

I/584826/2024

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

No. Labr/ 1213 /(LC-IR)/22015(12)/6/2018

Date : 12-12-2024

ORDER

WHEREAS an industrial dispute existed between (1) M/s. Hoogly Mills Project Ltd.(Unit Hukum Chand Jute Mill), P. O. – Hazinagar, Hoogly, District – 24 Parganas(North) & (2) M/s. Hoogly Infrastructure Pvt. Ltd.(Unit : Hukumchand Jute Mills) and their workman Sri Om Prakash Mahato, S/o - Sri Jamuna mahato, 9, B. M. Road, Champdani, P. O. Baidyabati, Hoogly, regarding the issues, 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 Second Labour Court, Kolkata specified for this purpose under this Deptt.'s Notification No. 1085-IR/12L-9/95 dated 21.07.1997 ;


AND WHEREAS the said Second Labour Court, Kolkata has submitted to the State Government its Award dated 18.09.2024 in case No. 23/02 under section 10(1B)(d) of the I.D. Act, 1947 (14 of 1947) on the said Industrial Dispute vide e-mail dated 18.11.2024 ;

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,


Assistant Secretary


to the Government of West Bengal

No. Labr/ 1213 /1(6)/(LC-IR)/ 22015(12)/6/2018

Date : 12-12-2024

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

1. M/s. Hoogly Mills Project Ltd.(Unit Hukum Chand Jute Mill), P. O. – Hazinagar, Hoogly, District – 24 Parganas(North).
2. M/s. Hoogly Infrastructure Pvt. Ltd.(Unit : Hukumchand Jute Mills)
3. Sri Om Prakash Mahato, S/o - Sri Jamuna mahato, 9, B. M. Road, Champdani, P. O. Baidyabati, Hoogly.
4. The Asstt. Labour Commissioner, W.B. In-Charge, Labour Gazette.
5. The OSD & EO Labour Commissioner, W.B., New Secretariat Building, 11th Floor, 1, Kiran Sankar Roy Road, Kolkata – 700001.
6. The Deputy Secretary, IT Cell, Labour Department, with the request to cast the Award in the Department's website.



Assistant Secretary

No. Labr/ 1213 /1(3)/(LC-IR)/ 22015(12)/6/2018

Date : 12-12-2024

Copy forwarded for information to :-

1. The Judge, Second Labour Court , N. S. Building, 3rd Floor, 1, K.S. Roy Road, Kolkata - 700001 with respect to his e-mail dated 18.11.2024.
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. 23/02 Under Section 10(1B) (d) Industrial Dispute Act, 1947

=====

SHRI OM PRAKASH MAHATO

S/O – SRI JAMUNA MAHATO

9, B.M. ROAD, CHAMPDANI

P.O- BAIDYABATI, HOOGLY

VERSUS

1. M/S.HOOGLY MILLS PROJECT LTD

UNIT HUKUM CHAND JUTE MILL

P.O. HAZINAGAR. HOOGLY.

DISTRICT- 24 PARGANAS(NORTH)

2. HOOGLY INFRASTRUCTURE PVT.LTD

UNIT- HUKUMCHAND JUTE MILLS.

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Appearance

MR/MRS- SUBRATA CHAKRABORTY LD Advocate for the Applicant.

MR/MRS MADHUMITA DUTTA, LD Advocate for the Opposite party No 1

MR/MRS- TARAK DUTTA , LD Advocate for the Opposite party No 2

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REFERENCE	Dispute raised by individual workman within the meaning of Section 10(I)(B) (d), as applicable to the State of West Bengal .
POWER OF THIS COURT TO ENTERTAIN THE CAUSE IN HAND	Section 7 of Industrial Dispute Act,1947 Read with Entries under 2 nd Schedule to the Industrial Dispute Act AND Dept Notification no 1085- IR dated 25-07-1997
PROCEDURE ADOPTED IN DEALING WITH THE CASE	Karnataka state Road Corporation Vs Smt Lakshidevamma and another (2001)5 SCC 433 <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.
BINDING NATURE OF AWARD	Dispute being raised individually, shall only bind the parties herein (Section 18 of the Industrial Dispute Act)
COMPLAINCES	Copies of award be submitted to appropriate government for publication.(Section 15 of the Industrial Dispute Act) .

PRESENT: MISS SREEJITA CHATTERJEE

JO CODE ; WB001252

DATE OF AWARD :18.09.2024

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EXORDIUM

- 1.) The accordane of security to workman in industrial jurisprudence is a challenge and seeks to solve better with greater complexities for its prime solution lies in establishing the '**STATUS OF WORKMEN**' as foundation to industrial relationship. It is this foundation which holds the edifice of industrial relations. Not only, then, is the accordance of this status complete but is the only logical completion of rule and an effort that seems fundamental for invoking benefits of industrial laws. It seeks to reconcile and affirm the foundation of principal of collective-bargaining, as an attempt to secure the avowed objects of the Act.

