

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

No. Labr/ 182 / (LC-IR)/ 22015(16)/28/2025

Date : 10/02/25

ORDER

WHEREAS an industrial dispute existed between (1) M/s. Gobind Gas Power & Co., (2) Captain Jogmohan Singh(Owner) and (3) Mrs. Ranjit Kaur (Operating Officer) and their workman Somnath Roy, regarding the issues, being a matter specified in the second schedule to the Industrial Dispute Act, 1947 (14 of 1947);

AND WHEREAS the 9th Industrial Tribunal, Durgapur, Paschim Bardhaman has submitted to the State Government its Award dated 30.01.2025 in Case No. 05 of 2023 on the said Industrial Dispute Vide e-mail dated 31.01.2025 in compliance of u/s 10(2A) of the I.D. Act, 1947.

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 in the Labour Department's official website i.e - **wblabour.gov.in**

By order of the Governor,


Assistant Secretary

to the Government of West Bengal

No. Labr/ 182 / 1(7)/(LC-IR)/ 22015(16)/28/2025

Date : 10/02/25

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

1. M/s. Gobind Gas Power & Co.
2. Captain Jogmohan Singh(Owner).
3. Mrs. Ranjit Kaur (Operating Officer).
4. Somnath Roy
5. The Asstt. Labour Commissioner, W.B. In-Charge, Labour Gazette.
6. The OSD & EO Labour Commissioner, W.B., New Secretariat Building, 11th Floor, 1, Kiran Sankar Roy Road, Kolkata – 700001.
7. The Deputy Secretary, IT Cell, Labour Department, with the request to cast the Award in the Department's website.


Assistant Secretary

No. Labr/ 182 / 2(3)/(LC-IR)/ 22015(16)/28/2025

Date : 10/02/25

Copy forwarded for information to :-

1. The Judge, 9th Industrial Tribunal, Durgapur, Paschim Bardhaman with respect to his e-mail dated 31.01.2025.
2. The Joint Labour Commissioner (Statistics), West Bengal, 6, Church Lane, Kolkata - 700001.
3. Office Copy.


Assistant Secretary

**IN THE NINETH INDUSTRIAL TRIBUNAL AT DURGPUR, PASCHIM
BARDHAMAN.**

**Present :- Sri Nandadulal Kalapahar,
Judge, 9th Industrial Tribunal at
Durgapur, Paschim Bardhaman.**

Case No. 05 of 2023 U/S – 2A(2) of Industrial Dispute Act, 1947

Judgement delivered on this day the 30th day of January, 2025.

Somnath RoyPetitioner/Workman.

Vs

1)M/S Govind Gas Power of Attorney;

2)Captain Jogmohan Singh (Owner);

3)Mrs. Ranjit Kaur (Operating Officer).....Employer/Opposite Parties.

Sd/-

Judge This is an application u/s- 2A(2) of Industrial Tribunal Act, 1947.

For petitioner : The Ld. Advocate, Mr. KaliKinkar Dey.

For the Ops & M/S Gobind Gas Power &Co. : The Ld. Advocate, Mr. Debashis Mondal.

JUDGMENT

This is an application u/s- 2A(2) of Industrial Tribunal Act, 1947 filed by the Petitioner praying for passing an award that the alleged termination of service of the Employee/Applicant is illegal, unjustified and not in conformity with the principles of Labour Laws and he is entitled to re - instate him in his service since the February, 2015 for the Opposite Party no. 1 with proper appointment letter from 03/05/2022 with full back wages since March, 2022 with other consequential benefit in his salary account and any other relief and /or reliefs as admissible under law on the basis of the fact that the OP No. 1 is proprietorship business organisation and renowned Gas Distributor of Indian Oil Corporation for Burdwan Town , District – Purba Bardhaman, West Bengal . Opposite Party no.2 is the proprietor and Opposite Party no. 3 is the wife of OP No. 2. That during the absence of the Opposite Party no. 2, the OP no. 3 is the decision maker and she used to handle business operation of Opposite Party no. 1 . That the petitioner/Applicant joined as an employee in the month of February, 2015 and he used to handle the Accounts , daily petty Cash with customer dealings as per customer's requirement of OP no. 1 with utmost sincerity and diligence and efficiently without any interruption and complaint if any whatsoever from any other types of work assigned to him from time to time. That on 22/12/2018 vide

