

In The Third Industrial Tribunal,
New Secretariat Buildings, Kolkata

Case No. 19/2020 u/s. 10(1B)(d)

Present: Sri Mihir Kumar Mondal
Judge, 3rd Industrial Tribunal
Kolkata

Ashok Kumar Adak Applicant
Residing at Vill. Gumodanga, P.O. Mollaber, Dist. Hooghly.

-Vs.-

M/s. Ganges Vally Foods Pvt. Ltd., OP/Company
Vill. Jagannathpur, P.O. Bamunari, P.S. Dankuni,
Hooghly.

A W A R D

Dated : 17.12.2024

This is a case u/s 10(1B)(d) of the Industrial Dispute Act, 1947. The instant case was filed before this Tribunal on 22.01.2021. According to the Order No.1 dated 22.01.2021, the applicant Ashok Kr. Adak filed the application u/s. 10(1B)(d) of the Industrial Disputes Act, 1947 dated 11.12.2020 before this Tribunal on 22.01.2021. The applicant/workman on 22.01.2021 filed an application in Form-T coupled with written statement i.e. application u/s. 10(1B)(d) of the Industrial Disputes Act, 1947. Form-S under Rule 12A(3) of the West Bengal Industrial Dispute Rules, 1958 containing certificate dated 11.06.2019 issued by the Conciliation Officer and Labour Commissioner was annexed with the Form-T and application u/s. 10(1B)(d) of the Industrial Disputes Act, 1947.

The instant case has been started on the basis of an application u/s. 10(1B)(d) of the Industrial Dispute Act, 1947 filed by one Ashok Kumar Adak, a resident of Vill. Gumodanga, P.O. Mollaber, Dist. Hooghly against M/s. Ganges Vally Foods Pvt. Ltd., Vill. Jagannathpur, P.O. Bamunari, P.S. Dankuni, Hooghly raising an industrial dispute. The applicant by filing written statement of the case has stated that he was appointed in the service of the Company (Ganges Vally Foods Pvt. Ltd.) on _____ (*in the application u/s. 10(1B)(d) of the Industrial Disputes Act, 1947 the applicant did not mention the date of his appointment since the place for putting the date remains blank*) and his service was confirmed by the Company w.e.f. 01.07.1998 according to its letter dated 29.06.1998. It has been stated in the 'Application' that while he was appointed in the service of the Company, he was enrolled under ESI Scheme and he was made subscriber of EPF and he had been discharging his duties to the satisfaction of the Management of the Company without any iota of blemish and the Management of the Company never had got any chance to proceed against him for any reason whatsoever. It has been stated that he used to perform his duties under the instruction of his higher authorities and he had no supervising duties. It has been stated in the application that although the Ganges Vally Foods Pvt. Ltd. is a Company under the provision of the Companies Act, 1956 but the said Company had been running the business without following the law of the land and thus inspite of earning huge profits, the Management of the Company used to deprive its workmen in respect of their legal and legitimate claims. It has been stated that he including Ganges Vally Foods (P) Ltd. Shramik Karmachari Union (Permanent), of which he is a member, used to raise protest against such unethical

activities of the Management of the Company. The said Union i.e. Ganges Vally Foods (P) Ltd. Shramik Karmachari Union (Permanent) is a duly registered trade union under the Trade Union Act, 1926 having its registration no. 29167. It has been stated that he with a view to make the service condition better, actively took part in the activities of the trade union and thus he became the eye sore of the Management and further the Management persuaded him to leave the trade union activities and as he did not act as a puppet of the Management, it started to threaten him to dismiss from his service. It is stated that the Management of the Company all on a sudden raising some false issues, issued notice of temporary closure/stoppage w.e.f. 04.03.2019 under clause 17 of the Certified Standing Orders. Accordingly, he and Ganges Vally Foods (P) Ltd. Shramik Karmachari Union (Permanent) raised strong protest against the decision of such illegal temporary closure/stoppage of the factory w.e.f. 04.03.2019 by the Company by way of issuing notice. It has been stated that since he raised voice against such illegal (as alleged) temporary closure/stoppage of the factory under the aegis of 'Union', he fetched the ire of the Management of the Company and thus the Management issued 'Dismissal Order' on 04.03.2019 with immediate effect addressed to him but the said Dismissal Order was pasted/affixed on the main gate of the factory but prior to issuance of Dismissal Order dated 04.03.2019, either no show cause notice was issued to him or no charge sheet was issued as well as no disciplinary proceeding was started against him. It has been stated that Dismissal Order was issued to him directly without giving him an opportunity for self-defence, which he is entitled as per the provision of law. It has been stated that although he all along completed his allotted jobs without any blemish as well as he performed his duties efficiently and honestly but he has been dismissed from his service in unjustified and unethical manner. It has been stated that after his dismissal no compensation has been paid to him according to the law and after his dismissal from his service, he remains unemployed and his last drawn salary was Rs.17,560/- per month. It has been stated that he has been passing his days under financial crisis along with his family members and he along with his family members are living upon the charity of near relatives, friends, etc. He has prayed for passing an Award holding that his dismissal from the service w.e.f. 04.03.2019 is illegal, unjustified and arbitrary as well as he has prayed for a direction upon the Company to reinstate him with full back wages and for granting other consequential benefits.

The OP/Company i.e. M/s. Ganges Vally Foods Pvt. Ltd. has contested this case by filing Written Statement. The OP/Company by its Written Statement has denied all the material allegations levelled against it by the applicant/workman. It is seen that the OP/Company has apportioned its Written Statement in three parts i.e. Part-I, Part-II and Part-III. In Part-I of the Written Statement, the OP/Company has claimed that the instant case is not maintainable in the eye of the law because this case has been filed after the statutory period of filing of such kind of cases as mentioned in (West Bengal Amendment) in Section 10(1B)(d) of the Industrial Disputes Act, 1947. In the Part-I of the Written Statement it has been pleaded that the time framed in the Section 10(1B)(d) of the Industrial Disputes Act, 1947 i.e. the statutory period of filing such case cannot be extended in any manner whatsoever. It has been stated that the prayer of the applicant/workman in this case is not maintainable in the eye of the law as the functioning of the factory of Ganges Vally Foods Pvt. Ltd. has been closed down permanently w.e.f. 04.08.2020 and thus such prayer became *non-est* in the eye of the law. It has been also pleaded that the prayer made by the applicant/workman became unenforceable due to permanent closure of the factory w.e.f. 04.08.2020 as well as no judicial forum or other forum is created under the provision of the Industrial Disputes Act, 1947 and also no statutory authority is vested with the jurisdiction to deal with the issue of closure of a factory while considering an action taken against a workman under

disciplinary measure. In Part-II of the Written Statement it has been stated that the ill act carried on by applicant/workman together with other dismissed employees attracted the sub-clauses (1), (9), (10), (13), (14), (15) of clause 21 of the Certified Standings Orders of the OP/Company. The OP/Company issued Dismissal Order dated 04.03.2019 to the applicant/workman. It has been stated that the Dismissal Order was issued in the midst of reign of terror, chaotic situation as well as during the prevalence of disturbing situation in and around the factory premises caused by the applicant/workman along with other dismissed workmen. It has been stated that the applicant/workman along with other dismissed workmen threatened the Management of the OP/Company with dire consequences, such as causing bodily injury to the persons of the Management and their wrongful confinement as well as they criminally intimidated the Management staffs by way of violent demonstration, defying the order of competent authority etc. Due to such extreme violent situation the Management fell into a helpless condition and thus they had no other alternative but to dismiss the applicant/workman along with others. It has been stated that due to worst situation there was no scope to conduct any enquiry. The Management staffs were finding it difficult to get rid of such worst situation and to ensure the personal safety of each and every employee working in the factory. The Management levelled various charges upon the applicant/workman and it is prayed that this Tribunal would give a reasonable opportunity to the OP/Company to prove the charges levelled against the applicant/workman by adducing both oral and documentary evidence. In the Part-III of the Written Statement it has been stated that the OP/Company has its factory situated at Village-Jagannathpur, P.O. Bamunari, District-Hooghly and in the said factory manufacturing of biscuits was carried on. The OP/Company had been passing through worst financial problem and it had to suffer huge loss during certain years before declaration of permanent closure of the factory. It has been stated that inspite of huge financial loss, the Management of the OP/Company had tried to accommodate the employees according to the capacity and opted to bear liabilities, financial and otherwise, in respect of the employees who would not be able to accommodate in the job of the factory. It has been stated that the Management of the OP/Company used to intimate the financial condition of the business of the OP/Company as well as the viability of the OP/Company. It has been stated that in view of worst economic condition of the organization, the Management of the OP/Company had no other alternative but to float a Voluntary Retirement Scheme in the name and style Voluntary Retirement Scheme Manual For Employees, 2018. It has been claimed that after floating the Voluntary Retirement Scheme of 2018, total 27 numbers of employees availed the benefit of the same. It has been mentioned that on 24.01.2019 representative of all three trade unions namely Ganges Vally Foods Pvt. Ltd. Shramik Union, Ganges Vally Foods Pvt. Ltd. Workers' Union and Gages Vally Foods Pvt. Ltd. Employees' Union had a meeting with the Management of the OP/Company relating to the Voluntary Retirement Scheme and pursuant to the discussion, the Management of the OP/Company on 24.01.2019 floated another scheme in the name and style of Voluntary Retirement Scheme Manual For Employees, 2019. It has been stated that all total 19 numbers of employees availed the benefit of VRS scheme, 2019. It has been mentioned that due to increase in the cost of production, the OP/Company was deprived to get work-order for a long period and in the result, the Management had to take the decision to stop the production from 24.01.2019. The intimation regarding stoppage of production was informed to the Assistant Labour Commissioner, Serampore, Hooghly by letter dated 25.02.2019. It has been mentioned that a discussion in between the Management of Ganges Vally Foods Pvt. Ltd. and the office bearers of three separate trade unions operating in the factory premises was scheduled to be held on 02.03.2019 at about 11 a.m. over the matter of financial package under Voluntary Retirement Scheme but all on a sudden workmen namely Uttam Adak, Alope Mondal, Ashok Kr. Adak rushed to the