*The instant application for reinstatement and back wages of applicant of the alleged "Workman" seeks to **unearth such Status of applicant as an workman**, in order to decide on the applicability of Industrial Disputes Act , 1947 (hereinafter referred to as the Act) to the present facts .*

FACTS BY THE APPLICANT

- 2) The facts of the case, as set forth by the applicant, is that he was appointed to the post of Spinning Assistant, in the Opposite Party company namely M/S Hooghly Mills Project Ltd , through an interview which secured him position as Probationer for six months. Company is submitted to be registered under the Companies Act 1956.

It is averred that the company chose to extend his tenure beyond six months, being pleased by his diligence and performance and thus he thus continued thereafter. The differences arose when suddenly the company wished to compress its staff strength and put his job at peril. Since 4/11/2001, his service was discontinued, by a mere verbal communication from the end of Manager to another assistant.

It is submitted that such verbal communication, followed by termination or retrenchment, is without compliance of the provisions of the Act and Rules made thereunder and in contravention of the law. A written representation was thus sent by applicant to the company on 13th November 2001 and received on 19th November 2001, as a mark of protest to the act.

It is his plea that he had worked for more than 240 days in the year and is entitled to compensation and reinstatement. He preferred a representation to labour department as the company failed to answer his letter. The matter was referred for conciliation.

The conciliation having failed for more than 60 days, he submitted Form P4 report to the conciliation officer for issuing Form S and the present application is founded on Form T, for invocation of Section 10 (1B) (d).

FACTS BY THE OPPOSITE PARTY NO 1

- 3) The OP resisted the claim on the plea that the instant application is filed in violations of **Rule 20 (B) (1) of Industrial Dispute Rules 1958** and premature as document accompanying the applications were filed in the haste and before the stipulation in the Rule, thus putting the horse behind the cart.

OP deprecates the contentions and strikes to the point of maintainability on another count that the post of **Spinning Assistant is a supervisor-cum -managerial post** as workers were placed under him and it was his duty to oversee their leaves and transfer. **Thus, he is not a workman.** It is submitted that his salary slip lends support to this contention as it is found that he was drawing HRA at 10% while workers received HRA at the rate of 5% only.

It is averred that his services were never continued beyond probation as there were serious allegations of securing appointments to the workmen against bribes and he was thus kept under vigil. Rather it is in anticipation of trouble and exposure to bribe case that he voluntarily quit his job on 4th Nov 2001 and never reported thereafter.

While leaving in haste, he even forgot to clear his mess dues of ₹ 6000 from July 2001 to November 2001 against which the OP lodged FIR, the amount remaining unpaid.

This present application is a ploy of the workmen to realise huge arrears of back wages in the garb of illegal termination. Hence the application deserves dismissal.

- 4) **In the course of evidence of OPW4, it was unravelled that OPNO1 company M/S Hooghly Mills Project Ltd was sold out to M/S Hooghly Infrastructure Private Limited.**

Hence the applicant proposed to array the later as party, by amending the cause title and substituting the name vide petition of amendment dated 27th December 2010. It is axiomatic that the said application was allowed vide Order Number 100 dated 12th November 2012, in the form of addition of M/s Hooghly Infrastructure as OP NO2.

OP No.1 remains and continues to be M/S Hooghly Mills Project Ltd.

FACTS BY THE OPPOSITE PARTY NO 2

- 5) The OP No. 2 entered appearance on 27 July 2013 and filed their written statement.

The abridged contention of OPNO2 appears to be denial of the employer-employee relationship between them and the applicant.

It is averred that the takeover resulted vide agreement dated 14th July 2009, against a consideration of ₹ 37.50 cr. The cut-off date for assumption of the rights and liabilities was 15th July 2009.

It is their plea that the recitals of the said agreement suggest except gratuity, all liabilities with respect to the workmen, shall rest with the transferor that is first party of the agreement /OP NO 1 herein. Hence the alleged workman /applicant was neither employed under them nor their liability extends to such employees beyond 2009, in respect of any matters apart from Gratuity, which is not the apple of discord in the instant case.

Hence, they are not concerned with the differences at hand and pray for release from the record.

- 6) The case seems to have been contested from the inception and almost 10 witnesses were tendered on behalf of the opposite party. Unfortunately, the formal issues of contest were neither framed at the inception nor at any subsequent stage.