reference no. DEF/IND/HB/BWN/75 , the O.P no. 2certified that Somnath Roy is an employee of OP no. 1. That the employer /Opposite parties initially had given his monthly salary by hand by signing at salary register. Due to procedural problem to give salary every months by hand on 28/12/2016 the employer opened a Salary Account at Punjab National Bank , G.T. Road Burdwan Branch vide Account No. 0541000403019380 and since January , 2017 the employer used to give the monthly salary and yearly bonus to the applicant's Salary account up to February, 2022. That as in the Bank Statement it was written as salary on 05/12/2022, the applicant made an application before the Branch Manager, Punjab National Bank for confirmation from which organisation the salary was credited at his salary account. On 14/12/2022 the Branch Manager of the aforesaid Bank was confrmed that since 03/01/2017 to02/03/2022 salary was credited from the present employer/Opposite Parties from their A/C no. 0541008700004005 .

That from March, 2022 the employee/applicant had not received his monthly salary at his salary account i.e salary was not credited on 02/05/2022 he visited the opposite party no. 3 as opposite party no. 2 was not physically present and OP No. 3 verbally terminated him from service without furnishing any reason. That after the termination of his service, the petitioner/Employee met the opposite party no. 2 on several occasions to explain his financial and mental condition without any job but other employees of opposite party no 1 had given any chance to meet with the OP no. 2 and no opportunity for self exaplinationwasaffforded to him when the employer /Ops followed the principles of hire and fire policy at their whims and caprice. That on 10/08/2022 the Employee/Applicant sent a letter to OP no. 1 by regd . Post with A/D Card for his salary pending from March, 2022 to July 2022 but the OP no.1 refused to receive the letter and it was sent back to the Employee/Applicant. That the petitioner under such compelling circumstance on 16/08/2022 sent a letter to the all the respondents to recall the verbal termination of service and requested him to reinstante as an employee with full back wages from March, 2022 to till date. Unfortunately, all the opposite parties had refused to receive the same . Applicant had kept all the letters reserved to him carefully for producing the same before the Tribunal on being demanded the same. That the

Sd/-
Judge

opposite parties had refused to receive the aforesaid letter on 29/08/2022 and thereafter the employee/Applicant made an application to the Assistant Labour Commissioner, Burdwan for conciliation. Before Durga Puja, 2022, the Assistant Labour Commissioner had taken a step to hold a tripartite meeting (Assistant Labour Commissioner self, Applicant and Randhir Bhutoria on behalf of Respondents) and on behalf of the respondents it was verbally submitted that he had tried his level best to reinstate him on and from 1st October, 2022 at Respondent no. 1. That the employee neither got any job nor got any back wages and he informed the Assistant Labour Commissioner over phone and whatsapp message but he did not get any further fruitful result. That the Employee/Applicant made wait very patiently for good outcome from Assistant Labour Commissioner, Burdwan as forty five (45) days has already been elapsed from the date of receipt of conciliation application there was no outcome, on 05/12/2022 he applied for conciliation failure certificate.

That the petitioner /Employee finding no other way out he made a "Demand justice" letter dated 20/12/2022 to the Employer/Opposite Parties ventilating the grievance therein with regard to his alleged termination from service on and from 03/05/2022 which was sent under speed post but the same was refused to receive and accordingly the said letter was returned back to his Id. Advocate . The said letter was kept reserved for production of the same in due course before the Tribunal.

That from the date of appointment of the Applicant /Employee by the employers/Opposite Parties he had been discharging his duty to the satisfaction of the Employer/Opposite Parties all along and he used to maintain sincere and unblemished record of service since his last 7 years of employment prior to his alleged termination of service by the Oppositer Parties /Employer.