administrative block within the factory premises to disrupt the discussion by way of instigating few co-workers present there and ultimately workmen namely Uttam Adak, Alope Mondal, Ashok Kr. Adak, Taleb Ali, Sk. Ali Ur Rahman, Nazmul Haque and Ashok Sardar created a pandemonium in and around the factory premises. In view of such unrest inside the factory premises, concerned official of the Management submitted an 'incident report' to the factory Manager of the OP/Company on the said date. It has been stated that on 03.03.2019 the Management of the OP/Company submitted a written FIR to the Officer-in-Charge of Dankuni Police Station over the illegal activities carried on under the instigation of some workmen. It has been stated that due to the effect of the incident of violent demonstration by some workmen defying the lawful authority of the Management and the act of criminal intimidation, threat, etc. on the part of violent workmen, the Management was compelled to issue the notice dated 04.03.2019 declaring temporary closure/stoppage of the functioning of the factory under clause 17 of the Certified Standing Orders of the OP/Company with immediate effect i.e. from 'A' shift dated 04.03.2019. It has been stated that since the workmen namely Uttam Adak, Ashoke Sardar and others committed pandemonium and unrest situation inside the factory premises on 02.03.2019 the Management of the OP/Company by a letter dated 04.03.2019 dismissed all of them from their service of the OP/Company. The said dismissal order was issued inconsonance with clause 21(1), clause 21(9), clause 21(10), clause 21(13), clause 21(14) and clause 21(15) of the Certified Standing Orders of the OP/Company. It has been stated that although the action taken by the Management is punitive in nature but such action was taken without holding enquiry because there was no scope or chance to hold enquiry prior to imposition of penalty in the environment of pandemonium and unrest situation prevailing in and around the factory premises. It has been stated that the Management of the OP/Company informed the decision of temporary closure/stoppage of the factory by notice dated 04.03.2019 to various authorities, such as O.C., Dankuni P.S., Assistant Provident Fund Commissioner, Howrah, etc. It has been mentioned that the Management on 23.04.2019 extended the additional benefits to the tune of Rs.1,00,000/- under the scheme of VRS of April, 2019 to those workmen who have not completed 10 years of service in the OP/Company and not attained the age of 40 years. It has been stated that the Management of the OP/Company by letter dated 26.08.2019 intimated the Joint Labour Commissioner, Government of West Bengal to the effect that out of 260 workmen, 231 workmen had already accepted the benefits under the Voluntary Retirement Scheme of April, 2019 and the OP/Company had cleared all the dues to those 231 numbers of employees. It has been stated that out of 8 dismissed workmen, one workman namely Sk. Taleb Ali approached by letter dated 03.04.2019 to the Management seeking withdrawal of dismissal order so that he would be able to avail the benefit of Voluntary Retirement Scheme of April, 2019 and the Management as a measure to show good gesture considered the said appeal and allowed him to avail the benefit of said scheme by revoking the order of dismissal. Apart from that, other three dismissed employees namely Sukanta Chowdhury, Nazmul Haque and Sk. Alhiur Rahman approached the Management verbally for reconsideration of their matter and the Management allowed them to avail the benefits of Voluntary Retirement Scheme of April, 2019. It has been stated that the Management of the OP/Company by notice dated 04.08.2020 declared permanent closure of the said factory after observing due process of law. The matter of permanent closure w.e.f. 04.08.2020 was intimated to all concerned authorities in writing. It has been mentioned that the Management of the OP/Company on 14.09.2020 and 15.09.2020 informed appropriate authorities of ESI, Deputy Chief Inspector of Factories and Assistant Director of Factories, Serampore for cancelation of ESI Code, removing the name of the factory from the official record of the Government of West Bengal and 'cross of' the license of the said factory respectively. It has been stated that there is no scope for reopening of the factory as well as for resumption of

production process due to declaration of permanent closure. It has been mentioned that the Management has got every right to prove the charges levelled against the workman before this Tribunal by observing due process of law. The OP/Company by filing Written Statement has prayed for dismissal of this case on the ground of non-maintainability due to permanent closure of the factory.

After submission of Written Statements and list of documents by the parties to this case, exchange of documents took place. Thereafter, the matter was fixed for framing of issues.

On the basis of pleadings of the parties, the following issues were framed in this case by the then Learned Presiding Officer of this Tribunal on 23.11.2021 :

ISSUES

1. *Is the instant application under Section 10(1B)(d) of the Industrial Disputes Act, 1947 maintainable ?*
2. *Is the dismissal of applicant Sri Ashok Kumar Adak from service by the management on 04.03.2019 is illegal and unjustified ?*
3. *What relief/reliefs, if any, the applicant/workman is entitled to ?*

After framing of the issues, the evidence of this case was started.

During evidence stage, applicant/workman Sri Ashok Adak examined himself as PW-1 and he adduced Sri Sourav Das as PW-2.

It is seen that the OP/Company adduced Sri Harihar Raut as OPW-1 in support of the case of the OP/Company.

In course of evidence, both the parties proved documents during examination of witnesses.

The applicant Sri Ashok Adak has identified and proved the following documents in course of his examination as witness:-

1. Exbt.-1 : photocopy of the letter of confirmation of service dated 29.06.1998;
2. Exbt.-2 : photocopy of receipt of the subscription to the worker's union dated 08.12.2020;
3. Exbt.-3 : photocopy of temporary closure notice dated 04.03.2019;
4. Exbt.-4 : photocopy of protest letter dated 02.03.2019 jointly written by workman against temporary closure declared by the OP/Company.
5. Exbt.-5 : photocopy of letter of dismissal dated 04.03.2019 (3 sheets) to the D.L.C., Chandannagar, Hooghly;
6. Exbt.-6 : photo copy of letter dated 13.03.2019 of Ashok Kumar Adak to Deputy Labour Commissioner, Serampore, Hooghly.
7. Exbt.-7 : photocopy of Conciliation Memos. dated 20.03.2019.
8. Exbt.-7/1 : photocopy of Conciliation Memos. dated 18.04.2019.
9. Exbt.-8 : photocopy of last drawn salary slip for the month of January, 2019.
10. Exbt.-9 : photocopy of ESI Card of Ashok Kr. Adak;
11. Exbt.-10 : photocopy of e-Pehchan Card of Ashok Kr. Adak.

In course of examination of witness on behalf of the OP/Company, the following documents were identified and proved. The exhibited documents are as follows:-

[19/2020/10(1B)(d)]

1. Exbt.-A: photocopy of notice dated 19.12.2018 (5 pages) on VRS for employees;
2. Exbt.-B: photocopy of application dated 20.12.2018 (8 pages) for VRS;
3. Exbt.-C: photocopy of notice (5 pages) on VRS for employees, 2019 dated 24.01.2019;
4. Exbt.-D : photocopy of application(10 pages) for VRS dated 24.01.2019;
5. Exbt.-E: Order sheet dated 01.02.2019 (3 pages) of Case No.145 of 2019;
- 6.. Exbt.-F: photocopy of company's letter dated 18.02.2019 to the West Bengal Pollution Control Board;
7. Exbt.-G: photocopy of company's reply dated 25.02.2019 on present state of affairs;
8. Exbt.-H: photocopy of minutes of meeting dated 02.03.2019;
9. Exbt.-I: photocopy of company's letter dated 02.03.2019 (3 pages) to Factory Manager regarding incident report of 02.03.2019;
10. Exbt.-J: photocopy of FIR with Dankuni P.S. dated 03.03.2019 (3 pages);
11. Exbt.-K: photocopy of notice dated 04.03.2019 (2 pages) of temporary closure of the factory:
12. Exbt.-L: photocopy of dismissal order dated 04.03.2019 (3 pages) of Ashok Adak;
13. Exbt.-M: photocopy of company's letter dated 04.03.2019 to Dankuni P.S.;
14. Exbt.-N: photocopy of company's letter dated 04.03.2019 to Dankuni P.S.;
15. Exbt.-O: photocopy of company's letter to A.L.C., Hooghly dated 05.03.2019;
16. Exbt.-P: photocopy of company's letter dated 05.03.2019 to Dankuni P.S.;
17. Exbt.-Q: photocopy of company's letter dated 06.03.2019 to Asstt. Provident Fund Commissioner;
18. Exbt.-R: photocopy of company's letter dated 06.03.2019 to Chief Inspector of Factories;
19. Exbt.-S: photocopy of letter dated 06.03.2019 written by Factory Manager to ESIC, Dankuni;
- 20.Exbt.-T: photocopy of company's letter dated 07.03.2019 to D.L.C., Hooghly;
- 21.Exbt.-U: photocopy of Union's letter dated 29.03.2019 (5 pages) to the OP/Company;
- 22.Exbt.-V: photocopy of company's letter dated 30.03.2019 to the Union;
- 23.Exbt.-W: photocopy of Union's letter dated 02.04.2019 to the OP/Company;
24. Exbt.-X: photocopy of company's letter dated 03.04.2019 to the Union;
25. Exbt.-Y: photocopy of letter dated 04.04.2019 (2 pages) of HR Manager to Dankuni P.S.;
26. Exbt.-Z: photocopy of Minutes of Meeting dated 08.04.2019 (7 pages) on VRS;