This anomaly was discovered by this court at the stage of argument, issues were framed at that stage as follows **VIDE ORDER NO 212 DATED 12.08.2024; -**

- 1) Whether this court has **jurisdiction** to proceed with this case?
- 2) Whether the application is **maintainable** in its present form in view of Rule 20 and other provisions?
- 3) Whether the **applicant is a workman** within the meaning of Industrial Dispute Act 1947 if he is found to be a workman whether he was illegally terminated or retrenched?
- 4) Whether the **Op no 2 can be fastened with the liability** to the applicant?
- 5) Relief.

Attention of the Ld. Advocates were drawn to the formal issues. They did not propose to tender any further evidence.

In respect of such anomaly and absence of issues and its discovery at end of trial and its effect, it seems that in a landmark judgement of **Bhagwati Prasad VS Shir Chandramauli AIR 1966 SC735, His lordship** Justice PB Gajendragadkar was of the view that if the substantial matters were indirectly and obscurely covered in evidence, no further evidence is warranted. **It was laid down that the test is whether the parties were conscious of the events when they led the evidence.**

Applied to the present facts, it appears from evidences that the parties were consistently leading their evidences on these issues. Hence, they were conscious of the position at the time of the evidence. Thus, drawing an analogy from the **Bhagwati prasad's case (Supra)**, and in view of the fact that **this is a very old record (about 23 years)**, coupled with the fact that none of the Ld. Advocates have showed renewed interest in tendering anything further, re-examination is not warranted.

The omission appears to be only an exclusion and not an irregularity.

EVIDENCES BEFORE THIS COURT

ORAL EVIDENCES :-

SERIAL NO	WITNESS NAME	POST HELD
PW1	Om Prakash Mahato	SPINNING ASSISTANT

DOCUMENTS FOR THE APPLICANT

SL. No.	EXHIBIT NO.	NATURE OF DOCUMENTS
1	1	Photo copy of Appointment letter of the applicant, dated: 01.11.2000.
2	2	Photo copy of Workman's letter to the Company, dated 13.11.2001
3	2/1	Photo copy of A/D card along with letter dated 13.11.2001.
4	3	Photo copy of last drawn Pay Slip of October, 2001
5	4	Photo copy of representation dt. 18.03.2002
6	5	Photo copy of certificate Form- P-4 dt. 16.08.2002
7	6	Photo copy of Form-S
8	7	Photo copy of letter dt. 7.4.2002 letter of the Co's General Manager to the O.C Naihati P.S.
9	8	Ex-gratia pay slip of applicant Om Prakash Mahato dt. 31.3.2001

ORAL EVIDENCES FOR THE OP NO 1

Serial no.	WITNESS NAME	POST HELD
OP NO1	RAJENDRAA TEWARI	TIME KEEPER
OP NO2	OPNO2 SHRI TARUN CHAKRABORTY	SECURITY OFFICER
OPNO3	OPNO3 SHRI RATAN KUMAR PUROHIT	SUPERVISOR
OP NO4	OPNo4 :SHRI BANSHRAKHSAN PRASAD	LABOUR OFFICER OF OP COMPANY
OP NO5	OPNo5 5 :SHRI PRASANT CHOWDHURY	OFFICE MASTER
OP NO6	OP NO6 SHRI MOU MUKHERJEE	SPINNING OBSERVER
OP NO7	OP NO 7 :SHRI RAJIB GUHA	SPINNING ASSISTANT
OPNO 8	OP NO 8 SHRI DEB KR. CHOWDHURY	CHIEF SECURITY OFFICER
OP NO 9	OP NO 9 :SHRI TAPAN KR. SEAL	ASSISTANT SUPERVISOR
OP NO 10	OP NO 10 SHRI RANJIT KUMAR MISHRA	LABOUR OFFICER

DOCUMENTARY EVIDENCES FOR THE OPW-1

SL. No.	EXHIBIT NO.	NATURE OF DOCUMENTS
1	A	Copy of Bio data of Sri Om Prakash Mahato applicant submitted to the company at the time of SPG Winding Supervisor.
2	B	Photo copy of Attendance Register.
3	C	Copy of Pay Slip of Supervisor Category, dt. November-2000
4	D	Copy of Labour Requisition Part-I, Requisition for Categories workman dated 01.08.2001
5	D/1	Copy of Labour Requisition Part-II, Employment Passed dated 03.08.2001
6	E	Copy of List of Budlies from duty on 25.04.2001
7	E/1	Copy of List of Budlies from duty on 01.08.2001
8	E/2	Copy of Attendance Register of the workman
9	E/3	Photo copy of Attendance Register of the workman.
10	F	Photo copy of Sale Agreement.

DECISION WITH REASONS.**7) ISSUE NO 1(*JURISDICTION OF THE COURT*)**

The authority of this court (formed under notification no 1727-IR/IR3A-58 dated the 26th April, 1967) to investigate into these matters under Section 10(1B)(d), is presently derived from **notification number 101/IR/12L-14/11 Dated 2/2/2012** . The said notification does not invest Second Labour court to proceed with issues arising from differences at North 24 Parganas or Hooghly, that is the situs of the company. Strangely, this point was not taken up by the contesting parties.

