/s United construction is a contractor establishment under M/s West Bengal Power Development Corporation Ltd(W/B 26974) and having a a separate code WB/34811. They are covered under the purview of EPF and MPA of 1952.

The OP admit a discrepancy of date of birth of the applicant W/B 34811/25 being reported and applied through his employer United construction, for the change.

On scrutiny, it was found that Form F/2 was submitted by the establishment on 21 .02. 2006. It contained date of birth as 11.01.1959 which falls in line with Form F/5 submitted by the establishment on 17.11.2012 showing the same date.



It is submitted that the principal employer WB PDC Ltd, vide letter no GM/KTP/HR &A dt 14.11.2013 ,sought some clarifications from Regional Provident Fund Commissioner (RPFC) regarding the change and acceptance of date of birth which was replied by their office vide letter no A/015/WB/34811/Gr.24/435 .

According to the guidelines by Head Quarters dated to 12.12 2006, Regional Provident Fund Commissioner or any officer authorised by him , is empowered to change the date of birth on basis of relevant documents if it matches with the pan card, birth certificate, passport, service records.

It is based on all these that the office corrected the date of birth and informed the principal employer vide letter number A/015/WB/34811/Gr.24/435 dated 24.12.2013.

## 6) ISSUES

The following issues were framed vide **Order No. 40 dated 8<sup>th</sup> August 2018** ;-

1. *Whether Sri Gajendra Ghora, the applicant, **be regarded as a workman** under Section 2(s) of the Industrial Disputes Act, 1947?*
2. *Whether there **exists any employee-employer relationship** between the applicants and the **Opposite Party No. 1 & 2** ?*
3. *Whether the **Application under Section 2A(2) of the Industrial Disputes Act, 1947** in **maintainable**?*
4. *Whether the **present dispute comes within the purview of character of Industrial Disputes** in respect of OP No. 1 & 2?*
5. *Whether the **workman was illegally terminated from service by way of forceful retirement** w.e.f. 31.12.2014 on the basis of erroneous date of birth i.e. 01.01.1955 instead of 11.01.1959 by the Opposite Party No. 1 & 2 through their contractor, the Opposite Party No.3 ?*
6. *Whether the **instant dispute is maintainable in absence of materials** and/or documents with regard to **refusal of employment**?*

*Whether the applicant Sri Gajendra Nath Ghora is entitled to get any **relief** from the O. Ps?*

- 7) In due course of proceeding, the Opposite Parties prayed for expunging from the record. In terms of the observation of Hon'ble High court, OP NO 1 and 2 prayed for release from the case vide Order no 70 dated 24-02-2022 and this was followed by the petition of OP NO 4 vide Order no 71 dated 04-04-2022. The application of OPNO1 and 2 was turned down though the OP NO 4 was expunged vide order No. 75 dated 30 August 2022

The applicant had prayed for interim relief which was allowed vide No. 66 dated 23rd August 2021.



**8) EVIDENCE****ORAL EVIDENCE OF APPLICANT**

P. W. 1 : GAJENDRA NATH GHORA ---- APPLICANT

**DOCUMENTS FOR THE APPLICANT**

SL. NO.	EXHIBIT NO	NATURE OF DOCUMENT
01	1	Photocopy of Transfer Certificate recorded as 11.01.1959
02	2	Photocopy of Voter Identity Card
03	3	Photocopy of Pan Card
04	4	Photocopy of Ration Card
05	5	Photocopy of Gate Pass
06	6	Photocopy of a letter dated 14.3.2012 addressed to the P.F. Commissioner written by United Construction (O.P.3)
07	7	Photocopy of a letter written by United Construction (O.P. 3) to the Assistant PF Commissioner for re-submission of Form-5.
08	8	Photocopy of a letter dt. 24.12.2013 addressed to the Senior Manager(HR & A)
09	9	Photocopy of a letter dt. 05.03.2014 addressed to the United Construction (O.P.3).
10	10	Photocopy of a Computer Generated list Dt. 11.04.2013 wherein my date of birth is mentioned.
11	11	Photocopy of Form -5 addressed to O.P.3.
12	12	Photocopy of P. F. Slip of 2013-2014.
13	13	Photocopy of Nomination Declaration Form (2 pages)
14	14	Photocopy of Security Checking Pass
15	15	Photocopy of letter dt. 09.10.14 written by applicant to the P.F. Commissioner
16	16 & 17	Photocopy of two letters dt. 05.06.14 & 12.04.13 written by applicant to the General Manager, Kolaghat Thermal Power.
18	18	Photocopy of Security Checking Pass
19	19	Photocopy of letter issued by Ld.Advocate, Sanatan Panja dt. 05.11.2011 to the Senior Manager (HR &A) and to the Partner, M/s. United Construction.
20	19/1	Photocopy of detailed track reports for EW2371572221N
21	19/2	Photocopy of detailed track reports for EW8237157841N
22	19/3	Copy of postal endorsement
23	20	Photocopy of the certified copy of order passed by Hon'ble High Court Writ Petition No.31625 (W) of 2014.
24	21	Photocopy of letter to Additional Labour Commissioner on 17.02.2015
25	21/1	Photocopy of postal receipts in one page.
26	22	Photocopy of issued notice of retirement on 23.12.2024

