

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./ 1230 /(LC-IR)/22015(12)/28/2018

Date: 17/12/2024

ORDER

WHEREAS an industrial dispute existed between M/s. Bowreah Jute Mill Private Limited and their workman Shri Kishore Mondal regarding the issues being a matter specified in the second schedule of the Industrial Dispute act, 1947 (14 of 1947);

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


AND WHEREAS the said Second Industrial Tribunal has submitted to the State Government its Award dated 05.12.2024 in Case No. 06/2018 on the said Dispute vide E-mail dated 13.12.2024.

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/ 1230 /1(5)/(LC-IR)/ 22015(12)/28/2018

Date: 17/12/2024

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

1. M/s. Bowreah Jute Mill Private Limited
2. Shri Kishore Mondal.
3. The Asstt. Labour Commissioner, W.B. In-Charge, Labour Gazette.
4. The OSD & EO Labour Commissioner, W.B., New Secretariat Building, 11<sup>th</sup> Floor, 1, Kiran Sankar Roy Road, Kolkata – 700001.
5. The Deputy Secretary, IT Cell, Labour Department, with the request to cast the Award in the Department's website.


  
Assistant Secretary

No. Labr/ 1230 /2(3)/(LC-IR)/ 22015(12)/28/2018

Date: 17/12/2024

Copy forwarded for information to :-

1. The Judge, Second Industrial Tribunal, N. S. Building, 3<sup>rd</sup> Floor, 1, K. S. Roy Road, Kolkata - 700001 with reference to his E-mail dated 13.12.2024.
2. The Joint Labour Commissioner (Statistics), West Bengal, 6, Church Lane, Kolkata - 700001.
3. Office Copy.

  
Assistant Secretary

**Before the 2<sup>nd</sup> Industrial Tribunal, Kolkata**

**Present : Shri Partha Sarathi Mukhopadhyay, Judge  
2<sup>nd</sup> Industrial Tribunal, Kolkata**

**Case No. 06/2018**

**Under Section 2A(2) of The Industrial Disputes Act, 1947**

**Shri Kishore Mondal**

**Petitioner**

**Vs.**

**M/S. Bowreah Jute Mill Private Limited**

**Opposite Party**

**Date: 05.12.2024**

**J U D G E M E N T**

The case of the petitioner, in short, is that he had been working continuously in the Finishing Department of the OP company for more than 240 days in every year and suddenly on 17.02.2016 the OP company issued one show cause letter to him and other 26 workers with false allegations and then those workers alongwith the petitioner were arrested by the Police in a case under Section 107 & 144 of the Cr. P.C. and the petitioner was released from jail on 07.04.2016 and the said criminal case is still pending and then one enquiry was held by the OP company and the petitioner used

to attend the said enquiry and then on 14.03.2017 the enquiry officer submitted his enquiry report but the OP company did not dismiss him from his service and he went to resume his duty but he was refused to join by the OP company and other workers admitted their guilt and they were allowed to join and he was not allowed to join because he did not admit his guilt and then he filed one case before the Assistant Labour Commissioner, Uluberia and after his termination he has not been gainfully employed elsewhere and he has no source of income and on these grounds he has filed this case praying for his reinstatement with full back wages and other benefits.

The OP company has contested this case by filing a written statement denying therein all the material allegations of the petitioner.

The OP company has submitted in its written statement that the case is not maintainable in law and since 12.08.2003 the petitioner had been working as a *registered badli* workman and on 16.02.2016 he took part alongwith other employees in the violent activities against the OP company and he was arrested by the Police and then the OP company submitted charge sheet against the said employees and held one domestic enquiry and other employees admitted their guilt but the petitioner did not admit his guilt and after the domestic enquiry, the OP company did not take any decision against the petitioner and if the petitioner joins his duty, the OP company has no objection and he had never completed 240 days in a year during his working period and the petitioner is gainfully employed after his termination and the petitioner has not been terminated from his service by the OP company and all the allegations of the petitioner are false.

Hence, the OP company has prayed for dismissal of this case.