[19/2020/10(1B)(d)]

27. Exbt.-AA: photocopy of notice dated 06.04.2019 (5 pages) regarding VRS, April 2019;
28. Exbt.-BB: photocopy of (8 pages)
29. Exbt.-CC: photocopy of VRS Extension Notice dated 09.04.2019;
30. Exbt.-DD: photocopy of company's reply dated 23.04.2019 to letter of Asstt. Labour Commissioner;
31. Exbt.-EE: photocopy of company's reply dated 14.05.2019 to Circle Manager, WBSEL;
32. Exbt.-FF: photocopy of company's reply dated 21.05.2019 to the Regional Manager, WBSEL;
33. Exbt.-GG: photocopy of company's reply dated 07.06.2019 (2 pages) to Inspector-in-Charge, Dankuni P.S.;
34. Exbt.-HH: photocopy of company's reply dated 24.06.2019 to the Regional Manager, WBSEL;
35. Exbt.-II: photocopy of Surrender Receipt of Food Safety and Standards Authority of India;
36. Exbt.-JJ: photocopy of company's reply dated 26.08.2019 to the Joint Labour Commissioner;
37. Exbt.-KK: photocopy of company's reply dated 27.08.2019 to the Joint Labour Commissioner;
38. Exbt.-LL: photocopy of company's reply dated 28.08.2019 to Pradhan, Rishra Gram Panchayat;
39. Exbt.-MM: photocopy of company's reply dated 29.08.2019 to Deputy Labour Commissioner;
40. Exbt.-NN: photocopy of notice dated 03.09.2019 to the Deputy Labour Commissioner;
41. Exbt.-OO: photocopy of company's letter dated 04.03.2020 to DLC, Serampore;
42. Exbt.-PP: photocopy of notice of the Company;
43. Exbt.-QQ: photocopy of company's letter dated 18.03.2020 to the Inspector-in-Charge, Serampore;
44. Exbt.-RR: photocopy of company's letter dated 19.03.2020 to the DLC, Serampore;
45. Exbt.-SS: photocopy of Resolution dated 05.08.2020;
46. Exbt.-TT: photocopy of Notice of closure dated 04.08.2020;
47. Exbt.-UU: photocopy of gratuity of 34 workmen;
48. Exbt.-VV: photocopy of intimation of closure of factory dated 04.08.2020 to Prasenjit Pramanick of payment of compensation (96 pages);
49. Exbt.-WW: photocopy of intimation about closure of GVP;
50. Exbt.-XX: photocopy of company's letter dated 04.08.2020 (2 pages) to DLC, Serampore;
51. Exbt.-YY: photocopy of company's letter dated 06.08.2020 (6 pages) to Inspector of Factories;

52. Exbt.-ZZ: photocopy of application dated 07.08.2020 for permanent closure of the Company;

53. Exbt.-AAA: photocopy of company's letter dated 14.08.2020 (3 pages) to the Deputy Labour Commissioner, Serampore;

54. Exbt.-BBB: photocopy of company's letter dated 19.08.2020 (3 pages) to the Inspector of Factories, Serampore;

55. Exbt.-CCC: photocopy of company's e-mail dated 24.08.2020 to Inspector of Factories regarding payment details of 34 workmen;

56. Exbt.-DDD: photocopy of company's letter dated 03.09.2020 (7 pages) to WBSEDL;

57. Exbt.-EEE: photocopy of company's letter dated 14.09.2020 (10 pages) to Chief Inspector of Factories, Barrackpore;

58. Exbt.-FFF: photocopy of company's letter dated 14.09.2020 (4 pages) to Employees State Insurance Corporation;

59. Exbt.-GGG: photocopy of company's letter dated 14.09.2020 to Assistant Provident Fund Commissioner, Howrah;

60. Exbt.-HHH: photocopy of letter dated 15.09.2020 (2 pages) from Inspector of Factories to Company;

61. Exbt.-III: photocopy of company's letter dated 19.09.2020 (3 pages) to Inspector of Factories.

It is to mention here that Ld. Advocates for the parties to this case submitted written notes of argument after evidence of this case was completed.

Decisions with reasons

Issue No. 1

This case has been started on the basis of submission of Form-T coupled with copy of Form-S along with application u/s. 10(1B)(d) of the Industrial Disputes Act, 1947 by the applicant/workman Ashok Kumar Adak. The instant case was started on 22.01.2021 before this Tribunal. On scrutiny of the record it appears to me that the Form-T duly signed by Ashok Kumar Adak was filed before this Tribunal on 11.12.2020 as it appears from 'Filing Seal'. It is seen that the last page i.e. Page No.5 of the application u/s. 10(1B)(d) of the Industrial Disputes Act, 1947 carries the date '10th day of December, 2020' below the verification column. It is found that the Conciliation Officer and Assistant Labour Commissioner issued the FORM-S on 11.06.2019 but the Application u/s. 10(1B)(d) of the Industrial Disputes Act, 1947 along with Form-T duly signed by Ashok Kumar Adak was filed before this Tribunal on 11.12.2020. It is pertinent to mention here that the OP/Company in the Part-I portion of its Written Statement has clearly raised the issue of non-maintainability of this case on the ground that the Application u/s. 10(1B)(d) of the Industrial Disputes Act, 1947 was not filed within the statutory period. Apart from that it has been clearly pleaded in the Part-I portion of the Written Statement stating that – “..... *the present case is not maintainable since it is well settled that the time framed prescribed by the statute cannot be extended in any manner whatsoever.*” According to sub-section (1B), as amended by West Bengal Act 33 of 1989, clause (c) of the Industrial Disputes Act, 1947 – “*The party may within a period of sixty days from the receipt of such certificate or, where such certificate has not been issued within seven days as aforesaid, **within a period of sixty days commencing from the day immediately after the expiry of seven days as aforesaid,** file an application in such form and in such manner with such particulars of demands as*

may be prescribed, to such Labour Court or Tribunal as may be specified by the appropriate Government by notification. Different Labour Courts or Tribunals may specified for different areas or different classes of industries.”

So, in view of the actual date (11.12.2020) of filing of the Form-T, the date (11.06.2019) of issuance of Form-S and taking into consideration the statutory provision as noted in the above, it is crystal clear that the application u/s. 10(1B)(d) of the Industrial Disputes Act, 1947 was not filed within the statutory period. It is to mention here that the application u/s. 10(1B)(d) of the Industrial Disputes Act, 1947 does not contain any explanation for delay in filing it beyond the statutory period. Although the OP/Company has raised the point of non-maintainability of this case on the ground that the case was not filed within the statutory period, Ld. Advocate for the applicant/workman in the written argument did not put any explanation with a view to refute the objection of the OP/Company raised in the Written Statement.

At the time of the argument Ld. Advocate for the applicant/workman was asked to clarify the point raised by the Ld. Advocate for the OP/Company. Ld. Advocate for the applicant/workman supplied the judgment passed by the Hon’ble High Court, Calcutta in connection with W.P. 21862 (W) of 1999 and stated that the ‘limitation’ is not applicable in the case u/s. 10(1B)(d) of the Industrial Disputes Act, 1947. I have carefully gone through the judgment passed in connection with W.P. 21862 (W) of 1999 by the Hon’ble High Court, Calcutta and found that there is no whisper whatsoever on the point of ‘limitation’ within the four-corners of the cited judgment.

Although the OP/Company has raised the issue of filing of this case after ‘statutory period’ in terms of sub-section (1B), as amended by West Bengal Act 33 of 1989, clause (c) of the Industrial Disputes Act, 1947 but in the matter of W.P. No.19027 (W) of 2001, the Hon’ble High Court, Calcutta has been pleased to observe – *“That there can be no doubt with regard to the matter being within the jurisdiction of the Labour Court. The jurisdiction is not ousted merely because the time frames prescribed under section 10(1B)(d) of the Act were not adhered to by the petitioner workman. The provision of section 10(1B)(d) of the Act are beneficial provision and thereby the procedure for such adjudication of an industrial dispute relating to an individual has been simplified. The benefit of the provision is for an individual in his private capacity and does not serve any public purpose, interest or policy non-compliance with the periods prescribed in the provision would only make it an irregularity and not an illegality.”*

In view of such decision of the Hon’ble High Court, Calcutta, it can be safely said that due to filing of the Application u/s. 10(1B)(d) of the Industrial Disputes Act, 1947 without complying the statutory period of filing such an application before the Industrial Tribunal does not make such Application not maintainable.

Thus, the Issue No.1 is decided in affirmative i.e. it is decided that the Application u/s. 10(1B)(d) of the Industrial Disputes Act, 1947 is found as well maintainable in the eye of the law.