**ORAL EVIDENCE FOR THE OPPOSITE PARTY**

OPW-1 : CHANCHAL KUMAR SINGH----- OP COMPANY

**DOCUMENTS FOR THE OPPOSITE PARTY**

SL. No.	EXHIBIT NO.	NATURE OF DOCUMENTS
1	A	Copy of Nomination and Declaration Form for Unexempted/ Exempted Exhibits.
2	B	Copy of letter Additional Labour Commissioner, Tamluk Dt..08.04.2015
3	B/1	Copy of letter written by Mr. Ghora to the Additional Labour Commissioner (containing page-3) Dt. 09.02.2015.
4	C	Copy of letter dated 26.05.15 written by conciliation Officer and Assistant Labour Commissioner, Tamluk to the General. Manager W.B.P.D.C.L,KTPS and three others.
5	C/1	Copy of reply given General. Manager W.B.P.D.C.L, KTPS to the conciliation officer Dt. 06. 2015 Regd. With A/D.
6	D	Copy of letter 10.05.2013 Ld. Advocate Sanatan Panja on the subject of correction of date of birth .
7	D/1	Copy of reply and postal receipt dated 24.11.2014.
8	D/2	Copy of Gate Pass.
9	D/3	Xerox copy of Nomination and Declaration Form (containing 4 pages)

**9) JURISDICTION**

The Dept Notification no. 101-IR/12L-14/11dated 2<sup>nd</sup> February 2012, invests the authority on this court to deal with such cases of individual dispute. In terms thereof, this court is vested with the authority to deal with matters flowing from the **situs of companies located at ' East Midnapore'**.

The cause appears to be within this court's cognisance.

**10) ISSUE NO. 2 (Existence of employer-employee relationship between the applicants and the Opposite Party No. 1 & 2 )**

The inference of this issue is suggested from the facts set out in written statements and evidences, denoting a direct reference to the relationship of employer -employee between the parties herein. Anvil of the issue rests on the question whether applicant is a workmen under OP NO 1 and 2, in turn drawing this court to the question of his relation with OP No. 3.

**The persistent statements by the parties at various places including written statements, evidences, are at once contradiction and negation of employer -employee relationship of the applicant with OP NO 1 and 2 and affirmation of the relationship only with OP NO 3, only to be attained by detailed discussions hereunder.**

The rudiment of a case under this Act is the written statement of the applicant. Such written statement of the applicant opens with a declaration suggesting appointment "*on recommendation of united construction company since 1996*". Hence this admits all that is to be this decided. It is their application and applicant himself states that he was appointed through United Construction that is OP NO3.

This is followed by the Hon'ble High Court's interim order which has remained unchallenged, where His lordships held that there is no privity of contract with OP NO1, 2.

The relevant portion of the Hon'ble High Court's observation is reproduced hereunder; -

*"..... the undisputed facts are that the petitioner was working under the respondent no 4 and that there is no employer-employee relationship amongst the petitioner and Kolaghat Thermal Power Station and that through the instant writ application, a direction has been sought for upon the respondent no 4 to consider the petitioner's representation for the correction of the date of birth in the Gate Pass ...."*

Respondent no 4 in that case was United Construction /( OP NO 3 herein)

**The above-mentioned order was relied upon at the time of consideration of application for interim relief by this court in order dated 23.08.2021 , in the following terms; -**

*" ..... In the Writ Petition before the Honbl High Court it was observed that there was no employer employee relationship between Kolaghat thermal power station and the applicant Gajendranath Ghora. .... therefore, I do not find any liability of opposite party no 1 and 2 to pay any subsistence allowance to the applicant....."*

*.....so considering all the documents, evidence and the arguments of the Ld. Advocates of the respective parties and on evaluation of the materials before me I am of the view that on humanitarian ground the interim relief should be awarded in favour of the applicant from the date of filing of this application U/S 15(2)(b) of the Industrial Disputes Act but for a limited period ...."*

None of these orders were challenged.

Next, some documents are axiomatic on the above rival contentions of their relation which demands a discussion; -

Exhibit 5 shows that the United construction is the contractor of the applicant.