In a frantic search on this point and the maintainability of the cause, this court has come across a prior document and seeks to rely upon this notification no 1085-IR /12L-9/95 DATED 25-07-1997. This notification is a precursor to above mentioned notification. In view of the fact that this case was instituted in 2010 and notification no 101/IR/12L-14/11 Dated 2/2/2012 (w.e.f 2012) appeared in suppression of earlier notifications in the year 2012, earlier notification was in force at the time of institution of this case which spells thus; -

Labour court/Industrial Tribunal	District
..... 4. Second labour court constituted	(i) North 24 Parganas
Under notification no 1727-IR/IR3A-58,	(ii) South 24 Parganas
dated the 26 th April ,1967	(iii) Calcutta
	(iv) Midnapore

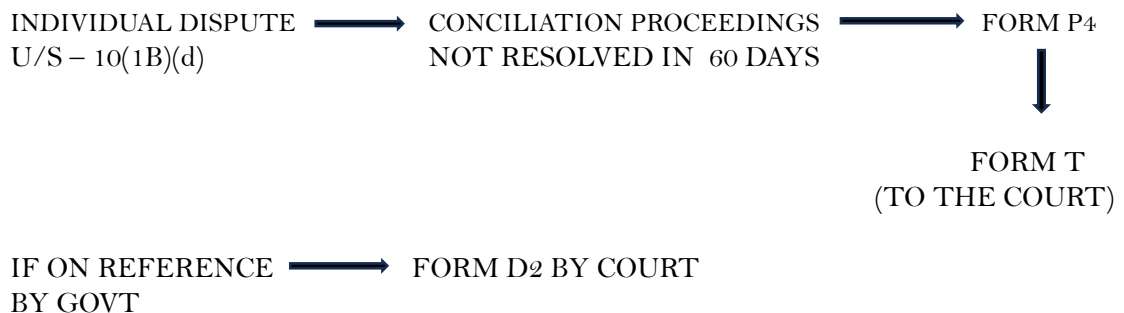
The company is found to operate from North 24 Parganas and having its registered office at Kolkata (at that time Calcutta) .

Hence this court has jurisdiction to proceed thereon.

8) ISSUE NO 2 (MAINTAINABILITY OF THE APPLICATION)

Cavilling's of the OP relate to the infringement of **Rule 20** of the West Bengal Industrial Dispute Rules, 1958. The objections are founded upon the premise that the documents in this case were tendered by the applicant much before he was asked to do so.

The contention is not well founded on the apparent reason that the Act lays down the following mode of institution, once there is a failure of Conciliation machinery; -



The applicant seems to have complied with the procedures. In the given factual matrix, it is unclear as to why the case shall not be maintainable. This is not case on reference but an individual dispute raised on expiry of the period for conciliation. Rule 20 and the species of Rules covered under that head, deal with certain procedures once the application is before the court. There appears to be no infringement in the filing procedure and matters connected thereto and incidental therewith, so as to debar this court from proceeding thereon.

The objection is thus not well founded.

9) ISSUE NO 3 (WORKMAN EMPLOYER RELATIONSHIP AND CONSEQUENT ILLEGAL TERMINATION AND RETRENCHMENT)

The subject matter of the present litigation veers around this question, which when answered, navigates the course of this case.

Determination of this cause is seen in those things which assist the court in arriving at the direct conclusions on the point whether the applicant is workman or not and, in this regard, cavilling of parties and witnesses lend way to the documentary and oral evidences thus tendered.

The Act contains an exhaustive definition of “Workman” as reiterated by authority in **Mukesh K Tripathy VS Senior Divisional Manager LIC AIR 2004 SC 4179**.

Section 2(S) defines a **Workman** in the following terms; -

“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 consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person-

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

(i) Who is employed in the police service or as an officer or other employee of a prison; or

(ii) Who is employed mainly in a managerial or administrative capacity; or

(iii) 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)”

The premise pronounces upon itself the three important aspects;-

- (a) The first part of the statutory definition, widely opens to liberal interpretation and words *manual, unskilled, skilled, technical, operational, clerical or supervisory*, are to be construed **Ejusdem Generis** and not intended to limit the operation.
- (b) The second part invests a legal fiction and attempts to include dismissed workman within the definition. This enables such workman to file applications under the present Act for redressal.
- (c) The third portion contains categories of persons excluded from the operation.

The broad intention of the definition of Workman was to intentionally exclude from its purview the “**managerial force**” and to include the “**labour force**”

The definition demands a construction which advances the avowed object of the Act. (**SK Verma VS Mahesh Chandra (1983)2LLJ492(SC)**)

NOW LET EACH CATEGORY BE ILLUSTRATED BY EXAMPLES.