Issue No. 2 :

In the Application u/s. 10(1B)(d) of the Industrial Disputes Act, 1947 the applicant/workman has mentioned that the OP/Company dismissed him from his service w.e.f. 04.03.2019. During evidence, the Dismissal Order dated 04.03.2019 issued by OP/Company to ‘Mr. Ashoke Adak’ has been marked as Exbt.-5. On perusal of the ‘Dismissal Order’ (Exbt.-5), it appears that it contains the ‘charge’ levelled against the applicant/workman. In the ‘Dismissal Order’ dated 04.03.2019 the OP/Company brought several charges against the applicant/workman ‘Mr. Ashoke Adak’ and those were

brought under various Sub-clauses (1, 9, 10, 13, 14 and 15) of the Clause 21 of the Company's Certified Standing Orders. In the Written Statement the OP/Company has pleaded – *"In fact, the Management was in a helpless situation and as such left with no other alternative but to dismiss the employee concerned along with others being incapable of conducting any enquiry to maintain peace and tranquility in and around the factory premises including to ensure the personal safety of the employees at large."* Moreover, in page - 7 of the Written Statement it has been mentioned – *The material portion of the said order of dismissal are being reproduced hereinafter :*

"You and above mentioned workers have created a sense of insecurity, chaos, fear, intimidated used abusive language and created such terrorized environment in and around the factory. Under such condition it has become difficult to issue charge-sheet and to conduct domestic enquiry. The act/action on your part will not allow conducive environment to conduct Enquiry and the process will be defeated as the witness in the enquiry are so scared that statement recording will be difficult and exhibits as evidence will be influenced by you because of your action, so conducting inquiry is not possible."

In para. 14 of the Written Statement, the OP/Company has pleaded that – *"It is well settled that the management has got every right to prove the charges before this Learned Tribunal by observing due process of law."*

After going through the relevant portions of the Written Statement, submitted on behalf of the OP/Company, it is churned out that in view of the riotous condition and prevailing unrest inside the factory premises on 02.03.2019 the Management of the Company considered that there was no suitable scope to initiate domestic enquiry against the workman Ashoke Adak against the act of his taking active part in the offensive activities which took place inside the factory premises on 02.03.2019 and thus the Management of the Company was compelled to take decision to take punitive measure against the workman Ashoke Adak directly i.e. the Management of the Company was compelled to issue Dismissal Order to its workman Ashoke Adak due to the hostile situation. Since the Management of the Company issued Dismissal Order to its workman Ashoke Adak levelling some charges under Sub-clauses (1), (9), (10), (13), (14) and (15) of Clause (21) of Company's Certified Standing Orders, the Management has pleaded that it has got every right to prove all those charges levelled against the workman Ashoke Adak, dismissed from his service on 04.03.2019, before this Tribunal by observing due process of law. Ld. Advocate for M/s. Ganges Vally Foods Pvt. Ltd. in written notes of argument has mentioned the decision of the **Hon'ble Supreme Court of India** reported in **(2021) 3 Supreme Court Cases 108**. In the said decision the Hon'ble Supreme Court of India has been pleased to observe – *"This Court has in a catena of decisions held that where an employer has failed to make an enquiry before dismissal or discharge of a workman, it is open for him to justify the action before the Labour Court by leading evidence before it. The entire matter would be open before the tribunal, which would have the jurisdiction to satisfy itself on the evidence adduced by the parties whether the dismissal or discharge was justified"*.

The OP/Company in its Written Statement has narrated that the untoward incident took place inside the factory premises on 02.03.2019. The OP/Company by filing Written Statement has claimed that the workman Ashok Kumar Adak along with other workmen under the aegis of trade unions, operating amongst the employees working in the factory of the OP/Company, took part in the incident in which riotous activities, indecent and indiscipline acts, act of misbehaviour, act of assault and threat, coercion, criminal intimidation, disobedient activities, chaotic situation were caused and thereby pandemonium was created inside the factory premises. The OP/Company by its Written Statement has alleged, in short, that the workman Ashok Kumar Adak and other

workmen resorted to illegal and unlawful activities on 02.03.2019 inside the factory premises in the name of raising protest against the Management of the Company. Since the OP/Company admittedly issued Dismissal Order without resorting the legal steps of domestic enquiry against the workman Ashok Kumar Adak prior to taking punitive measure i.e. issuance of Dismissal Order on 04.03.2019 upon Ashok Kumar Adak and has pleaded to prove the charges levelled against the dismissed workman Ashok Kumar Adak before this Tribunal, the Management of the Company has got the chance to prove the charges levelled against the dismissed workman Ashok Kumar Adak by adducing evidence, both documentary and oral. Now, we have to find out how far the Management of the OP/Company has been able to prove the charges levelled against the dismissed workman Ashok Kumar Adak by adducing evidence in this case before this Tribunal.

The OP/Company at the initial stage filed List of Documents along with the documents on which it placed reliance with a view to prove its 'case' as well as the charges levelled against the applicant/workman Ashok Kr. Adak. During the evidence of OPW-1 Harihar Raut, the OP/Company got identified all the documents filed on behalf of the OP/Company with a view to prove the charges levelled against the applicant/workman Ashok Kr. Adak and also as a measure to establish its case. It is to mention here that all total 61 numbers of documents were identified and proved by OPW-1 on behalf of the OP/Company and all those documents were marked Exbt.-A to Exbt.-III. Amongst 61 numbers of exhibited documents, Exbt.-J (3 pages) is the computer typed 'First Information Report' dated 03.03.2019 to the Inspector-in-Charge, Dankuni P.S. by Mr. Chandan Sarkhel, Factory Manager, Ganges Vally Foods Pvt. Ltd. which bears the xeroxed impression – 'RECEIVED contents not verified' with initial signature of one ASI with date (05.03.2019) of Dankuni Police Station. It is to mention here that the said Exbt.-J does not contain any receiving endorsement by the competent authority of Dankuni P.S. as a mark of starting of a specific criminal case for commission of cognizable offence(s). It is required to mention here that in the year 2019 such First Information Report relating to the commission of a cognizable offence would come under the provision of Section 154 of the Code of Criminal Procedure, 1973. According to the Section 154(1) of the Code of Criminal Procedure, 1973 whenever an *information* relating to the commission of a cognizable offence is submitted to the Officer-in-Charge of a Police Station, it is his (Officer-in-Charge) duty to enter such 'information' in a book to be kept by such Officer in such form as the State Government prescribed in this behalf. **In short**, on receiving 'First Information Report' relating to the commission of a cognizable offence, the concerned Officer-in-Charge of a Police Station if he finds that said written information actually discloses commission of cognizable offence, then only it becomes incumbent upon him to start a specific criminal case observing legal formalities by way of drawing up 'Formal FIR' in prescribed form issued by the State Government. Here it is clarified that information relating to the commission of cognizable offence may also be given orally and if oral information is given, the Officer-in-Charge of the concerned Police Station shall reduce the information in writing and the contents of written information is required to be read over to the informant. In both the cases i.e. in the cases of oral or written information, the informant is required to sign on the information. According to the Section 154(2) of the Code of Criminal Procedure, 1973, the Officer-in-Charge of such Police Station is bound by law to supply a copy of the 'information' as recorded under sub-section (1) to the informant free of cost. Here in this case, written information was submitted to the Inspector-in-Charge, Dankuni P.S. but such written First Information Report dated 03.03.2019 lacks endorsement of starting of specific cognizable case by the concerned Police Station. Moreover, the OP/Company did not file any copy of the 'formal FIR' drawn by the concerned Officer-in-Charge of Dankuni P.S. on receiving the written First Information Report dated 03.03.2019, which

was supposed to be received by the informant Chandan Sarkhel, Factory Manager, Ganges Vally Foods Pvt. Ltd. from the Officer-in-Charge of concerned Police Station i.e. Dankuni Police Station free of cost. In this space, it is required to mention that on receiving First Information Report relating to commission of cognizable offence, if a specific cognizable case is started u/s. 154(1) of the Code of Criminal Procedure, 1973, starting of investigation is the natural happening according to the relevant provision of the Code of Criminal Procedure, 1973. The Investigating Officer on completion of investigation, submits Police Report u/s. 173 of the Code of Criminal Procedure, 1973. Such Police Report may be of two kinds i.e. Final Report (or report in final form) and Charge-sheet (challan). It is to mention here that after starting the 'investigation' under Chapter XII of the Code of Criminal Procedure, 1973 the Officer-in-Charge or the Investigating Officer if he finds that evidence is deficient i.e. there is no sufficient evidence or reasonable ground of suspicion to justify the forwarding of the accused (if such person is in custody) to a Magistrate, release him on his executing a Bond with the condition to appear before the Magistrate empowered to take cognizance as and when so required. But according to the Section 170(1) of the Code of Criminal Procedure, 1973, if upon an investigation it appears to the Officer-in-Charge or the Investigating Officer that there is sufficient evidence or reasonable ground as aforesaid, such Officer shall forward the accused under custody to a Magistrate empowered to take cognizance of the offence upon a Police Report and to try the accused or commit him for trial etc. etc. According to Section 173 of the Code of Criminal Procedure, 1973 the Officer-in-Charge or the Investigating Officer of a Police Station submits 'Police Report' as the result of investigation. Section 173(4) of the Cr.P.C. deals with the situation arisen when there was no sufficient evidence to justify the allegation levelled against the accused person. When the Investigating Officer finds no sufficient evidence to prima facie establish the charge levelled against the accused person i.e. when evidence was deficient to justify the allegation levelled against the accused person, he submits 'Final Report' but when the Officer-in-Charge or the Investigating Officer finds sufficient evidence to justify the allegation levelled against the accused person, he submits 'Charge-Sheet'. In this case, the OP/Company although submitted bunch of documents, it did not file any copy of formal FIR, 'Police Report' submitted by the Investigating Officer or the Officer-in-Charge of the Dankuni Police Station which he was supposed to submit after completion of the investigation, if actually a Police case for commission of cognizable offence(s) was at all started on the basis of written 'First Information Report' dated 03.03.2019. There is another aspect to be mentioned here relating to Police case supposed to be started on the basis of any information from any informant. An Officer-in-Charge of a Police Station may start a Police case for commission of non-cognizable offence(s) if he, on receiving any information with the allegation of commission of offence(s), finds that such information does not disclose commission of cognizable offence(s) but it discloses non-cognizable offence(s). In that situation the Officer-in-Charge of a Police Station u/s. 155(1) of the Cr.P.C. on receiving information of commission of a cognizable offence(s), shall enter or cause to be entered the substance of the information in a book to be kept by such Officer in such form as the State Government may prescribe and refer the informant to the Magistrate. According to Section 155 Cr.P.C., the Officer-in-Charge of a Police Station is required to start investigation of the case, started on the basis of receiving information of commission of non-cognizable offence(s). According to the Section 155(3) Cr.P.C. – *"Any Police Officer receiving such order may exercise the same power of the investigation (except the power of arrest without warrant) as an Officer-in-Charge of a Police Station may exercise in a cognizable case."* So, in this matter, it can be said that if for argument sake Officer-in-Charge of Dankuni Police Station after applying his mind on the typed First Information Report dated 03.09.2019 submitted by the Factory Manager of Ganges Vally Foods Pvt. Ltd. was of the opinion that offence(s) allegedly