Exhibit 6 is a representation dated 14 March 2012 , by United construction to Provident fund Commissioner clearly mentioning "**one of our employees**". This is the document of OPNO 3 himself.

Exhibit 7 is a document in the letter pad of United construction with the declaration” ***following employee on behalf of M/S United construction.....***”. It contains the name of the applicant. Hence the applicant is an employee under them.

Exhibit 10 suggests “**Name and address of the factory establishment**” in which the worker is employed and it is mentioned as “United construction”.

Exhibit 14 spells out the agency name that is ‘United construction contract’s workmen’ and the applicant’s name as Gajendranath Ghora.

Exhibit 17 is a letter addressed by the applicant to the General Manager, Kolaghat Thermal Power Project, where he has himself declared to be employed through United Construction.

Exhibit 18 shows the Agency name as United construction contract and worker Gajendranath Ghora.

**Further, some extracts of Oral evidences are relevant and reproduced as follows; -**

Cross Examination **of PW1 DATED 23.02.2023** suggests; -

*“ ..... I was given the letter for my retirement by OP NO 3 **who is my employer.***

*The Salary, P.F ESI were being given and deposited respectively by the OPN NO 3*

***My gate pass was issued by the OP NO 1 in respect of the details provided by OP NO 3.....”***

All these evidences furnished by the applicant himself indubitably suggests an inference that he was employed through the contractor, who had been lending their workers to OP NO 1,2. This is further strengthened by his above admission in the cross examination.

It may be added here that OP NO4 is a necessary formal party. They appeared for testifying on the point of change and necessary incorporations in the PF A/C. It is pertinent to note from their W/S that the similar position was reiterated by them in the form that the applicant was employed under the principal employer ID no W/B 26974 through contractor with ID. No WB/34811.

The above facts go unimpeached and uncontroverted, rather admitted.

Strangely, for the first time in Paragraph no 14 of the affidavit in chief of the applicant, it was raised by the applicant that there is a privity of relation between OP NO 1 and 2 and the applicant and contract with the contractor is a sham contract.

It seems to this court that any fact which requires to be introduced at a later stage must be by way of amendment to the case and proved by evidences. However, in the present case of the applicant, it was nowhere suggested the fact of sham contract and was introduced for the first time in the

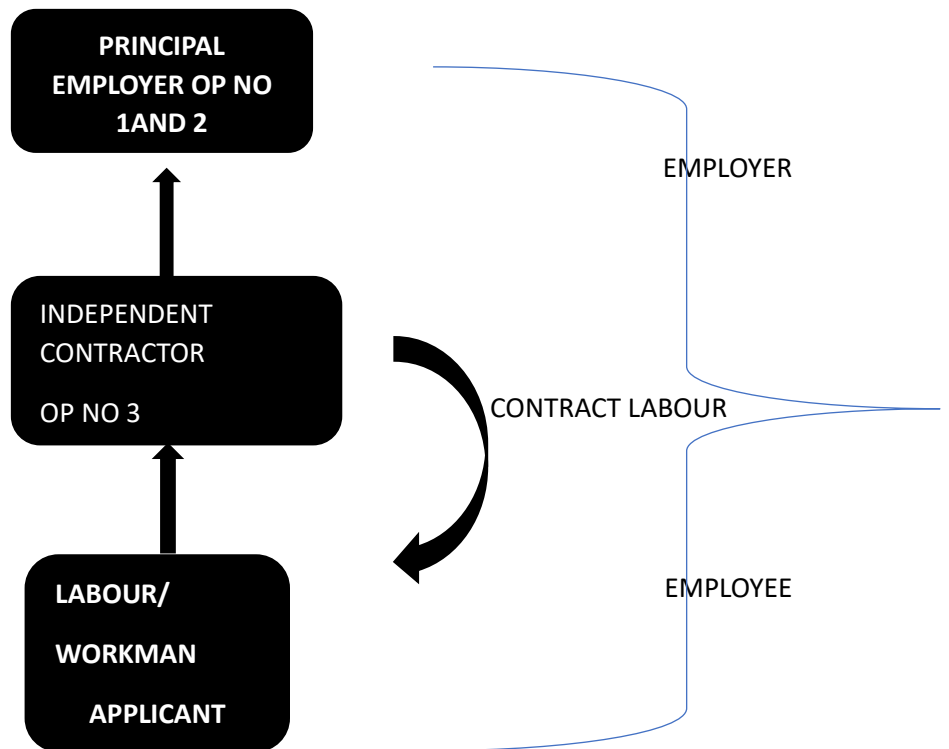
evidence in written affidavit in chief. No subsequent amendment was incorporated in the written statement of

the applicant, no issues were framed to that effect, no evidence was tendered for decision thereon, by the applicant.