Considering the entire materials on record the following issues have been framed in this case in order to arrive at a conclusion : -

- i. *Whether the refusal of employment of workman Sri Kishore Mondal by the management of the company M/s. Bowriah Jute Mills Ltd. with effect from 20.03.2016 is justified.*
- ii. *Whether the instant case/dispute as an industrial dispute U/s. 2A of the Industrial Disputes Act, 1947 is an industrial dispute.*
- iii. *Whether the instant case is maintainable/sustainable and if the workman Kishore Mondal is entitled to get any protection under the Industrial Disputes Act, 1947.*
- iv. *Whether the applicant had been in continuous service under the company M/s. Bowriah Jute Mills Ltd. vis-à-vis Section 25B of the Industrial Disputes Act, 1947.*
- v. *Whether the workman/applicant Kishore Mondal is entitled to get any interim relief.*
- vi. *To what other relief, if any, the workman/applicant Kishore Mondal is entitled?*

### **Decision with reasons**

#### **Issue nos. 1 to 6**

All the issues are taken up together for consideration for the sake of convenience

In order to prove the case the petitioner has examined himself as the PW1 and proved some documents while the OP company has examined two witnesses and proved some documents.

Admittedly the petitioner was appointed on 12.08.2003 by the OP company as *registered badli workman* and on 16.02.2016 he was arrested by the Police in a criminal case as he participated in a crime alongwith others against the OP company and other employees who were also involved in the said criminal case were given appointment later on by the OP company.

Admittedly the OP company started one domestic enquiry against all the employees including the petitioner who were involved in the said criminal activities on 16.02.2016 against the OP company and one enquiry report was submitted after the enquiry **but till now the OP company did not take any decision against all the said employees including the petitioner on the basis of the said enquiry report.**

On the contrary, in its written statement the OP company has admitted that the petitioner has not yet been terminated from his service by the OP company and he can join in his job in the OP company at any time.

According to the written statement of the petitioner, since joining in the Finishing Department of the OP company the petitioner had been working continuously by attending his duty over 240 days in each calendar year till his termination on 20.03.2016.

According to the written statement of the OP company, **since** 12.08.2003 the petitioner had been working as the *registered badli workman* in the OP company till his termination and during that period he never completed 240 days continuous working in any calendar year.

So the petitioner has taken a plea that since his joining in 2003 till his termination 20.03.2016, he worked in the OP company continuously by

attending his duty over 240 days in each calendar year while it is the case of the OP company that since 12.08.2003, the petitioner had been working but he did not complete 240 days of working in every calendar year.

So the petitioner has stated about his continuous service from 12.08.2003 to 20.03.2016 while the OP company has also stated the same but has stated that during that period in any calendar year the petitioner did not complete 240 days working continuously.

So both parties of this case have to prove their respective claims in this case regarding completion or non-completion of 240 days working in any calendar year.

The petitioner has produced and proved some pay slips as Exhibit- 7 series to show his years of service in the OP company but the said pay slips do not cover the tenure of service of the petitioner from 12.08.2003 to 20.03.2016 as per his case to show his working for more than 240 days in respect of the entire period of service and he has not produced all the pay slips or any other documents to show that since his joining in 2003 till his termination on 20.03.2016, he completed working of 240 days continuously in any calendar year during that period but he has claimed that he had worked continuously for that period. So it is clear that the petitioner has failed to prove that he completed working of 240 days continuously in any calendar year during that period.

The OP company has admitted that since 12.08.2003 the petitioner had worked in the OP company till his termination but he did not complete working of 240 days continuously in any calendar year during that period.

So from the cases of both sides it is admitted that since 12.08.2003 till his termination on 20.03.2016 the petitioner worked continuously.

As the OP company took the plea that the petitioner did not complete working of 240 days continuously in any calendar year during that period, it was burden to the OP company to prove it but the OP company has not produced any document to prove it though in the office of the OP company documents were available to prove that the petitioner did not complete working of 240 days continuously in any calendar year during that period. So, it is clear that the OP company also has failed to prove that the petitioner did not complete working of 240 days continuously in any calendar year during that period.