That the Employer has followed the anti labour policy without issuing any appointment letter to the applicant and/or without implementing statutory benefits such as Provident Fund , E.S.I, House Rent Allowance etc and even the employer did not pay the minimum wages to the applicant for his subsistence inspite of verbal request being made on several occasions for proper maintenance of attendance for all the employees to the OP nos. 2 and 3 but all such attempts yielded no result.

Sd/
Judge

That the Employer/Ops verbally terminated the employment of Petitioner /Employee at their own whims and caprice which resulted a great loss to the petitioner and even the Employer /Ops did not adopt the procedure of disciplinary proceeding being initiated against the petitioner /Employee. Petitioner/Employee did not avail any opportunity of defending himself for the reason or ground of his alleged termination of service by the Employer/Oppositer Parties as such the termination of service of the petitioner /Employee is found to be against the settled principle of law. That the petitioner/Employee has prayed for reinstatement of his service with full back wages from March, 2022 and other consequential benefits in accordance with law. That the petitioner /Employee is one of the earning member of his family That the verbal termination of the service of the petitioner/Employee since 3rd May, 2022 is illegal and unjustified and which claims the reinstatement of service of the petitioner/Employee in the company of the Opposite parties with full back wages and consequential service benefits which the petitioner is legally entitled to get. Petitioner is not employed in any concern gainfully till the date of filing of the application from the alleged date of termination of his service. That the alleged action of the Opposite Parties /Employer comes within the jurisdiction of the Tribunal and no other application has been filed before any other court of law.

That the Opposite parties /M/S Gobinda Gas Power Company & 2 Ors have contested this application filed by the Employee/workman and denied all the allegations which were brought against them and they have stated that the present case is neither maintainable nor warranted with the actual facts and circumstances of the case. That the petitioner of this case is neither employee nor workman as defined under section 2(s) of the Industrial Dispute Act, 1947. That the Opposite Parties are not the employer as defined u/s –2(g) of the Industrial Dispute Act, 1947. That the issue in dispute is not a “Industrial Dispute” as defined u/s- 2(k) of Industrial Dispute Act, 1947. That the OP No. 1 has no proprietorship or Industrial Establishment . That there is no employer and employee relationship as defined in the Act with the present petitioner and Ops. That the present petition is barred by estoppel, waiver and acquiescence. That the statements made by the

It is a admitted fact by the OP no. 1 that he had a proprietorship organisation which dealt with dealership of LPG of Inidan Oil Corporation for Burdwan Town . it is also a admitted fact that due to old age of the Proprietor i.e

Captain JagmohanSingh , his wife Mrs. Ranjit Kaur (OP No. 3) has been and had been looking after the business of Proprietorship Firm on behalf of her husband but she was not at all Operating Officer. The Ops further submits that there is/was no such post of “Operating Officer”. That the Opposite Parties Proprietorship Firm did not appoint Mr. Somnath Roy at any point of time, neither he used to handle the account of the Firm and nor he used to deal with the daily cash of the Customer. Petitoiner was a person on call to attend the particular job for a particular day. That the petitioner was never employed in OP no. 1 Establishment as other employees and staffs were engaged.