**Taking the cue from the above discussions, it is irresistible conclusion that there is no privity of contract between applicant and OP no 1 and 2 , though the contours of relation with OP NO 3 demands discussion, which is taken up hereunder.**

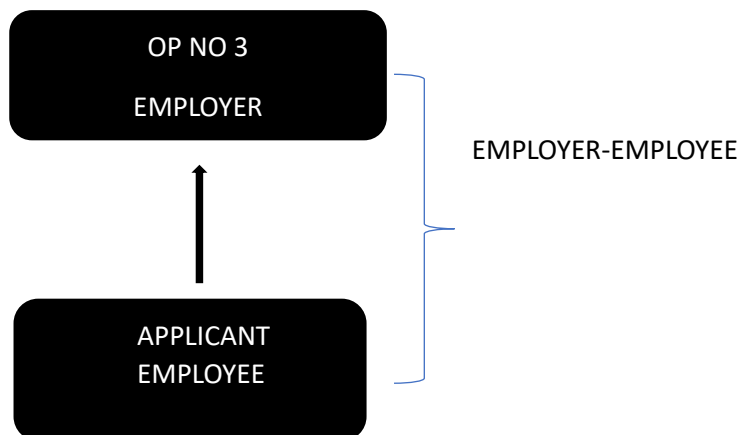
**10) ISSUE NO. 1, 4 (Whether Sri Gajendra Ghora, the applicant, be regarded as a workman and the dispute comes within the purview of character of industrial disputes)**

The relationship between the parties herein, from the written statement of the applicant, can be depicted thus; -



Once it is barren from the inference suggested by the above issue that the there is no employer-employee relationship with OP NO 1 and 2, the relationships persist with the following modification;

-



Thus the OP NO3 / contractor assumes the status of employer and the applicant, a contract labour under him. **The reason for accordance of such status and relationship is detailed hereunder.**

**The employee herein , being a contract labour and the employer, a contractor, the law governing such relationship is Contract Labour (Regulation and Abolition Act) 1970 . In emerging thus, the premise pronounces upon itself the consideration of Contract Labour (Regulation and Abolition Act) 1970, apart from the Industrial Dispute Act ,1947, to deal the given case .**

**It is here that the law demands abridged discussion on the point, to arrive at repose of ultimate unity and a decision on the following points ;**

*Whether the applicant can be conferred a **status of workman**?*

*Whether the present **dispute is an industrial dispute**?*

and

*Whether **op no 3 can be fastened with the liability of an employer**?*

**Section 2(S) of I. D act defines workman thus ;-**

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

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

There is no inclusion of employee in form of contract labourer in the State of West Bengal in the definition, unlike some of the states like Rajasthan who have incorporated a change by the state amendment, which is quoted as an illustration; -

**"In its application to the State of Rajasthan in the clause(s) , after the words " employed in the industry " insert the words " by an employer or by a contractor in relation to execution of his contract with the employer "**

Industrial Dispute Act is the general legislations on the subject of labour jurisprudence. **Contract Labour (Regulation and Abolition Act) 1970** deals with certain subject, and certain aspects of relationship between contractor and Labourers placed under him.

The Industrial Dispute Act was enacted in the year 1947 and dealt with all the aspects of Industrial Disputes, applied to all industries and the workmen coming within its fold. The subject, being an **entry of Concurrent List of Seven Schedule** to the Constitution, some states intended to cover the benefit of Industrial Dispute Act to labourers and contractors. The state of affairs continued till 1970 when the legislature, to address certain grey area and injustice to the contract labourers, introduced the legislation in the shape **Contract Labour (Regulation and Abolition Act) 1970**.

**Hence, erstwhile disputes relating to the contract Labourers could be referred for disposal under the Industrial Disputes Act and the Industrial Disputes Act was admittedly a general enactment.** This is plain from reading of statutes and judicial interpretations in ancestry of cases including *Delhi Cloth and General Mills VS State of Rajasthan 1992(65)FLR847*.