- i) **Manual;** These are cases where the work demands some physical exertion.
For example; A gardener or *mali* can be said to be a workman within this category.

- ii) **Unskilled;** Where the work is mundane, doesn't require application of any special knowledge.
For example; Conductor of a bus or a peon of the post office.

- iii) **Skilled;** This category demands a skill or special knowledge, coupled with the ability to apply them with dexterity.
For example; A carpenter can be included within this category.

- iv) **Technical;** Where the work demands application of scientific or technical knowledge, acquired through proper training.
For example; Automobile engineers may be included within this category.

- v) **Operational;** These are those services which involve operation of machines or devices.
For example; Pilots are included within this purview.

- vi) **Clerical;** These are area where the work neither demands any excessive mental nor physical work. But the category intends to include those who perform steno type or routine natured work.
For example ; Stenographers attached to the workplace fall in this category.

- vii) **Supervisory;** The term supervisory is only intended to include control over the method of execution of work.
The definition is intended to exclude the managerial staffs.
For example; The power of an individual to sanction leave of workers.

The most disputed area of exclusion and inclusions of persons within the definition of the workman, falls under the last category, that is Supervisory. The reason is simple. The Act defines the word with certain exclusions and a rider in the last portion of the section which lays down the following;

- a) Who is employed in supervisory capacity and draws a wage of Rs 10,000/ (w.e.f 15.9.2010 prior to which it was Rs 1600/-) , or
- b) Exercises functions which are mainly *managerial* in nature.

The definition has evolved through ancestry of decisions and presently, the litmus test applied to unravel whether an employee is a workman or not is to take into account his **basic or primary duties** and the dominant purpose of his employment. **It is the nature of the duties and not the designation, which forms the foundation of conclusions** and consistently held to be the true test of the Workman. **CHAMPDANY INDUSTRIES LTD VS STATE OF WB AND OTHERS 2018LLR137**

It is the facts of each case which would suggest nature of work. PATEL ROADWAYS LTD BHIWARI AND ANR VS SURENDAR KUMAR AND ANOTHER 2016 LLR 848.

The facts are to be deciphered from the documents and oral evidences, which are suggestive of the nature of work held and executed by the applicant. Nature of work is the most important aspect of determination.

If the duties appear to fall in more than one category, that is supervisory and part clerical, the main work shall determine the nature of the employment, notwithstanding the performance of other incidental functions by him. **(Ananada Bajar Patrika Ltd Vs Workman 1960(18) FLR 86)**

For example = If the main functions of the employee are technical and certain ancillary supervisory functions are performed with no powers of authority that is initiating disciplinary proceedings , he would still be termed as an “Workman”. **(S.K.MAINI VS M/S Corona Sahu Co AIR 1994 SC 1824)**

NOW TO THE CASE FACTS. The evidences herein suggest about 8 Exhibits and one witness were tendered by the applicant to prove his fact that he is a workman and was illegally terminated. Conversely OP tendered 6 (series) of documents and 10 witnesses to disprove it.

At the outset, the relevant documents are discussed and analysed.

The appointment letter, which is the rudiment of the case, suggest applicant's appointment to the post of "SPINNING ASSISTANT" and marked herein as **Exhibit 1**. This is his only document which appears germane to the issue that he is a workman. He intends to show by this document that he was appointed to the post of spinning assistant and was never holding supervisorial posts.

This is contradicted by OP by tendering series of documents. At the outset, reliance is placed upon Exhibit A, which is the *resume* submitted by the applicant at the time of his appointment suggesting invitation to "Application for the post of SPG WINDING **SUPERVISOR**". It is pertinent to note here in the point no 7 of the *resume*, he is seen to mention that he had a working experience of 6 year with "Eastern Mfg Co" at the post of **SPG AND WDG Supervisor**. It is submitted by adversary that any sane individual would apply for a higher post to that he is already invested with. Thus, as he was working as supervisor with managerial functions, he is not expected to apply for a lower post. It is added that the post of Spinning assistant is actually a supervisory post with managerial function as inferred from the caption "**SPG AND WDG Supervisor**".

Exhibit B is the attendance register bearing caption "Supervisor *mill no 1*.". This was marked on admission in cross examination of the applicant and there was no objection to the said document. Illustrating this aspect, the PW 1 that is applicant himself has deposed "*I have put my signature in this attendance register appearing caption **Supervisor** of mill No. 1*".

Next, the **Exhibit-D** of the OPW suggests that applicant made requisition for five workers to which **Exhibit D/1** adds that he received five workers. **Exhibit-E and E/1** seems to **suggest his authority to suspend some workers who were submitted to be placed under him.**

These are documents by the OP, intended to show that applicant was a supervisor with managerial capacity.