committed, were not cognizable in nature then he was required to start a criminal case for commission of non-cognizable offence(s) over the incident dated 02.03.2019 as described in the typed First Information Report dated 03.03.2019 submitted by the Factory Manager of Ganges Vally Foods Pvt. Ltd. In such situation, the Officer-in-Charge of Dankuni Police Station was required to start investigation of such criminal case and the result of the investigation was required to be submitted before the Magistrate having jurisdiction. That being so, the Company i.e. M/s. Ganges Vally Foods Pvt. Ltd. is duty bound to bring written FIR of information, charge-sheet or report in final form (although conventionally in non-cognizable cases, Police after conclusion of the investigation submits Prosecution Report) submitted after conclusion of the investigation before this Tribunal in connection with this case with a view to establish that criminal activity took place in the factory premises on 02.03.2019 in which the workman Ashok Kumar Adak and others were involved and allegedly took active part in the alleged criminal activity. But in fact, M/s. Ganges Vally Foods Pvt. Ltd. during evidence or at the time of filing documents with list of documents did not get identified valid/cogent documents (either original or photocopies) such as written FIR/information, formal FIR, Charge-Sheet/Report in final form (or Prosecution Report in respect of non-cog. cases) before this Tribunal in connection with this case to establish that legible information about the commission of criminal activity having direct involvement of the applicant/workman Ashok Kumar Adak was submitted to the Officer-in-Charge of Dankuni Police Station and thereafter the Officer-in-Charge of the Dankuni Police Station observed the legal formalities and procedures and submitted the report after conclusion of the investigation. It is to mention here that Charge-Sheet is the result of the investigation of a criminal case, both cognizable case or non-cognizable case, (or Prosecution Report in the matter of non-cognizable case) is the document to establish prima facie charge against the offender of a criminal activity. [Although the concerned Court having jurisdiction after full trial decides whether the prosecution has been able to establish the prima facie charge levelled against the offender or not and thereby acquits or convicts the offender for commission of offence(s).]

The dismissal order dated 04.03.2019 i.e. Exbt.-5 contains some charges levelled under Sub-clauses (1), (9), (10), (13), (14) and (15) of Clause (21) of Company's Certified Standing Orders. In the Page No.2 of Dismissal Order dated 04.03.2019 (Exbt.-5) the Factory Manager of Ganges Vally Foods Pvt. Ltd. on behalf of the Management mentioned – *"You along with the abovementioned workers have created a sense of insecurity, chaos, fear and terrorized environment in and around the factory."* Out of 5 sets of charges brought against the workman Mr. Ashoke Adak, three items under sub-clauses (9), (13) and (14) of clause (21) of the Company's Certified Standing Orders clearly show that charges brought under those three sub-clauses for commission of criminal activities and all those criminal activities, as disclosed from the wordings of the contents, attract some particular provisions of the Indian Penal Code 1860. The Management of the Company took decision to dismiss their workman Mr. Ashoke Adak by way of issuance of Dismissal Order on 04.03.2019 after imputing some allegations. Out of those allegations as imputed by the Management of the Company against the workman Mr. Ashoke Adak, some are due to alleged commission of activities of misconduct, indiscipline, disobedience and taking part in or holding/organizing unauthorized meeting inside the factory premises and rest are for commission of criminal activities. In the matter of imputing allegation against the workman Mr. Ashoke Adak for commission of criminal activities, it is needless to mention here that bringing or imputing allegation of commission of criminal activities against any person is not sufficient but law of the land demands that he who brings such allegations is duty bound to prove such allegations before the Court of Law having jurisdiction by adducing evidence. Apart from

that such complainant is required to produce relevant document before the appropriate forum to prima facie establish that the law enforcing agency has initiated investigation on the criminal case started on receiving legible information/intimation from the aggrieved party. In this instant case, the Management of the Company by filing written statement prayed for proving the 'charge' brought against the workman Mr. Ashoke Adak, as it is found from the Dismissal Order dated 04.03.2019, observing the due process of law. It is to mention here that the Management of the Company intended to take such privilege on the basis of the observation of the **Hon'ble Supreme Court of India** reported in **(2021) 3 Supreme Court Cases 108**. Again it is needless to mention here that the Company i.e. M/s. Ganges Vally Foods Pvt. Ltd. has got such privilege and opportunity to prove the allegation/charge against the workman Ashok Kumar Adak. In spite of that the Company i.e. M/s. Ganges Vally Foods Pvt. Ltd. was not careful to bring prima facie evidence with a view to establish that the workman Ashok Kumar Adak took part in the alleged criminal activity in and around the factory premises on 02.03.2019. The Management of M/s. Ganges Vally Foods Pvt. Ltd. ought to have filed trustworthy documents such as photocopy of FIR lodged by the Factory Manager on 03.03.2019 before the Officer-in-Charge, Dankuni P.S. containing endorsement of the Officer-in-Charge relating to starting of a specific criminal case, photocopy/carbon copy of formal FIR, photocopy of G.D. Entry, if any, etc. if investigation was continuing and the Charge-Sheet or Final Report or Prosecution Report submitted by the Investigating Officer after closing the investigation. In fact, in this case, the Management of the Company did not file photocopy of FIR having endorsement of the Officer-in-Charge regarding starting of a specific criminal case, photocopy of formal FIR, photocopy of Charge-Sheet or Final Report or Prosecution Report as a measure to establish the 'charges' brought under sub-clauses (9), (13) and (14) of the clause (21) of the Company's Certified Standing Orders. It is to mention here that the Management of the Company has pleaded that charges brought under sub-clause (9), (13) and (14) of the clause (21) of the Company's Certified Standing Orders on the allegation of commission of criminal activities and the Management through the Factory Manager lodged FIR with the Officer-in-Charge, Dankuni P.S. on 03.03.2019 against the workman Ashoke Adak and others over the incident dated 02.03.2019 took place within the factory premises. It is seen from Exbt.-5 that the Management of the Company considering the gravity of the untoward incident that took place on 02.03.2019 inside the factory premises and also considering the unlawful activities as well as indisciplined, disobedient, misconduct activities done by the workman Mr. Ashoke Adak, found it expedient/proper/justified to issue Dismissal Order to the workman Mr. Ashoke Adak on 04.03.2019. At the same time the Management of the Company found it proper and justified to submit 'First Information Report' to the concerned Police Station having jurisdiction against the offenders, according to their consideration, with a view to set the criminal law in motion. So, it can be said that the Management of the Company decided in a prudent way to set the criminal law in motion against the alleged offenders and thus it can be reasonably supposed that the Management of the Company decided not to tolerate criminal activities done by the offenders. So, now it cannot be claimed that the Management of the Company decided to lodge FIR with the Officer-in-Charge of Dankuni P.S. as a matter of mere formalities observed by the Management in such situation. So, the argument of the Ld. Advocate for M/s. Ganges Vally Foods Pvt. Ltd. that the Management of the Company as a matter of formalities, lodged the FIR with the Officer-in-Charge, Dankuni P.S. over the incident dated 02.03.2019, is discarded. Here in this case, the Management of the Company felt it necessary and urgent to inform the criminal activities done by some workmen (including the workman Ashok Kumar Adak) to the Officer-in-Charge, Dankuni P.S. by way of submitting written FIR on 03.03.2019 and the Management of the Company claimed that the Company has right to prove the charges levelled against the workman Ashoke Adak