On the advent of the special central enactment, the relation between contractor and contract labourers came to be governed by it and it was intended to prevail over the provisions of Industrial Disputes Act 1947, in respect of matters covered by it , which is an earlier general law pertaining to the subject of contract labour, irrespective of state amendments . **Thus under the General principle of law applicable to validity, as enshrined under article 254 of the Constitution, the Act of 1970 , a later Act of the Parliament, shall prevail over any state amendments to that effect under the Industrial Disputes Act 1947.**

The facts of present case present itself in a peculiar form and intend to redress on a earlier termination emanating from wrong data in gate pass . Here, it is pertinent to note that though **Contract Labour (Regulation and Abolition Act) 1970** deals with certain aspect of relation between contractor and worker, it doesn't address such incidence. It doesn't expiate wide areas of rights and duties of contractors. Even if it entrusts contractors with the duty to maintain records, it doesn't adumbrate the consequences of failure. It doesn't lay down any provisions as to what is to be done in case of premature termination arising from omission on the part of the contractors and the forum which shall be competent to address such issues. Conversely, **Contract Labour (Regulation and Abolition Act) 1970** , being a special legislation, Industrial dispute Act needs to be imported with caution to such relationship between contractors and workers and this is fortified by **MANAGEMENT BURMAH SHELL OIL STORAGE AND DISTRIBUTION CO OF INDIA LTD VS THE INDUSTRIAL TRIBUNAL , AP AND**



**ORS 1975 LIC 165** . The area is thus left unattended, blurred and something which legislature couldn't foresee.

It is here that in respect to narrow ridges falling within the flow these statutes, the employers seek benefit of fallacious interpretations, shying themselves away from the responsibilities as none of these legislations serves on zero -in – on exactly the redressal in such cases. Justice demand that workers should not be deprived of the benefits of industrial laws, in the guise of absence of direct law on the subject and the benefit with respect to those matters which the legislature couldn't foresee.

The contractor has an easier field. It is possible for him by denying the status, to arrive at more readily convincing simplicity of statements. But given the frame of legislations and object of labour laws, it is impossible for him to escape and persist permanently. He too ends by positing the relation as inert. It serves no purpose but to put off by vague concession, the inexorable demand of justice to labourers or to stand as an excuse for refusing to extend the benefits of social legislations.

In such situations, the courts return with a more vehement impulse of inquiry or a more violent thrust for an immediate solution and by that thrust, new interpretations arise to replace the old that has been destroyed or stripped off significance because it was its duty to secure the benefits to the labourers. The attempt to deny or stifle a truth because it is obscure in its outward working is itself a kind of obscurantism.

A glaring instance of Hon'ble Courts stepping in to rescue such situations, can be imported in respect of **Contract Labour (Regulation and Abolition Act) 1970** itself.

The **Contract Labour (Regulation and Abolition Act) 1970** adumbrates provision for abolition of contract labour by the appropriate Government but the fate of such labourers were kept hanging as the statute is silent on the subject. In Gujrat **Electricity Borad Thermal VS Hind Majdoor Sabha 1995 SCC(5)27** , this was pointed out in the following terms :-

*“ 14.....although the Act has been placed on statute book with a benevolent intention and elaborate provisions are made to prevent the abuse of contract labour system as is evident from the statement of objects and reasons and provisions of the Act referred to by us in details earlier , **the legislation has not provided any relief for the concerned workman after the contract is abolished ....”***

Our Hon'ble Courts had stepped in to address the grey areas by pressing into service the purposive constructions and extend benefit of statutes to the labourers whose contract labour is abolished and curled out formulae for dealing with the situation for different workers.

Similarly, , the **Contract Labour (Regulation and Abolition Act) 1970** doesn't deal with all situation as to what is to be done in such cases of premature termination in relationships persisting solely

between contractor and worker, as in the present case. Neither any forum is conferred to address such situation of differences between the contractor and his workman. **Nor the West Bengal State amendment includes contract labourers in the definition of workman under Industrial**

**Dispute Act, 1947.** Given such unattended circumstance, it would be too harsh an act to shut out the workman and leave his grievances unattended, on procedural counts. They may satisfy logical reason but not actuality.

In these barren contradictions, one can seek a reconciliation, traversing beyond the limitations without denying expressed provisions. As reiterated by **His Lordship Krishna Iyer J** “*the mortality of justice at the hands of law troubles the judges conscience and points an angry interrogation at the law reformer... the humanist rule that procedure should be handmaid, not the mistress, of legal justice compels consideration of vesting a residuary power in judges to act ex debito justitiae where the tragic sequel otherwise would be wholly inequitable.....*” **Sushil Kumar Sen VS State of Bihar ((1975) 1 SCC774 )**

As a logical conclusion of the above discussions, it seems that as **Contract Labour (Regulation and Abolition Act) 1970** is silent and there is no state amendment to rescue the same, the Industrial Dispute Act would prevail in the same manner as it would have operated when the statute of 1970 was not in shape. Though the Industrial Dispute Act also doesn't address the provisions with respect to contractors and labourers placed under them, but the benefit can be extended as it is normally extended to employers and employees under the Act. The workmen under **Contract Labour (Regulation and Abolition Act) 1970**, is also workmen under the Industrial Dispute Act. The contractor would be deemed the employer of such person, against whom an 'industrial dispute' could be raised. For those states who did not incorporate any amendment, such benefit can be extended to the contract labourers as a logical completion of the principle that workers are indeed workmen and it is not much relevance, whether under a principal employer or contractor, the legislation being a beneficial one. This can also be inferred from the essence of various judgments though there was no occasion of a direct pronouncement (**HUSSAINBHAI CALICUT VS ALATH FACTORY THIZHALILI, KAZHIKODE, AIR 1978 SC 1410, INDIAN EXPLOSIVE LTD VS STATE OF UP 1981(I) LLJ423, VEGILOS PVT LTD VS WORKMAN AIR1972 SC 1942**).