It seems thus that the applicant has not shown to this court by any documentary evidence, his nature of his job and duties, though the onus rested upon him. Conversely, the OP has tendered documents to suggest the applicant's the post of 'Supervisor'

Turning to the oral evidences, the following have appeared and are germane to the decision of this issue;-

Cross examination of Pw1 dated 30/03/06 :-

"Before joining this company, I worked as spinning and winding advisor in M/S PRABARTAK JUTE MILLS, Kamarhati.

*In my previous employment I was working as a **supervisor***

... My nature of job was primarily clerical.

I was directed to maintain spinning machine

I was not instructed to repair the defective spinning machine

I have also kept the account of production of spinning machine

Spinning machines were operated manually but it worked automatically. I operated the machines. ”

Cross examination of Pw1 dated 2/5/2006 :-

“In Hukum Chand Jute Mills, I was paid HRA @10%. I cannot say whether workers were paid HRA @5%.”

Cross Examination of Pw1 dated 13/06/06

*“I have put my signature in the attendance register bearing the caption “**Supervisor** mill no1 ”. Let the copy of the attendance register be marked as Exhibit B.”*

Examination in chief OPW1 dated 4/1/2007

“In the requisition slips, the applicant has made requisition for “B” categories workman on 1/8/01 . Let the xerox copy of the requisition be marked as Exhibit D. Against the requisition the labour office sent five labourers vide this employment passed on 3/8/01/. Let it be marked as Exhibit D/1 ”

*The **applicant has suspended the works of the two workmen** namely Gouranga Chand and Lalmasanin under these two up lists marked as Exhibit E and E/1.”*

Examination in chief of OPW2 as on 19/12/07

“ I am posted as security officer in the unit Hukum Chand jute mills of M/s Hoogly mills.

He was a supervisor posted at Mill no 1 , spinning department from November 2000 to November 2001.

It is not a fact that I was instructed by my superior official to disallow him to enter into the factory premises...

This restriction in the entry is imposed for the workman category only.”

Examination in Chief of OPW3 as on 3/5/2010

“Myself and the applicant were supervisory staff in the op company ...

Supervisors are entitled to get 10 % of the basic pay towards HRA and the workman are entitled to get 5% of the basic pay towards HRA.”

Examination in Chief of OPW 4 as on 28/9/2010

“As a supervisor he used to get 10% of the basic pay towards house rent allowance. The workman are entitled to 5% of the basic pay towards the HRA.”

Examination in chief of OPW 6 as on 18/1/16

“Exhibit E/2 is the attendance register of the workman of op company. Exhibit E/2 doesn’t contain the signature of OP Maity.

Exhibit C is the payslip of supervisors. Category 4 belongs to category of supervisors.

The applicant has power to recruit for inside recruitment. The applicant had power to suspend the work of the said persons.”

Examination in chief of OPW7 on 29/06/2016

“I worked in the Hooghly Mills Hukum Chand unit

***The post of spinning assistant is a managerial post.** Spinning assistant used to control other workers.*

A managerial staff used to get 10 percent house rent and workman used to get 5 percent house rent .The managerial staff who stay in the mess quarter used to draw house rent and provision of stay in mess quarter was free of cost.”

Examination in chief of OPW 9 as on 10/11/16

“The supervisors used to get 10 percent house rent and the workman used to get 5% house rent. The applicant used to get 10 % house rent “

Examination in chief of OPW10 as on 10/1/17

“The applicant had power to do all the work independently. Supervisor of Hooghly mills project used to get 10% house rent. The workman used to get 5% house rent. Om Prakash used to get 10% house rent.”

All these witnesses are former or present employees of the OP NO 1 company.

Oral evidence of PW 1 /applicant doesn’t elaborate on his nature of duties._The oral evidences tendered by the OP backs their contention of supervisory post of the applicant and it is also furthered that the said functions were invested with managerial powers.

It seems that the Nomenclature of the post held by the applicant primarily goes against the status of the applicant as workman as evident from his wage slip and other document exfacie. Conversely, it is trite law by judicial precedents that nomenclature of post is not conclusive to suggest any inference. Hence his appointment to post of “SPG WINDING SUPERVISOR ” is not suggestive of supervisory post with primary managerial functions.

However, as it is the prime question of contest, it was for the workman to suggest by evidences, oral and documentary, that he performed duties in the nature ‘manual, *unskilled, skilled, technical, operational, clerical or supervisory*’. He has not tendered a single oral or documentary evidence to suggest the nature of job performed by him, denying and disparaging

the contentions of OP that he is a supervisor with managerial functions. His documentary evidence that **is Exhibit 1** doesn't spell out the nature of job entrusted to him. It is only indicative of his salary, period of probation, terms of transfer and like. It doesn't contain any stipulation that his services are placed under any person or supervisor, which conversely feeds the OP's contention of his independent supervisory post with managerial functions. His oral evidence only contains a bare assertion that his work was primarily clerical. What was his work is unknown. Thereafter it is found that he deposed he operated the spinning machines though not single oral evidence accompanied this averment. Conversely, it is found that rest of the workers tendered from the OP 'S end suggest that he was supervisor with powers to requisition staffs and punish them and good number of staffs were placed under him. This has appeared consistently from the examination of the employees of the establishment, who were tendered as OPW .