for commission of criminal activities inside the factory premises on 02.03.2019 and accordingly availed the opportunity to prove such charges based on criminal activities by adducing evidence but in fact the Management of the Company has miserably failed to prove all those 'charges' [under sub-clauses (9), (13) and (14) of the clause (21) of the Company's Certified Standing Order]. In the matter of 'charges' under sub-clause (1), (10) and (15) of clause (21) of the Company's Certified Standing Orders, it is to mention here that all those charges were brought against one workman namely Mr. Ashoke Adak. So, it is to be considered in the perspective of all those 'charges', whether the subject matter of each and every items of charges are understandable and convincing to one general workman of a factory. After reading the 'charge' under sub-clause (1), I am of the opinion that the content of such 'charge' does not disclose any clear and definite contention and thus it can be said that such 'charge' is not at all understandable and convincing to the workman. It can be said that such 'charge' is vague, indefinite and at the same time it is ambiguous in nature and thus such ambiguous charge may be treated as beyond proof. In the matter of 'charge' under sub-clause (10) it is to be mentioned that the said 'charge' has been brought for commission of 'any act' and thus it can be safely said that the Management did not mention specifically which kind of act was committed by the workman and by what means the said act was subversive of discipline or good behaviour. A charge must be definite and should carry clarity about the alleged commission of misconduct but the charge under sub-clause (10) lacks such principle. So, the 'charge' brought under sub-clause (10) is vague, indefinite and at the same time ambiguous in nature and thus such ambiguous charge may be treated as beyond proof. In the matter of 'charge' under sub-clause (15) I am of the opinion that evidences of PW-1, PW-2 and OPW-1 are required to be considered to find out whether the OP/Company has been able to prove such 'charge' against the workman. On perusal of the cross-examinations of PW-1 and PW-2 it is found that the OP/Company did not put any question to those witnesses with a view to extracting statements corroborating the allegation made out in the body of the 'charge' brought under sub-clause (15) of clause (21) of the Company's Certified Standing Orders. Moreover, it is found that the OP/Company did not put any suggestion to PW-1 and PW-2 with a view to seek affirmation of the allegation contained in the charge brought under sub-clause (15) from them as well as only for the purpose of affirming the allegation as contained in the 'charge' brought under sub-clause (15) to PW-1 and PW-2. Since the charges are brought by the Management of the Company against the workman Ashoke Adak, it is the incumbent duty of the Management to prove such charges. Now, we should find out from the evidence of OPW-1 how the Management took effort to establish such 'charge' under sub-clause (15) against the workman Mr. Ashok Adak. The OPW-1 in the para.10 and 12 of his examination-in-chief on affidavit has narrated the unlawful activities allegedly taken place inside the factory premises and he implicated the workman Ashok Kr. Adak and other workman in the alleged incident of unrest with criminal activities that took place on 02.03.2019 as well as pandemonium created in and around the factory premises. In para. 11 he has divulged that on 03.03.2019 the Management of the Company lodged an FIR with the Inspector-in-Charge, Dankuni P.S. over the illegal activities carried on inside the factory premises at the instigation of some workmen, whose names have been divulged by him in para. 10 of his examination-in-chief on affidavit. The OPW-1 has reiterated his statements regarding the untoward incident dated 02.03.2019 in other paragraphs such as para. nos. 28, 30 etc. In fact the OPW-1 did not make any statement corroborating the allegations contained in the 'charge' brought under sub-clause (15) of clause (21) of the Company's Certified Standing Orders. So, without hesitation it can be held that the OP/Company although brought the 'charge' under sub-clause (15) of the clause (21) of the Company's Certified Standing Orders against the workman Mr. Ashoke Adak but the OP/Company in the process of adjudication of this case by

adducing evidence has failed to establish such 'charge'. In course of scanning the evidence of PW-1 and PW-2, I find that the OP/Company did not put any question to those witnesses with a view to extracting statements corroborating the allegations contained in the charges brought under sub-clause (1) and (10) of clause (21) of the Company's Certified Standing Orders. Moreover, the OP/Company did not put suggestion to PW-1 and PW-2 with a view to asserting the allegations as contained in the charges brought under sub-clause (1) and (10) of clause (21) of the Company's Certified Standing Orders against the workman Mr. Ashoke Adak. On perusal of the evidence of OPW-1 it is found that he divulged that on 02.03.2019 disgruntled workmen created a reign of terror, chaos and confusion in and around the factory premises. The OPW-1 has divulged that the disgruntled workmen committed the offence of criminal intimidation, threat with dire consequence, threat of causing injury to the persons and they also committed the offence of wrongful confinement of managerial personnel and they caused violent demonstration, defiance of the authority of the Management of the Company. In fact, from the evidence of OPW-1 it is surfaced that unruly workmen committing various criminal activities during industrial unrest happened on 02.03.2019 inside the factory premises. It is also surfaced from the evidence of OPW-1 that since the workmen of the Company became unruly in course of the volatile and unrestful situation and that they were involved in various criminal activities, thus they had broken the discipline of a workplace while defying the lawful authority of the Management of the Company on 02.03.2019. He has divulged that on 03.03.2019 the Management of the Company lodged an FIR with the Inspector-in-Charge, Dankuni P.S. in connection with the illegal activities carried on under the instigation of workmen namely Uttam Adak, Ashok Mondal, Ashok Kr. Adak, Sk. Taleb Ali, Sk. Aliur Rahman, Nazmul Haque and Ashok Sardar. So, from the statements of OPW-1 it is clear that the overall incident caused acute violation of the law and order situation inside the factory premises, principally due to criminal activities allegedly committed by the workmen and the Management considered the whole incident as unlawful incident, in which criminal offences were committed, and thus decided to lodge complaint (FIR) with the local Police Station i.e. Dankuni Police Station. The evidence of OPW-1 leaves no suspicion that immediately after the untoward incident dated 02.03.2019, the Management of the Company was unable to separate indisciplined activities and disobedience of the lawful authority of the Management by the workmen from the gravity of the incident dated 02.03.2019 and preferred to lodge the FIR ('information' to the law enforcing agency i.e. Police at the first point of time) with the local Police Station. The Dismissal Order was issued on 04.03.2019 i.e. after efflux of considerable time from the incident dated 02.03.2019. In such situation, it can be said that due to efflux of time, the Management had opportunity to prepare the Dismissal Order as an afterthought and considerable deliberation. In the light of the above observation it is to explain here that insubordination is a word which has its seeds in indisciplined activities and disobedience of the lawful authority. In the above we have found that the OP/Company has failed to bring and file trustworthy vital documents to prove that actually Police case was started on the basis of FIR dated 03.03.2019 submitted to the Dankuni P.S. by the Factory Manager. In fact, the OP/Company did not file vital trustworthy documents, such as copy of FIR having endorsement by competent Police Officer starting a Police case, copy of formal FIR, copy of Charge-Sheet or Final Report and copy of G.D. Entry or Prosecution Report in this case. The fact remains that after scanning the evidence of OPW-1, it has been observed that he merely stated that an FIR over the incident dated 02.03.2019 was lodged with the Officer-in-Charge, Dankuni P.S. Save and except the matter of lodging FIR, he did not make any statement to the effect that other vital and trustworthy documents relating to a Police case were filed in this case with a view to prove that the workman took part in the unlawful activities as well as criminal activities allegedly happened in the factory premises on 02.03.2019. In view of

such lack of evidence and in view of the above discussion, it may be safely said that the OP/Company has failed to establish the 'charges' brought under sub-clause (1) and (10) of the clause (21) of the Company's Certified Standing Orders. Thus, from the above it is clear that the OP/Company inspite of getting fair opportunity to prove the 'charges' levelled against the workman Mr. Ashoke Adak as contained in the Dismissal Order dated 04.03.2019 (Exbt.-5), has miserably failed to prove the 'charges' levelled against the workman Mr. Ashoke Adak.

So, from the above discussion it can be safely said that since the OP/Company has failed to prove the charges brought against the workman Mr. Ashok Kr. Adak under sub-clauses (1), (9), (10), (13), (14) and (15) of the clause (21) under the Company's Certified Standing Orders, the matter of dismissal of the workman Mr. Ashoke Adak from the service of the Company M/s. Ganges Vally Foods Pvt. Ltd. is found as illegal and unjustified.

Thus, the issue No.2 is decided in affirmative.

The applicant/workman raised the industrial dispute against the OP/Company and accordingly he filed the application u/s. 10(1B)(d) of the Industrial Disputes Act, 1947 before this Tribunal. The applicant/workman in his application u/s. 10(1B)(d) of the Industrial Disputes Act, 1947 has prayed for passing an Award holding that his dismissal from the service w.e.f. 04.03.2019 by the Management of the OP/Company as illegal, unjustified and arbitrary and he has prayed for issuance of direction upon the OP/Company to reinstate him in his service with full back wages. He has also prayed for granting other consequential benefits as this Tribunal may deem fit and proper.

It is seen from the above that we have come to the decision that the dismissal of the applicant/workman Sri Ashok Kr. Adak from his service by the Management of the OP/Company w.e.f. 04.03.2019 is illegal and unjustified. So, in view of such decision, this Tribunal is required to grant relief, as sought for, to the applicant/workman by this Award.