According to Section 25-B(1) of The Industrial Disputes Act, 1947, a workman shall be said to be in continuous service for a period if he is, **for that period**, in uninterrupted service, including service which may be interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal or a lockout or a cessation or work which is not due to any fault on the part of the workman.

According to Section 25-B(2)(a)(ii) of The Industrial Disputes Act, 1947, when a workman is **not** in continuous service within the meaning of Clause (1) for a period of 01(one) year or 06(six) months, he shall be deemed to be **in continuous service** under an employer for a period of one year if the workman, during a period of 12(twelve) calendar months preceding the date with reference to which calculation is to be made, has actually worked for not less than 240 days.

So, the provisions of Section 25-B (1) and Section 25-B(2)(a)(ii) of The Industrial Disputes Act, 1947, are not same regarding the continuous

service of a workman. If a workman claims continuous service for a period of his working days, he has to show that the said service was an uninterrupted service as per Section 25-B(1) while when a workman is **not** in continuous service according to Section 25-B(1) for a period of 01(one) year and if he claims continuous service for that period of 01(one) year, he has to prove that he has actually worked for not less than 240 days during a period of 12(twelve) months preceding the date of calculation according to Section 25-B(2)(a)(ii) of The Industrial Disputes Act, 1947.

So completion of work of not less than 240 days in a year is necessary when the workman will claim his continuous service for 01(one) year according to Section 25-B(2)(a)(ii) of The Industrial Disputes Act, 1947 while according to Section 25-B(1) of this Act, **the period of one year or six months is not** mentioned and this section mentions ***“for a period if he is for that period in uninterrupted service”*** and this term ***“for that period”*** means the period of working of the workman as per his claims in the case.

As the OP company has failed to prove that from 12.08.2003 to 20.03.2016 i.e. about 13 years the petitioner did not complete working of 240 days continuously in any calendar year during that period, I hold that the petitioner worked continuously during the said period.

The OP company has taken a plea that there was no question of any continuity of service of the petitioner as he was the *registered badli worker* but though the petitioner admittedly worked for a long period of about 13 years from 12.08.2003 to 20.03.2016 and though all the documents of the said service is in the custody of the OP company, the OP company has not produced any such paper to show **when and in which year** the petitioner was engaged as the registered badli worker and **when in that year** his service came to end and said service was terminated in that year before 240 days and then **again on the next year** when he was again engaged by the



OP company as registered badli worker and **when in that next year** his service was terminated again before completion of 240 days.

In this case the OP company has not produced any calculation sheet from 12.08.2003 to 20.03.2016 to show that in each year from 12.08.2003 to 20.03.2016, the petitioner was engaged on a specific date and his service was terminated for completion of stipulated period before 240 days in each year and again on the next year he was re-engaged and again terminated in that year before completion of 240 days after expiry of the stipulated period and so on ... till 20.03.2016.

The written statement of the OP company also does not mention any such calculation for the abovementioned about 13 years from 12.08.2003 to 20.03.2016. On the contrary, the OP company has **generally** stated in its written statement that there was no continuity of service of the petitioner for that period due to expiry of the stipulated period.

There cannot be one engagement and one stipulated period for the said service of the petitioner for the said 13 years. The OP company had to prove said engagement and stipulated period for each year of said 13 years in order to prove its case of discontinuity of service but the written statement of the OP company does not mention it and there is also no evidence in this respect.

If it is one engagement during the said 13 years for the petitioner without any stipulated period, then it is impliedly proved that the petitioner was in continuous service for said period of 13 years till his termination on 20.03.2016.

So, considering the above materials on record I hold that the petitioner worked continuously for the said 13 years in the OP company as the *registered badli worker*.

Regarding refusal by the OP company to allow the petitioner to join his duty on 20.03.2016, the petitioner has stated about the same in his written statement and evidence and in its written statement and evidence the OP company has denied the same.

The petitioner has not produced any document to show that on 20.03.2016 he was not allowed to join his duty by the OP company and he has orally stated about the said matter.

The OP company has stated that the petitioner did not attend the OP company to join his duty and he has never been terminated by the OP company till now and if he is interested to join his duty, he may join on any day and intentionally he did not join his duty.