In absence of a single reference in the evidences to suggest that the applicant is a workman and he was not holding a post of supervision coupled with the nature of work attached to his post, it is also not clear from the evidences on record and documents filed herein as what are his exact nature of performed . Unless the applicant cites what are his primary responsibilities, what is his ancillary job associated with the post, it is impossible for this court to draw any inference on presumptions. The OP has conversely filed series of documents to impeach the position of applicant as workman and suggesting by filling documents that he exercised managerial functions, and he was even invested with the powers to punish workman placed under him **(EXHIBIT E)**

This court hastens to add here that it is a settled proposition presently that there is no presumption in favour of a workman that he falls within any of the categories covered by the definition of workman and this is fortified by catena of cases including the authority in *Burmah Shell Oil Storage and Distribution VS Management Staff Association (AIR 1971 SC 922)*.

Another aspect cannot escape the attention of this court. Witnesses of OPW NO 3,4,7,9, 10 have consistently pointed out three important aspects; -

- (i)Applicant's HRA is 10% and this itself is suggestive of his supervisory and managerial power as workers receive DA @5% only.
- (ii) His mess dues suggest his supervisory and managerial nature of job as workers are not entitled to any mess facilities.
- (iii) He had various allied supervisory managerial powers of requisitioning staffs under him, punishing them etc which are tendered here and marked as Exhibit in the cross examination of the applicant himself.

Curious, as it seems, none of the witnesses were cross-examined exactly on this point as alleged point no i,ii,iii as noted above . This is fatal to the case of the applicant, in terms of established principles of cross-examination, because though the strict rules of evidence are not fastened to the labour courts, nevertheless, the applicant is expected to show his case by proving facts and disproving all important averments which tends to destroy the foundation of his case.

Reference may be made in this regard to principle derived from the English authority **BROWN VS DUNN(1893) R67 (A) , Lord Herschell** :-

“ I cannot help saying that it seems to me absolutely essential to the proper conduct of the cause , **where it is intended to suggest that the witness is not speaking the truth on a particular point to direct his attention to the fact by some questions put in cross examination showing that the imputation is intended to be made , and not to take his evidence and pass it by a matter altogether unchallenged** , and then , when it is impossible for him to explain , as perhaps he might have been able to do so if such questions have been put to him , the circumstances it is suggested , indicate the story he tells ought not to be believed , to argue that he is a witness unworthy of **credit, I have always understood that if you intend to impeach a witness , you are bound , whilst he is in the box, to give him an opportunity of making any explanation which is open to him** ; and as, it seems to me, that is not only a rule of professional practise in the conduct of the case but is essential to fair play and fair dealing with the witness. ”

(Emphasis mine)

The above principle has been consistently followed by the Indian courts in **CHUNILAL DWARKANATH VS HARTFORD FIRE INSURANCE COMPANY LTD AND ANR, SMT HARNAM KAUR VS SHIROMANI GURUDWARA PRABHANDAK COMMITTEE, AMRITSAR.**

The witnesses of OPW who have deposed the points no i, ii, iii above , were never effectively cross examined on these points. These witnesses have support of documents as it indeed appears from the salary slips marks herein as **Exhibit 3** exfacie shows that applicant was drawing HRA of Rs 350/-, which is 10% of his Basic wages. **The averments go unimpeached and uncontroverted.**

Derived from the above, principles and rules of cross examination, it seems that the consistent uncontroverted averments of various witnesses stand to suggest the truth of those facts deposed. In absence of documents, such evidences are relevant as suggestive of managerial capacities of the applicant.

Gauged in the above factual and legal matrix, the applicant cannot strictly be shown to have been covered within the ambit of workman.

Once a person is not shown to be a workman, the question of his termination and retrenchment doesn't arise though this court cannot stop discussing the following.

Reference was made to the act of prevention of applicant from entering the premises of the factory. Witnesses have informed this court that this obstruction applied only to workmen and not to supervisors. Interestingly, there was no cross-examination on this point also. Further the applicant is not found to lodge any complaint with this PS, which generally follows such natural course of events in such cases. There appears not a single instance to suggest that he was actually prevented from resuming his duties. No documents have been tendered by the applicant.

Turning to oral evidences on this point, applicant has examined himself only from his side who has not made much depositions on this point apart from the reiteration of the averments in the written statement.