But, in course of making discussion on the written statement submitted by the OP/Company it has been found that the OP/Company pleaded that the Management of the Company by notice dated 04.03.2019 declared temporary closure/stoppage of the factory under clause (17) of the Certified Standing Orders of the Company w.e.f. 'A' shift of 04.03.2019. The OP/Company further pleaded that the Management intimated the factum of declaration of temporary closure/stoppage through notice dated 04.03.2019 to various authorities, such as to the Assistant Provident Fund Commissioner, 24, Belilious Road, Howrah and others. The OP/Company by its written statement has mentioned that since the factory lost its economic viability, the Management ultimately by notice dated 04.08.2020 declared permanent closure of the factory by observing due process of law and the matter of permanent closure w.e.f. 04.08.2020 were intimated to all concerned authorities such as the Labour Commissioner, Government of West Bengal, N.S. Buildings, Kolkata-700001 and other authorities. On perusal of the evidence of PW-1, it is seen that the PW-1 in course of his cross-examination has stated that he has come to know from co-workers that the Company was closed from 04.08.2020. He has also disclosed that he has learnt from the workers of the Company that they have received closure compensation. It is seen from the evidence of PW-2 Saurav Das that he is aware about the Notice of closure dated 04.08.2020. He has divulged that his name appears in serial no. 15 of the Annexure of closure notice dated 04.08.2020. He has further stated that according to the Notice of closure, compensation was transferred to his account on 03.08.2020. He has further divulged that he has not filed any document to show that closure was declared illegal and temporary by any Court of Law. He has in an unequivocal language, stated that it is true that no work is done in a closed factory. The

OP/Company adduced one witness. The OP/Company examined Mr. Harihar Raut as OPW-1 before this Tribunal. The OPW-1 in his examination-in-chief on affidavit has stated that the Management of the Company by a Notice dated 04.08.2020 declared permanent closure of the factory by observing due process of law. He has further divulged that consequent upon closure, services of all the workmen/employees employed at the said factory stood terminated w.e.f. 6 a.m. of 04.08.2020 and the Management of the Company by letter dated 14.09.2020 requested the Deputy Chief Inspector of Factories, Barrackpore for removing the name of the factory from the official record of the Government of West Bengal. During cross-examination the OPW-1 has divulged that now he is not working in M/s. Ganges Vally Foods Pvt. Ltd. and at present he is working in the M/s. Sunrise Biscuits Company Limited. It is seen that the Ld. Advocate for the workman did not cross-examine the OPW-1 on the point of permanent closure of the factory of M/s. Ganges Vally Foods Pvt. Ltd.

So, in view of the facts and circumstances of this case and in view of the evidence on record, there is no doubt about the fact of permanent closure of the factory with effect from 04.08.2020.

Ld. Advocate for the OP/Company in the written notes of argument has contended that in a closed industry no dispute can be raised and consequently in the matter of a closed industry, claim of reinstatement with back wages is not justified. He has relied on the decision of the Hon'ble Supreme Court of India in the matters of – (i) **Pipraich Sugar Mills Ltd. vs. Pipraich Sugar Mills Mazdoor Union (reported in AIR 1957 SC 95)** and (ii) **Hondaram Ramchandra vs. Yeshwant Mahadev Kadam (Dead) through LRS. [reported in (2007) 14 Supreme Court Cases 277]**. In the matter of **Pipraich Sugar Mills Ltd. vs. Pipraich Sugar Mills Mazdoor Union**, the Hon'ble Supreme Court of India has been pleased to observe – “An ‘industrial dispute’, as defined in s. 2(k) of the Industrial Disputes Act XIV of 1947- and by force of section 2, that definition applies to the Act ‘means any dispute or difference between employers and employees, or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person’. Now, the contention of the appellant is that it is a condition precedent to the exercise by the State of its power under s. 3 of the Act that there should be an industrial dispute, that there could be no industrial dispute according to this definition, unless there is a relationship of employer and employee; that in the present case, as the appellant sold its Mills, closed its business and discharged the workmen on March 21, 1951, paying to them in full whatever was due in accordance with the standing orders. there was thereafter no question of any relationship of employer and employees between them that accordingly there was no industrial dispute at the date of the notification on November 16, 1951, and that it was therefore incompetent. Reliance was placed in support of this position on the observation in Indian Metal and Metallurgical Corporation v. Industrial Tribunal, Madras(1) that the definition of an “industrial dispute” presupposes the continued existence of the industry, and on the decision in K. N. Padmanabha Ayyar v. The State of Madras(2) that there could be no industrial dispute with regard to a business, which was not in existence.

It cannot be doubted that the entire scheme of the Act assumes that there is in existence an industry, and then proceeds on to provide for various steps being taken, when a dispute arises in that industry. Thus, the provisions of the Act relating to lock-out, strike, lay off, retrenchment, conciliation and adjudication proceedings, the period during which the awards are to be in force have meaning only if they refer to an industry which is running and not one which is closed.

In *Messrs Burn and Co., Ltd., Calcutta v. Their Workmen (1)*, this Court observed that the object of all labour legislation was firstly to ensure fair terms to the workmen,

and secondly to prevent disputes between employers and employees, so that production might not be adversely affected and the larger interests of the public, might not suffer. Both these objects again can have their fulfillment only in an existing and not a dead industry. The view therefore expressed in Indian Metal and Metallurgical Corporation v. Industrial Tribunal, Madras and K.N. Padmanabha Ayyar v. The State of Madras that the industrial dispute to which the provisions of the Act apply is only one which arises out of an existing industry is clearly correct. Therefore, where the business has been closed and it is either admitted or found that the closure is real and bona fide, any dispute arising with reference thereto would, as held in K. N. Padmanabha Ayyar v. The State of Madras (supra), fall outside the purview of the Industrial Disputes Act. And that will a fortiori be so, if a dispute arises if one such can be conceived-after the closure of the business between the quondam employer and employees.”

The Hon’ble Supreme Court of India in the matter of **Hondaram Ramchandra vs. Yeshwant Mahadev Kadam (Dead) through LRS**, has been pleased to observe – *“From the records, it appears that the sales office of the appellant had been closed down. We have noticed hereto before that there exists a dispute as to whether the said closure, for all intent and purport, was effected in 1983 or 1991. The High Court evidently committed an error in not taking into consideration the factum of closure of the business from the premises of the appellant, for the purpose of grant of relief. If the undertaking of the appellant had been closed down, the workmen were entitled to compensation only in terms of Section 25FFF of the Industrial Disputes Act, 1947 and not the relief of reinstatement with back wages.*

The question of passing an award directing reinstatement with full back wages, in the aforementioned fact situation, did not and could not arise.”

In the matter of **Punjab National Bank & Anr. v. Durga Dutta Sharma & Ors.**, reported in **2006 LAB. I.C. 3760**, the Hon’ble Himachal Pradesh High Court has been pleased to observe - *“Now the decisions of the Apex Court have veered to the view that reinstatement with back wages is not the norm and that in appropriate cases compensation can be awarded in lieu of reinstatement.*

In Allahabad Jal Sansthan v. Daya Shankar Rai and Anr. , the Apex Court after considering the entire law on the subject held as follows:

We have referred to certain decision of this Court to highlight that earlier in the event of an order of dismissal being set aside, reinstatement with full back wages was the usual result. But now with the passage of time, it has come to be realized that industry is being compelled to pay the workman for a period during which he apparently contributed little or nothing at all, for a period that was spent unproductively, while the workman is being compelled to go back to a situation which prevailed many years ago when he was dismissed. It is necessary for us to develop a pragmatic approach to problems dogging industrial relations. However, no just solution can be offered but the golden mean may be arrived at.

Again in General Manager, Haryana Roadways v. Rudhan Singh , a three Judge Bench of the Apex Court held as follows:

There is no rule of thumb that in every case where the Industrial Tribunal gives a finding that the termination of service was in violation of Section 25-F of the Act, entire back wages should be awarded.

The Apex Court in Municipal Council, Sujampur v. Surinder Kumar , held as follows:

Equally well settled is the principle that the burden of proof, having regard to the principles analogous to Section 106 of the Evidence Act that he was not gainfully employed, was on the workman.

Apart from the aforementioned error of law, in our considered opinion, the Labour Court and consequently the High Court completely misdirected themselves insofar as they failed to take into consideration that relief to be granted in terms of Section 11-A of the said Act being discretionary in nature, the Labour Court was required to consider the facts of each case therefor. Only because relief by way of reinstatement with full back wages would be lawful, it would not mean that the same would be granted automatically.

In fact in all cases which have been referred to interest has normally not been awarded in addition to the back wages. I am of the opinion that keeping in view the present age of the employee, the fact that he has not worked with the bank for 23 years and the fact that bank has lost faith in the employee it would not be appropriate to reinstate the employee in service. Some compensation however has to be paid to him and in my opinion keeping in view the entire facts and circumstances of the case out of the sum deposited by the bank a sum of Rs.10,00,000/- (Rs. Ten Lakhs only) be paid to the employee as compensation in lieu of his reinstatement and back wages.”