This draws to the conclusion that with respect to the matters unattended by the labour laws, the benefits of Industrial Disputes Act would be pressed into service. Only in a complete affirmation can all the multiform and apparent contradictory interpretations be harmonised.

Hence the applicant is worker and the dispute an industrial dispute.

**11) ISSUE NO. 5 (Whether the workman was illegally terminated from service by way of forceful retirement w.e.f. 31.12.2014 on the basis of erroneous date of birth i.e. 01.01.1955 instead of 11.01.1959 by the opposite party no. 1 & 2 through their contractor, the opposite party no.3)**

This issue intends to fix the liability of opposite parties to have the records corrected.

The OP NO1,2 are not the employers, as held above, and coupled with the inference of the liability of OP no 3, following from immediately preceding issue, the correction ought to have been effected by Opposite party no 3. It was for them to have the records corrected which would consequently effect corrections in the gate pass.

This court hastens to add here that gate passes are issued only for admission of workers and safety and security of the establishment and doesn't have a bearing on other facts such as tenure of employment. **(BHARAT HEAVY ELECTRICALS LTD VS MAHENDRA PRASAD JHAKMOLA AND ORS 2019(4) SCALE 738.**

The information on the strength of which gate passes were issued, were furnished by the OP NO3.

The Contract Labour Act nowhere invests the contractor with responsibilities to maintain record. However, Rules framed under **Contract Labour (Regulation and Abolition Act) 1970** and the forms thereunder suggest that contractor is expected to maintain the following information in the following form in the following terms:-

*"76. **Employment card** –(i) Every contractor shall issue an employment card in Form XIV to each worker within 3 days of employment of worker.*

*(ii) the card shall be maintained up to date and any change in the particulars shall be entered therein.  
"*

#### **FORM XIV**

**(See Rule 76 )**

#### **Employment card**

Name and address of Contractor	Name and address of Establishment in which contract is carried on
	....
Nature of work and location of work	Name and Address of Principal Employer
.....	
1. Name of workman	
2. Sl. No in register of workman	
3. Nature of employment/Designation	
4. Wages rate ( with particulars of unit in case of piece work	
5. Wage period	
<b>6. Tenure of employment</b>	
7. Remarks	

The rules are not clarified on the point as to what its infringement might lead to.

But it can be safely inferred that all these information are intended to be within the knowledge of the contractor. One of such is “**Tenure of Employment**” which is intended to include the information of his his termination of service. This is the duty of the contractor and any errors in the said data must be brought to the notice of principal employer, by them. It is strange to note that they had brought it to the notice of the OPNO4 but never to the notice of Principal employer, which is a latch on their part. The applicant insisted the contractor a number of times to have it corrected. Hence on failure, it is the OP no 3 who must be held liable for an act of omission to pass the information to principal employer, followed by his reluctance to act promptly leading to the peril.

It is necessary thus that the contractors should base themselves on clear, unblemished, disciplined data. It is necessary too that they should stand corrected by return to restraint of exact facts.

Thus, the onus of incorporating corrections rest with OP NO3.

**12) ISSUE NO. 3, 6 (Whether the application under section 2A(2) of the industrial disputes act, 1947 in maintainable)**

This is the issue upon which the edifice of present case is built, though it is taken up at belated stage because its discussion derives strength from the culmination of the above-mentioned issues.

In a recapitulation of above discussions, the issue no 2 decided by this court settles the point that the OPNO 1,2 are not the employers of the applicant and actually the OPN O3 is the employer of the applicant. This is followed by Issue no 1,4 , which deduces the law intended to be applied to the peculiar subject of the present cause, in absence of direct decisions and legislations . It is thus settled that the Industrial Dispute Act was a general legislation governing workmen. Upon the inception of the Contract Labour Abolition Act, this special statute eclipsed the former though there are certain areas which were yet to be attended. The industrial laws are beneficial legislation. As the later Act doesn't contain any provision on the subject, the general statute that is Industrial Dispute Act is imported, as it was done earlier, as *ex debito justitiae*, to rescue the situation.