Rather , the OP has examined certain witnesses on this point who have deposed the following;-

Some of the relevant extracts of the evidence on the said point are reproduced hereunder ;-

Cross examination of OPW 1 dated 3/5/2007

"The applicant was working with me in the spinning department and all of a sudden, he stopped attending his duty. Then I came to learn that he had abandoned his service. Presently I am functioning as spinning mill manager."

Examination in chief on OPW1 dated 4/1/2007

"The applicant has stopped his employment on and from Nov. 2001

It is false to say the company refused his employment despite his utter willingness to continue the job."

Examination in Chief of OPW4 dated 28/9/2010

"The applicant worked there for one year that is up to 3/11/2001. The applicant abandoned his job wef 4/11/2002 . thereafter the applicant never reported to duty."

Cross Examination of OPW5 dated on 8/7/15

"Since the concerned workman had not joined his duty it was my presumption that he left his job as mentioned in para 9 of affidavit in chief."

Examination in Chief of OPW 7 dated 29/6/16

"The op company never issued any termination letter to the applicant from 4th November 2001 the applicant did not continue his job voluntarily"

Hence, as far as his retrenchment /dismissal is concerned, it is only by verbal statement that is laid before this court that too from the end of OP. These witnesses have been found to depose that applicant has voluntarily abandoned his job. There was no cross examination on this point. Not single documentary evidence rests in favour of termination. The statement is also not supported by oral evidences. In the given premise, it goes without much apparent contradictions that averments of dismissal, retrenchment etc fall short of any proof.

Hence these issues are set to rest against the applicant.

10) ISSUE NO 4 (OP NO 2 LIABILITY IN THE PRESENT FACTS)

The anvil of this issue rests upon **Exhibit F**, which is the agreement of acquisition of OPNO1 by the OPNO2.

Shorn of otiose details, the following recitals are germane to the just cause of the present facts; -

“..... 5. The cut-off date for the liability transfer and running up the mill shall always be treated as on 15th July 2009

6. all the liabilities till the cut-out date of the said Industrial undertaking (Hukum Chand) except the gratuity liability shall be of the first Party. The second party has agreed assume and bear all the liabilities, past present and future on account of the gratuity payable to the workman of the said industrial undertaking (Hukum Chand).....”

The present dispute in hand dates back to the year 2001 when there was no such acquisition by the OPNO2. The recitals of Exhibit F, marked herein without any objection suggest that the cutoff date for all the liabilities of the later commences on 15th July 2009. This being the position, in absence of any expressed contract of assumption of pending disputes or otherwise, the OPNO2 cannot be fastened with the liabilities arising in disputes in the year 2001, unlike in case of gratuity, which marks an exception to the general operation of recital(point no 5).

Hence the op no 2 cannot be said to be liable for the differences herein.

SEQUITER

Gauged in the above factual and legal matrix, it seems an irresistible conclusion that the applicant has failed to show his case and the following has emerged from discussions on issues; -

SL NO	ISSUE OF REFERENCE	DECISION
1.	<i>Whether the present cause is within the jurisdiction of this court</i>	YES
2.	<i>Written Statement filed by the applicant under section 10(1B)(d) of the Industrial Disputes Act 1947 (Bengal Amendment) maintainable in-law</i>	YES
3.	<i>Whether there is jural relationship between the applicant and the Opno1 as employee and he was consequently retrenched or illegally terminated</i>	NOT SHOWN
4.	<i>Whether OP NO 2 can be fastened with any liability in this case</i>	NO
5.	<i>Is the applicant entitled to get relief as prayed</i>	On the above discussions, no relief can be accorded

The rudimentary preoccupation of workman in his plea of relief under industrial jurisprudence, as it seems his inevitable and earliest preoccupation, manifests itself in proof of the status of workman. This is offered to the courts through facts suggested in evidence. Once satisfied even apparently, Courts and Tribunal's cannot bid a pause at any given stage, without securing benefits of the legislation to its beneficiaries. However, if not shown, the accordance of this status is not complete and case falls to the ground like pack of cards, as in the present case. Hence the case of the applicant fails.

IT IS ORDERED

The application under Section 10(1 B)(d) of the Industrial Dispute Act 1947 be and the same
Is hereby

DISMISSED ON CONTEST WITHOUT ANY ORDERS AS TO COST.

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

The case is hereby disposed off.

The parties are directed to receive necessary documents on production of copies in considerable
time lest the case file shall be consigned to case file preservation room.

Note in the relevant register.

TYPED BY

Sd/-

(SREEJITA CHATTERJEE)
JUDGE

Sd/-

(SREEJITA CHATTERJEE)
JUDGE
SECOND LABOUR COURT,
KOLKATA
18.09.2024