According to the West Bengal Amended Section 2A of the Industrial Disputes Act, 1947, refusal of employment of a workman by his employer has to be considered as termination of service of the said workman.

The OP company has taken a plea that the company has never terminated the petitioner from his service but the OP company has not produced any document to show that it issued any letter to the petitioner asking him to join his duty in the OP company.

The OPW No. 01, *Sri Jagabandhu Mondal* has stated in his cross-examination that he knows that if any workman does not come to work for about 06/07 days, the OP company will issue show cause notice or charge

sheet to him according to the standing order of the OP company and the OP company never gave any letter to the petitioner informing him that his service had never been terminated by the OP company and as the petitioner did not attend his duty since 06.05.2019, the OP company issued two letters to him dated 06.06.2019 and 06.07.2019 but he has not filed the said two letters in this case.

The OPW No. 02, *Sri Barun Kumar Mazumdar* has stated that he does not know whether the OP company gave any letter to the petitioner asking him to join his duty and he (OPW2) has not any document to show that the OP company asked the petitioner to join his duty as he had never been terminated by the OP company and since 08.02.2021 till 09.07.2023 the OP company did not give any letter to the petitioner for his absence in duty and the OP company did not give any letter to the petitioner to know as to why he had not been attending his duty since 06.05.2019 and the OP company did not issue any notice to the petitioner when on 12.07.2022 he went to the mill to join his duty and when he was offered his usual place of work i.e. *Hirakal machine*, he refused to work there.

So, considering the above evidences of the OPW1 & OPW2, I hold that according to the standing order of the OP company, the OP company did not issue any letter or notice or show cause notice to the petitioner asking him to join his duty when he was allegedly on absence.

The OP company has not taken a plea or proved any document to show that till now the petitioner has been working in the OP company as he has never been dismissed from his service by the company.

So, considering the above evidences of the PW1 and the OPW1 & OPW2 regarding refusal of employment, I hold that on 20.03.2016 the OP company

did not allow the petitioner to join his duty and thereafter the petitioner was not allowed to work there and **this circumstance means that on 20.03.2016 the service of the petitioner was terminated by the OP company by refusal of employment.**

The PW1, Kishore Mondal, the petitioner of this case, has stated about his case in his affidavit in chief and proved some documents and in his cross-examination he has stated that during his entire service period the company never made any charge sheet against him and he was arrested by Police in a case lodged by the OP company and in his affidavit he has mentioned that he used to work continuously in the OP company and he did not get any enquiry report and he does not know whether any enquiry was held by the OP company against him but the OP company called him.

The OPW1, has stated in Court that the OP company has not submitted the standing order in this case and the OP company did not submit any document in this case to show that the company chargesheeted the employees with the petitioner and conduct a domestic enquiry wherein all the employees admitted their guilt and prayed for mercy and there is no document to show that the petitioner participated in the domestic enquiry held by the OP company.

The OPW2 has stated in his cross-examination that he has not filed any document to show that during domestic enquiry the petitioner was found guilty of the charges and there is no document to show that the letters dated 06.06.2019, 06.07.2019, 10.07.2019 & 16.07.2019 (Exhibit- G series) were received by the petitioner.

The Hon'ble Supreme Court has held in a case namely Divisional Manager, New India Assurance Company Limited Vs. A. Sankaralingam as reported in

AIR 2009 SC page 309 that *an employee employed on part-time basis but under control and supervision of the employer is a workman and he is entitled to benefit of continuous service under Section 25-B and protection under Section 25-F of The Industrial Disputes Act, 1947.*

The Hon'ble Supreme Court has held in a case namely Management, W.B. India Limited Vs. Jagannath as reported in AIR 1974 SC page 1166 that *even a temporary workman if retrenched, has right to claim retrenchment compensation.*

The Hon'ble Supreme Court has held in a case namely Ramesh Kumar Vs. State of Haryana as reported in (2010) 2 SCC page 543 that *a casual employee if he has completed 240 days of service in preceding 12 months or not, then his service cannot be terminated without giving any notice or compensation in lieu of it in terms of Section 25- F of The Industrial Disputes Act, 1947.*

The OP company has not produced any documents to prove that at the time of termination of service of the petitioner on 20.03.2016, the OP company followed any of the mandatory conditions of Section 25-F of The Industrial Disputes Act, 1947. Accordingly, I hold that the petitioner was illegally retrenched by the OP company on 20.03.2016 and in view of the abovementioned decisions of the Hon'ble Supreme Court, though the petitioner was a registered badli worker, the OP company was bound to follow the conditions of Section 25-F of The Industrial Disputes Act, 1947 at the time of termination of the petitioner on 20.03.2016.