Upon these findings, it is to be inferred now whether the case is maintainable u/s 2A of the Act, which reads as follows;

“Dismissal, etc., of an individual workman to be deemed to be an Industrial dispute —

(1) Where any employer discharges, dismisses, retrenches or otherwise terminates the services of an individual workman, any dispute or difference between that workman and his employer connected with, or arising out of such discharge, dismissal, retrenchment or termination shall be deemed to be an industrial dispute notwithstanding that no other workmen nor any union of workmen is a party to the dispute.

(2) Notwithstanding anything contained in section 10 any such workman as is specified in sub-section (1) may, make an application direct to the Labour Court or Tribunal for adjudication of the dispute referred to therein after the expiry of forty- five days from the date has made the application to the conciliation officer of the appropriate Government for conciliation of the dispute, and on receipt of such application the Labour court or Tribunal shall have powers and jurisdiction to adjudicate upon the dispute, as it were a dispute referred to it by the appropriate Government in accordance with the provisions of this Act and all the provisions of this Act shall apply in relation to such adjudication as they apply in relation to an industrial dispute referred to it by the appropriate Government.

3) The application referred to in sub-section (2) shall be made to the Labour Court or Tribunal before the expiry of three years from the date of discharge, dismissal, retrenchment or otherwise termination of service as specified in sub-section (1).”

The section presupposes an existence of ;-

- (i) Contact **of** Service and
- (ii) its severance on erroneous or illegal cause, which presents an occasion to the courts to interfere.

There must be a *Contact of Service* to be termed a workman and not *Contact for Service*. *Contact of Service* presumes a direct relation of employer and employee. *Contact for Service* is merely a contract to do some work, as in case of independent contractors. Contract of service is different and distinct from contract for service.

The concepts were interpreted by the **House of Lords in Short VS J.W Handerson (1946)AC 24 (HL)** and ruled that right of supervision and control by the employer is the only test determinative of the relationship between the parties as the “*principal requirement of contract of service is right of master in some reasonable sense to control the method of doing the work and this factor of superintendence and control has frequently been treated as critical and decisive of legal quality of relationships.*”

**To quote Halsbury' s law of England 2<sup>nd</sup> Edition vol 22 p.112 para 191 ;-**

*“The relation of master and servant exists is a question of fact; but in all cases the relation imports the existence of power in the employer not only to direct what work the servant is to do but also the manner in which the work is to be done”*

Sometimes the distinction is a fine one and may be difficult to apply in border line cases. Courts have taken a view on the point that *“the greater the amount of direct control exercised over the persons rendering the services by the persons contracting for them, the stronger the grounds of holding it to be contract of service, and similarly greater the degree of independence of such control the greater the probability that services rendered are of nature of professional services and that contract is not one of service”* **Fletcher Moulton LJ in Simmonsvs Health Laundry Company.**

It is further laid that *“the correct method of approach, therefore, would be to consider that whether having regard to the nature of work there was due control and supervision by the employer”* **Dharangdhra Chemical Works Ltd VS State of Saurashtra.**

In the case before this court, considering the involvement of independent contractor , it can be questioned to be in the nature of contract for service and not contract of service. This demands a clarification.

Derived from the above discussion, the liberal and purposive construction of statues has transferred the complex relationship of principal employer through contractor to workman, into a simple relation of employer and employee between the contractor and the labourer/workman. **Once the existence of this relation is held in affirmative, all the incidence of relations of employer and employee is deemed to have been transposed and induced into the relation of contractor and employee /workman. In emerging thus, the Section 2A applies with all its implications, to such relation and the employer is the contractor and any severance is covered in it. Hence the employment in the present facts is inferred to be under the independent contractor. Contract for service through independent contractor is transferred to contract of service between the applicant and OPNO3.**

**Next, the contract must be severed by ‘ discharge, dismissal, retrenchment or otherwise ’**

Where the OP disputes the termination etc, it is incumbent on the court to determine this point before the claim is allowed or disallowed. In this case, the applicant maintains that his premature retirement results from omission to incorporate necessary changes and is in essence an illegal termination. It is an elementary proposition that if applicant relies upon facts in support of his cause, OP is entitled to impeach its validity, which appear none and rather go unrebutted as the main contesting party, OPNO 3 has shied away from recording his appearance in the court. Conversely, premature termination is visible from the documents in the record.

This court is not unmindful that retrenchment, that is one of the species of the illegal termination, is intended to exclude any termination on superannuation, on termination of contract of service and on other grounds in Section 2(OO) of the Act. But that is of no avail as the section presupposes other clauses also, in the following terms other, than retrenchment "otherwise terminates the services of an individual workman".