That the Opposite parties further disclose the facts that one Amiya Prosad Roy was a friend of Capt. Jagmohan Singh since 1994 and at that time Mr. Amiya Prosad Roy was an Engineer in Coal Mine in Manidisergarh at Madhya Pradesh . The said petitioner’s father Mr. Amiya Prosad Roy was in very distressed condition that his son Somnath Roy was unable to keep his job as Prefessor and also failed to run his “shoe shop business,” so he (Amiya Prosad Roy) requested Capt. Jagmohan Singh to help him (Somenath Roy) with regard to his carrear, so that he could settle down . In 1996 Capt. Jagmohan as a favour to his friend Mr. Amiya Prosad Roy helped Somnath Roy to open a “SWEET SHOP” at his residence, Kalna Road . The said Capt. i.e OP no. 2 helped with the basic necessities such as purchasing of a fridge for the petitioner etc. and also helped to get him a loan amount as well. Over two moments the business failed because of negligence of the petitioner and lack of work, ethics , he failed to pay the loan amount for Mr. Somnath Roy’s “Flower business” from a finance company called “Guru Nanak cloth house store”. The flower business was also failed again due to his negligence and then said petitioner started “Khasi (Goat)” Farming Business which wasalso failed. Thereafter, the petitioner got a job with Western Union Finance Company in Chandigarh, Punjab till 2012. Then the petitioner was transferred to Murshidabad, West Bengal and the petitiomer worked there till January, 2015. In every failure of the petitiomer was his bad behaviour. The petitioner Somnath Roy after getting fired from his job again asked for financial help from Capt. Jagmohan Singh as his son wanted to do study for MBA . So, Capt Jagmohan Singh started giving him money for his son’s education . From last five (5) years his son is working in a Company in Chennai, after finishing his MBA, which was possible due to this Opp. No. 2 i.e Capt. Jogmohan Singh’s financial assistance and support .Once again the petitioner made a request to the OP NO. 2 i.e Capt. Jagmohan

Sd/-

Judge

Singh to provide him some job temporarily for some extra income . The petitioner was called upon to work in a shop of “Soft drink (Juice) ” under the establishment /Trade name “Govind Drinks Corner” whose proprietor was only OP No. 2. After engagement in the said shop the OP no. 2 found that he was completely unfit to run any business , but the OP no. 2 did not retrench him as the petitioner was OP no. 2’s friend’s son . The OP no. 2 inspite of suffering financial loss engaged him in the said shop. As the then petitioner was financially weak so the OP no. 2 used to donate money to the petitioner through bank account payment to the petitioner.

*Petitioner never worked for the benefit of the shop, but for the benefit of his own income by way of misappropriation of cash amount from the counter of the said juice shop. The petitioner was a greedy person. The petitioner was never engaged in OP no. 1 establishment by the OP no.2. It is further mentioned that any engagement in the establishment of M/S Govind Gas Power Company were/are subject to the confirmation of the IOCL and the establishment is legally bound to disclose the name of the employees /Workers in the Form -B (Application for Registration) prescribed under Sub -rule (2) & (3) of rule 4 of the West Bengal Shop & Establishment Rules ,1964 before the office of Inspector, Shops and Establishment, Government of West Bengal . But nowhere in any Govt. office this petitioner’s name had been /has been incorporated either as workman or Employee of either “**Govind Drink Corner**” or in “**Govind Gas Power Company**” .*

It has further been mentioned that the status of the petitioner is mere a donee, who used to get money as donations from the accounts of the OP No. 1 by showing a misc. expenses .The Salary shown in the bank account of the petitioner was /is a clerical mistake by the Bank Authority and on detection such clerical mistake,the Bank was requested to correct the same by the OP no. 1 and 2 through letter.

It is further mentioned by the Opposite Parties that the Petitioner Somnath Roy keeping the OP No. 2 in dark managed to get one certificate dated 22/12/2018 with ulterior motive , which was issued by the OP no. 2 for helping the petitioner for seeking any other job at Brudwan, now at PurbaBardhaman . That the letter had/has no connection and relevancy to the OP no. 1. That the petitioner is bound to produce the appointment letter which is in his possession where it can be found that the petitioner was engaged in the OP Concern in the month and ear February, 2015. The petitioner till date did not file any documents showing that he used to handle accounts, daily petty cash with customer etc. as alleged in his W.S. Rest

portions of the paragraphs are mentioned in words. The certificate dated 22/12/2018 was issued to the petitioner as appreciation certificate for getting job at any other establishment as "Job experience " letter, but the petitioner is now using the same against the OP No. 2 with an ulterior motive.