In the matter of **Delhi Transport Corporation versus Ramesh Chand**, the **Hon’ble Supreme Court of India**, reported in **(2015) 16 Supreme Court Cases 227**, has been pleased to observe – *“It is pertinent to note that the respondent did not lead any evidence to show that he did not work when he was not in service of the appellant during the pendency of the matter. Therefore, in our opinion it would be just and appropriate not to award any back wages to the respondent.”*

The Hon’ble Supreme Court of India in the matter of **Management of Regional Chief Engineer, Public Health & Engineering Department, Ranchi versus their workmen represented by District Secretary**, reported in **(2019) 18 Supreme Court Cases 814** has been pleased to observe – *“It is necessary for the workman in such cases to plead and prove with the aid of evidence that after his dismissal from the service, he was not gainfully employed anywhere and had no earning to maintain himself or/and his family. The employer is also entitled to prove it otherwise against the employee, namely, that the employee was gainfully employed during the relevant period and hence not entitled to claim any back wages. Initial burden is, however, on the employee.”*

The applicant/workman being the PW-1 in his examination-in-chief on affidavit has stated that he has no source of income and is passing his days with the help of relatives and friends. Save and except such statement, the PW-1 did not make any statement clearly divulging that he was not in any kind of engagement or work for earning livelihood after his dismissal from the service of the OP/Company and he became unemployed. It can be said that if the applicant/workman is actually not in any kind of gainful employment including self employment after the dismissal from his service of the OP/Company, he ought to have divulged that fact in his examination-in-chief on affidavit with a view to establishing that he had no source of income to maintain his family. During cross-examination the PW-1 has admitted that he maintains his family from his earnings. In fact, the applicant/workman by adducing evidence has failed to discharge its burden to establish that after his dismissal from the service he was not gainfully employed anywhere and had no earning to maintain himself or/and his family. So, it is clear that the PW-1 has made self contradictory statement in his evidence. Further, it is established that the OP/Company has been able to refute the claim of the PW-1 that he became completely unemployed and has no earning by extracting the statement that he maintains himself and/or his family from his earnings. So, the PW-1 has lost his trustworthiness in the eye of this Tribunal in the matter of his inability to earn money/livelihood. Thus, it can be safely said that in view of the above observations of the

Hon'ble Supreme Court of India, the applicant/workman's claim for back wages cannot be entertained.

In view of the above observation of the Hon'ble Supreme Court of India, I am of the considered opinion that although the Issue No.2 has been decided in affirmative but there is no scope to grant relief to the applicant/workman in terms of his prayer as contained in the prayer portion of the petition u/s. 10(1B)(d) of the Industrial Disputes Act, 1947. So, this Tribunal is unable to issue direction upon the non-existent Management of the OP/Company, which was permanently closed down w.e.f. 04.08.2020.

Issue No.3 :

According to the facts and circumstances of this case, the applicant/workman Ashok Kumar Adak was employed in the OP/Company as their workman and his service was confirmed w.e.f. 01.07.1998. Admittedly, his service was dismissed w.e.f. 04.03.2019 vide dismissal order dated 04.03.2019 (Exbt.-5). The workman Ashok Kumar Adak being PW-1 has stated that his last monthly remuneration was Rs.17,560/-. It is fact that during cross-examination the OP/Company did not controvert such claim of the PW-1. The workman filed Pay Slip for the month of January, 2019 and the same has been marked as Exbt.-8. The Exbt.-8 shows that his Gross Pay for the month of January, 2019 was Rs.16,550.63. On perusal of the application u/s. 10(1B)(d) of the Industrial Disputes Act, 1947 it is seen that the date of appointment of the workman in the service of the Company is left blank. It appears from the Exbt.-1 that the service of Sri Ashok Kumar Adak was confirmed w.e.f. 01.07.1998. The Exbt.-8 shows that the workman joined in the service of the OP/Company on 01.08.1996. So, the total span of service of Sri Ashok Kumar Adak under the OP/Company is 22 years and 7 months 3 days. According to the Exbt.-5 the workman Mr. Ashoke Adak was dismissed from his service w.e.f. 04.03.2019. Exbt.-8 shows that the date of birth of the applicant/workman is 26.06.1976. So, it is clear that the applicant/workman served under the OP/Company for a considerable period of 22 years and 7 months. Further, we have got that the Gross Pay of the workman was Rs.16,550.63 in the month of January, 2019. It is fact that the applicant Ashok Kumar Adak served under the OP/Company for 22 years and 7 months and thus he had contribution to the betterment of the business of the Company. It is fact that the OP/Company made arrangement for Voluntary Retirement Scheme to all the employees and workmen after its temporary closure. In view of the facts and circumstances of this case this Tribunal finds it justified to direct the OP/Company to pay compensation to the applicant Sri Ashok Kumar Adak. The amount of compensation may be calculated taking 75% of Gross Pay amounting to Rs.16,550.63 and the period to be considered is from the date of his dismissal to the last date of November, 2024. So, the total period will be for 5 years 9 months. Thus, the amount of compensation is calculated and it comes to Rs.8,56,428/- (Rs.12,412 x 69 months). In the written statement the OP/Company has mentioned that the Management extended additional benefit of Rs.1,00,000/- to some categories of employees. This applicant does not qualify for such benefit. Thus, the OP/Company should pay compensation of Rs.8,56,428/- to the applicant/workman immediately.

The Hon'ble High Court of Bombay in the matter in between **Milan Products and Sumanbai Nivrutti Takle (Smt.) & Anr. (W.P. No.5188/1985 dated June 26, 1995)** has been pleased to observe – *“It is however directed that the first Respondent shall be entitled to an amount of Rs.2600/- (Rupees two thousand six hundred only) as compensation for wrongful termination of her service.”*

The Hon'ble Supreme Court of India in the matter in between **Amrit Vanaspati Co. Ltd. and Khem Chand and Another (C.A. No.6677 of 2004 dated July 12, 2006)** has been pleased to observe – *“He had been without any employment or without any income whatsoever. Taking a sympathetic and lenient view of the matter and peculiar facts and circumstances of this case, even though the factory unit of the appellant is closed, we direct the appellant Management to pay a sum of Rs.1,25,000/- in full and final quit of all the claims of the appellant and the respondent.”*

In view of above two observations of the Hon'ble Supreme Court of India and the Hon'ble High Court, Bombay, it can be safely said that it is justified to award compensation to the workman in the facts and circumstances of this case to protect the interest of a workman of a factory whose functioning has been closed permanently. This Tribunal has held to award compensation amounting to Rs.8,56,428/- against full and final quit of all the claims of the workman as a measure of granting relief to the workman.

Thus, the Issue No.3 is disposed of accordingly.

Hence,

it is

ORDERED

that the dismissal of the applicant/workman Ashok Kumar Adak from his service under M/s. Ganges Vally Foods Pvt. Ltd. is found as illegal and unjustified. Since it has been admitted and proved that the functioning of the factory has been closed down permanently, passing an Award directing reinstatement with full back wages does not arise and accordingly reinstatement and back wages is not awarded to the applicant/workman.

But the applicant/workman is awarded compensation amounting to Rs.8,56,428/- against full and final quit of all the claims of the workman.

The OP/Company i.e. M/s. Ganges Vally Foods Pvt. Ltd. is directed to pay a sum of Rs.8,56,428/- (Rupees eight lakh fifty six thousand four hundred twenty eight only) in full and final quit of all the claims of the applicant/workman Sri Ashok Kumar Adak.

This is the award of this Industrial Tribunal in this case.

In view of letter No. Labr./944(3)/(LC-IR)/22016/7/2024 dated 13.09.2024 of the Assistant Secretary, Labour Department, I.R. Branch, Government of West Bengal, New Secretariat Buildings, 12th Floor, the PDF copy of the Award be sent to the Labour Department, Government of West Bengal through e-mail ID(wblabourcourt@gmail.com) for information.

Dictated and corrected

Judge

(Mihir Kumar Mondal)
Judge
Third Industrial Tribunal
Kolkata
17.12.2024

I/587776/2024

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

Date : 26-12-2024

No. Labr/ 1268 / (LC-IR)/22015(16)/87/2024

ORDER

WHEREAS an industrial dispute existed between M/s. Ganges Vally Foods Pvt. Ltd., Vill.- Jagannathpur, P.O.- Bamunari, P.S.- Dankuni, Hooghly and their workman Ashok Kumar Adak, Vill. Gumodanga, P.O. - Mollaber, Dist. - Hooghly, 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 to the Third Industrial Tribunal, Kolkata specified for this purpose under this Deptt.'s Notification No. 101- IR dated 02.02.2012 ;


AND WHEREAS the said Third Industrial Tribunal, Kolkata has submitted to the State Government its Award dated 17.12.2024 in case No. 19/2020 under section 10(2A) of the I.D. Act, 1947 (14 of 1947) on the said Industrial Dispute vide e-mail dated 17.12.2024 ;

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/ 1268 /1(5)/(LC-IR)/ 22015(16)/87/2024

Date : 26-12-2024

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

1. M/s. Ganges Vally Foods Pvt. Ltd., Vill.- Jagannathpur, P.O.- Bamunari, P.S.- Dankuni, Hooghly.
2. Sri Ashok Kumar Adak, Vill. Gumodanga, P.O. - Mollaber, Dist. - Hooghly.
3. The Asstt. Labour Commissioner, W.B. In-Charge, Labour Gazette.
4. The OSD & EO Labour Commissioner, W.B., New Secretariat Building, 11th Floor, 1, Kiran Sankar Roy Road, Kolkata - 700001.
5. The Deputy Secretary, IT Cell, Labour Department, with the request to cast the Award in the Department's website.



Assistant Secretary

No. Labr/ 1268 /1(3)/(LC-IR)/ 22015(16)/87/2024

Date : 26-12-2024

Copy forwarded for information to :-

1. The Judge, Third Industrial Tribunal, N. S. Building, 3rd Floor, 1, K.S. Roy Road, Kolkata - 700001 with respect to his e-mail dated 17.12.2024.
2. The Joint Labour Commissioner (Statistics), West Bengal, 6, Church Lane, Kolkata - 700001.
3. Office Copy.


Assistant Secretary