Admittedly the petitioner worked as the registered badli worker in the OP company from 12.08.2003 to 20.03.2016 i.e. for about 13 years and he was not made permanent workman and according to the *fifth Schedule of The*

*Industrial Disputes Act, 1947*, this act of the OP company is unfair labour practice because the OP company appointed the petitioner as the registered badli worker on 12.08.2003 and allowed him to continue as such for the said long 13 years with the object of depriving him of the status and privileges of the permanent workman.

The following decisions of the Hon'ble Supreme Court are discussed for consideration in this case :-

- i) *The Hon'ble Supreme Court has held in a case namely Narottam Chopra Vs. Presiding Officer as reported in 1988(36) BLJR page 636 that if the services of an employee are terminated in violation of Section 25-F of The Industrial Disputes Act, 1947, the order of termination is rendered ab initio void and the employee is entitled to continuity of service alongwith his back wages.*
- ii) *The Hon'ble Supreme Court has held in a case namely Promod Jha and Ors. Vs. State of Bihar and Ors. as reported in Indian Kanoon in case no. – Appeal(Civil 4157) of 2000 that payment of tender of compensation after the time when the retrenchment has taken affect would vitiate the retrenchment and non-compliance with the mandatory provision which has a beneficial purpose and a public policy behind would result in nullifying the retrenchment and compliance of clauses (a) & (b) of Section 25 strictly as per the requirement of the provision is mandatory and compliance with Clause (c) is directory.*
- iii) *The Hon'ble Supreme Court has held in a case namely Anoop Sharma Vs. Executive Engineer, Public Health, Division No. 01, Panipath (Haryana) as reported in (2010)2 Supreme Court cases(L &*

*S) page 63 that termination of service of an employee by way of retrenchment without complying with the requirement of giving one month's notice or pay in lieu thereof and compensation in terms of Sections 25-F(a) & (b) has the effect of rendering the action of the employer as nullity and the employee is entitled to continue in employment as if his service was not terminated.*

- iv) The Hon'ble Supreme Court has held in a case namely Raj Kumar Vs. Dir. of Education and Ors. In Civil Appeal No. 1020 of 2011 reported in Indian Kanoon that the retrenchment of the appellant from his service is bad in law and the company is directed to reinstate the appellant at his post alongwith back wages and consequential benefits from the date of termination of service.*

In view of the above decisions of the Hon'ble Supreme Court I hold that the petitioner is entitled to be **reinstated** in his **previous post and place** under the OP company.

Record shows that in his Written Statement the OP company took a plea that the petitioner was never terminated from his service though domestic enquiry was held against him and no action was taken by the OP company on the basis of said enquiry and the petitioner may join in his duty if he is interested and the OP company has no objection in this matter and then according to the direction of this Tribunal the petitioner joined his duty on 04.12.2018 but the case continued and thereafter again he was not allowed to work and again by order dated 08.07.2022 of this Tribunal, the petitioner went to resume his duty but the OP company asked him to operate hirakal machine for which he did not work there.

In its written statement the OP company has mentioned two types of submissions - - on one hand the OP company has challenged the case of the petitioner while on the other hand it has submitted that it has never terminated the petitioner from his service and though the enquiry was held against him, it has taken no decision on the basis of said enquiry against him and he may join any day in the OP company if he is interested. These two types of submissions of the OP company are contradictory to each other because there is nothing on record to show that after his termination he has still been working in the OP company and the OP company, by a letter, asked him to join in his service again and I have already discussed above on the basis of the evidences of this case that the OP company has failed to prove that during the entire period of 13 years the petitioner did not complete working of 240 days in those years though the OP company has admitted that the petitioner worked for the said 13 years in the OP company.