Petitioner was never appointed by the OP no. 1 Partnership Firm, so the verbal termination of the service of the petitioner by OP no. 1, 2 and 3 are mere myth. That neither the OP no. 1 and its partners appointed the present petitioner in any job , nor terminated the petitioner illegally. The petitioner was working in the shop of 'Govind Drink Corner (Juice). "The petitioner was never appointed in the Firm i.e M/S Gobind Gas Power Company at any material time as alleged by the petitioner . No salary was paid to the petitioner from the OP no. 1 firm for any point of time , so the question of arrear salary is mere imagination and concocted story . As the petitioner had no relation with the OP no. 1, so acceptance of any letter does not arise at all. That the conciliation Proceedings conducted at the office of Assistant Labour Commissioner, Burdwan are all matter of record. That the petitioner tried to exert force upon the Opposite Parties to induct him (petitioner) in their partnership firm from the shop namely Gobind Drink Corner , as the said shop has been closed down and the OP no. 2 used pay petitioner as donation for his livelihood and for education of his son. **Gobind Drink Corner** and **M/S Gobind Gas Power Co.** have two separate entity and was separately operated by the OP no. 2. The petitioner had /has no right claim relief from the OP No. 1, Partnership Firm.

Petitioner was not employed by the opposite parties, so the question of implementing the statutory benefits, Provident Fund, ESI, House Rent Allowance, Payment of minimum wages does not arise at all. That opposite parties never engaged the petitioner in the Firm (O.P No. 1), so the question of verbal termination under whims and caprice and initiation of Disciplinary Proceeding does not arise at all. That the petitioner was not entitled get any back wages from March, 2022 and other consequential benefits as has been prayed for by the petitioner. No principles of natural justice and law was ever violated .Petitioner has no right to claim any relief as regular employee of Partnership Firm. That the petitioner is not entitled to get any other relief and /or reliefs as prayed for before the ld. Tribunal.

That the opposite parties further filed a rejoinder disclosing that they filed the written statement along with some documents such as one Bank Account

statement of Somnath Roy, vide A/C No. 0541000403019380 of Punjab National Bank and another document issued by Capt. Jagmohan Singh dated 22/12/2018. It is a fact that in the Bank Account of Somnath Roy Rs.5000/- was credited and shown as 'salary'. OP made contact with the Bank Manager and asked about wrong posting of transfer of money as "salary" without written consent taken from the OP concern. The Bank Manager pleads as "mistake entry" and undertakes to correct the wrong entry in future. That the petitioner was suffering from financial problem as he was jobless. That the petitioner came to the house of the Capt. Jagmohan Singh with a request for financial assistance, otherwise the education of the petitioner's son would be stopped i.e the education of Shuvam Roy. Capt. Jagmohan Singh then asked the petitioner to open a Bank Account where the OP No. 2 expressed his intention to transfer money through that bank account. The OP used to pay the amount through his account into the account of the petitioner as per capacity of said Jagmohan Singh. The petitioner is not at all attached with the OP concern or establishment. That the certificate dated 22/12/2018 issued by the Capt. Jagmohan Singh is required to be examined by Hand writing Expert. Capt. Singh denies that the lines inserted "if rules present he may be included ESI list of our Company employer" has been inserted by the petitioner by way of forgery for the purpose of taking advantage in this case on ulterior motive. That the certificate was issued in favour of the petitioner, so that the petitioner gets a job showing his past experience in any company or establishment. The petitioner has never worked as a casual, temporary and permanent employee at any point. The person who works in the OP establishment, the names of those persons are mentioned in the list of certificate issued by the Labour Officer, Shop & Establishment, SDMS System of Indian Oil Corporation Limited and those documents to be exhibited at the time of evidence. Petitioner is not entitled to claim any relief and / or reliefs as prayed for.

On going through the pleadings of both the parties the following issues are framed for effective adjudication of the case of parties :-

ISSUES :-

- 1) Is the case maintainable under the Industrial Tribunal Act, 1947 ?
- 2) Whether the applicant was a workman /employee of the Ops at any point of time or not ?
- 3) Whether the service of the applicant /workman was terminated on 02/05/2022 by the Ops or not ?