This court hastens to add here that though the premature retirement was not disputed separately before any court of law and is not set aside, nevertheless the cause is maintainable because the facts leading to the retirement is in question and not the per se retirement, which obviously takes place on the date reflected in the service records, whether or not the record is correct or erroneous.

Thus, the termination being illegal, the case is squarely covered by the Section and the present case is maintainable U/S 2A.

### **13) IMPOSITION OF COST**

The above discussions are plain on the point of liability of OP no 3 and not the OP NO 1,2 which emanates from omission to get the records corrected. Strangely, the OP NO 3 have kept themselves away from the process of the court and for this flippant approach, the workman has to suffer not only the delay till final disposal but also a delay in complying the interim relief that was granted in his favour securing his subsistence till the disposal to the case. It is important to quote the observation of Hon'ble Apex court on the consequences, once the workman is terminated; -

"..... Not only the employee concerned, but his entire family suffers grave adversities. **They are deprived of the source of subsistence.** The children are deprived of nutritious food and opportunities for education and advancement in life. At times, the family has to borrow from the relatives and other acquaintances to avoid starvation. These sufferings continue till competent authority decides on the legality the action taken by the employer. ...." **DEEPALI GUNDU SERVASE VS KRANTI JUNIOR ADHAYAPAK MAHAVIDYALAYA**

It seems that failure to pay interim relief in spite of an order attracts cost, in terms of Section 11 of the Industrial Dispute Act. Thus, this court directs the OP NO3 to pay a cost of Rs 5000/ to the applicant, in the given facts.



**14) RELIEF**

It emerges thus that the applicant is entitled to be placed in the same position as he would have been, but for the erroneous incorporation. It is axiomatic that he has already retired from service and therefore there is no question of reinstatement. But, in its normal connotation, he is entitled to back wages which he would have, had he been in the service, for the years he is honestly deprived.

Awarding full back wages in such cases is a rule as it is restitutive in nature. This is fortified by **DEEPALI GUNDU SERVASE (supra)** where it was observed; -

**“The very idea of restoring an employee to the position which he held before dismissal or removal or termination from service implies in the same position which taken by the employer. ....If the employer wants to deny back wages to the employee or to contest his entitlement to get consequential benefits, then it is for him or her to specifically plead and prove it”**

It seems that he was erroneously terminated on 31.12.2014

Had he been in service, he would have served for 5 more years.

It seems that the OP NO 3 had failed to pay the interim relief in spite of the existence of an order. The interim relief pertained to portion of back wages that is 50 % of last drawn salary for 3 months that is October, November December 2015 and 75 % of last drawn salary from January 2016. The purpose of the interim relief was to give a means of subsistence to the applicant pending the disposal of the case. (2000(1) CHN1=LAWS(CAL) 1999 10 33 ) . Not a single farthing has been tendered.

As this court is presently inclined to award full back wages from the inception of this case till the date of actual date of superannuation, the interim relief stands adjusted accordingly as it comprised of a portion which was intended to be awarded for securing his subsistence during pendency of the case

**15) INFERENCE**

The conspectus of the above discussions suggest that though exfacie, the cause appeared to non-maintainable in the present form, as much as truth that wears a disguise in order to arrive unobserved near its goal, but the benefits of Industrial laws could be secured as the laws and procedures are faithful handmaid, conscientious, clean handed, luminous within its limits and not reckless and presumptuous aberration.

This is the plausible course towards protection of object of the legislations to its beneficiaries.

The plea of the applicant is thus upheld.

**IT IS ORDERED**

The application under Section 2A(2) of the Industrial Dispute Act 1947 be and the same is hereby DISMISSED ON CONTEST without any orders as to cost against OP ND1,2 .

The application under Section 2A(2) of the Industrial Dispute Act 1947 be and the same is HEREBY ALLOWED against the OP ND3 ex parte and with order of cost.

The OP ND 3 was not justified in dismissing the applicant prematurely.

The applicant is entitled to receive full back wages from date of application till the actual scheduled date of superannuation treating the date of birth as 11.01.1959 and with all consequential benefits.

The wages shall be such as applicable to the fitment of similar workman in the establishment under similar tenure and circumstances. The OP ND 3 is also directed to make payment of back wages along with a cost of Rs 5000/- to the applicant. OP ND3 is directed to make payment and comply the award, lest the applicant shall be free to take legal recourse.

The interim relief stands duly adjusted.

Let necessary compliances be made in terms of service of the copies to concerned Government authorities.

The case is hereby disposed off.

Note in the relevant register.

TYPED BY

(SREEJITA CHATTERJEE)  
JUDGE

(SREEJITA CHATTERJEE)  
JUDGE  
SECOND LABOUR COURT,  
KOLKATA  
27.09.2024