Considering such contradictory submissions of the OP company, I hold that the decisions of the Hon'ble Courts cited by the OP company are not applicable in this case due to difference of facts and circumstances of this case with the given cases in those decisions of the Hon'ble Courts.

There is no cogent evidence on record to show that after termination of his service the petitioner has been working elsewhere for his gain.

In view of the abovementioned decisions of the Hon'ble Supreme Court, the materials on record of this case and the abovementioned discussion on the basis of the materials on record, I hold that without any justified cause and without any fault of the petitioner, the OP company terminated his service.



According to Section 25-T of The Industrial Disputes Act, 1947, “*no employer or workman or a Trade Union shall commit any unfair labour practice and according to Section 25 U of The Industrial Disputes Act, 1947, for committing unfair labour practice he will be punishable with imprisonment for a term which may extend to 06(six) months or with fine which may extend to Rs. 1000/- or with both.*”

The above conduct of the OP company sufficiently proves that by way of victimisation and not in good faith but in the colourable exercise of the employer’s rights according to the *Fifth Schedule under The Industrial Disputes Act, 1947*, the OP company has committed unfair labour practice to terminate the petitioner of this case and the OP company has also committed unfair labour practice by allowing the petitioner to continue his service as registered badli worker for a long period of 13 years in order to deprive him of the status and privileges of a permanent worker under this Fifth Schedule.

Section 25-U of The Industrial Disputes Act, 1947 is criminal in nature because it mentions about imprisonment and fine but in this case no criminal procedure is followed against the OP company for committing unfair labour practice upon the petitioner. Instead, the OP company is directed to pay compensation to the petitioner for exercising unfair labour practice upon the petitioner.

As the OP company has committed unfair labour practice to terminate the petitioner of this case, the OP company is directed to pay Rs. 3,00,000/- as compensation to the petitioner.

As the OP company has violated the mandatory provision of Section 25-F of the Industrial Disputes Act, 1947, the OP company is directed to pay Rs. 3,00,000/- as compensation to the petitioner

The Industrial Disputes Act, 1947 was brought on the Statute Book with the object to ensure **social justice** to both the employer and employees and advance the progress of industry by bringing about the existence of harmony and cordial relationship between the parties and on the **Principle of Beneficial Legislation**, this Act has been created but in this case the OP company wilfully, whimsically and illegally has terminated the service of the petitioner without any lawful excuse.

In view of the above discussions made on the materials on record I hold that the petitioner has to be reinstated in his previous post and place and as there is no proof to show that after termination of his service, he used to work elsewhere for money, I hold that he is entitled to get full back wages alongwith other consequential benefits.

Hence it is,

### **ORDERED**

That the case no. 06/2018 under Section 2A(2) of The Industrial Disputes Act, 1947 is allowed on contest against the OP company with a compensation of Rs. 3,00,000 and Rs. 300000/-, total Rs. 6,00,000/- (Six lakhs) to be paid to the petitioner by the OP company within 30 days from this date of order.

It is hereby declared that the order of termination dated 20.03.2016 passed by the OP company against the petitioner is illegal, invalid, baseless and unjustified.

The OP company is directed to reinstate the petitioner in his previous post and previous place of work **immediately**.

The OP company is directed to pay the full back wages alongwith other consequential relief from **20.03.2016** till the date of payment with a compound interest of 10% per annum on the entire arrear amount of back wages and consequential reliefs to the petitioner within 30 days from this date of order.

Let this judgement and order be treated as an Award.

According to Section 17AA of The Industrial Disputes Act, 1947, let a certified copy of this award be sent to the Principal Secretary to the Government of West Bengal, Labour Department, New Secretariat Buildings, 1, K.S. Roy Road, Kolkata 700 001 for information, and let a certified copy of this award be supplied to each of both the parties of this case, free of cost, forthwith for information.

The case is disposed of today.

Dictated & corrected by me.

Judge

(Shri P.S. Mukhopadhyay)  
Judge  
2<sup>nd</sup> Industrial Tribunal, Kolkata