Sd/-
Judge

4) *Whether the termination of the petitioner /workman is justified or not ?*

5) *To what other further relief and /or reliefs , if any, is the petitioner entitled ?*

In proving this case , the petitioner /Employee/workman has examined himself as PW-1 in this case and petitioner/workman has also produced some documents such as 1) Statement of Bank Account of PW-1, 2) Receipt copy of application dated 05/12/2022, 3) Statement of Bank Account along with letter dated 14/12/2022, 4) Certificate dated 22/12/2018 issued by the Employer, Capt. Jagmohan Singh, 5) Copy of demand notice dated 10/08/2022, 6) Sealed Envelope along with A/D Card regarding sending of said demand notice, 7) Application dated 29/08/2022 to the Assistant Labour Commissioner, Burdwan by PW-1 and 8) Three sealed envelopes containing demand notice which are marked as Exbt. nos. 1, 2, 3 , 4, 5, 6, 7, 8, 8/1, & 8/2 respectively in this case in order to substantiate his case. Then the evidence of the petitioner/workman was closed.

Where as on the other hand the Opposite parties have examined as many as two (2) witnesses namely Jagmohan Singh and Gobinda Kumar Biswas as OPW-1 and OPW-2 in order to prove their case and they have also produced some documents such as –

- 1) Copy of certificate of enlistment ;*
- 2) Copy of Payment of Certificate of Enlistment;*
- 3) Copy of IOCL system generated Employees List;*
- 4) Copy of registration Certificate of farm along with Form -B;*
- 5) Copy of Farms Application for issuance of Certificate;*
- 6) Copy of computer system generated P.F;*
- 7) ESI Monthly contribution statement;*
- 8) Attendance Register of Employees from 01/01/2015 to 31/04/2023;*
- 9) Pay Register from 01/04/2014 to 30/06/2021;*
- 10) Pay Register from July , 2021 to December, 2023;*
- 11) Letter dated 17/08/2022 of Mr. Somnath Roy;*
- 12) Letter dated 29/08/2022 of Mr. Somnath Roy;*
- 13) Copy of Notice dated 08/09/2022;*
- 14) Copy of authorization Letter dated 19/09/2022;*
- 15) Letter dated 05/12/2022 of Mr. Somnath Roy;*
- 16) Copy of Letter dated 10/01/2024 of Gobind Gas Power ;*
- 17) Notice dated 02/01/2024 &*
- 18) Handwriting and signature of OPW- 2 on letter dated 05/12/2022*

which are marked as Exbt. nos. A, B, C, D, E, F, G, H, Iseries(I, I/1, I/2 & I/3), J, K, L, M, N, O, P, Q & R respectively in this case. Then the evidence of Opposite parties was closed.

Having heard the arguments of this case in presence of the ld. Advocates for Petitioner/Workman and the ld. Advocate for Ops & their Company named M/S Gobind Gas Power & Co. and on being perused the oral and documentary evidence of witness examined, and documents adduced and produced by both the parties , the Judgement of this case is delivered today before this court.

DECISION WITH REASON :-

All the issues framed herein above , are discussed separately and independently for arriving at just and proper decision of this case.

It is argued by the ld.lawyer for the petitioner/workman that the petitioner/workman Somnath Roy used to work in a Company of M/S Gobind Gas Power and he used to handle the accounts of the said company and dealt with the customers of the said M/S Gobind Gas Power Co. Accordingly, the salary has also being credited in his bank account of Punjab National Bank (PNB)by the employer i.e O.Ps. Captain Jagmohan Singh, the owner of the said M/S Gobind Gas Power Co. It is further submitted by the ld.lawyer for the petitioner/workman that not only the salary but the bonus and other incremental benefits of the petitioner/workman were also credited in the said salary account of PNB which was opened by the employer in the name of the petitioner/workman. Initially, the said M/S Gobind Gas Power Co. was a partnership organisation and subsequently, it was converted into a company. During the absence of the owner of the said M/S Gobind Gas Power Co. his wife Mrs. Ranjit Kaur used to look after the business transaction of the said M/S Gobind Gas Power Co. Subsequently, the petitioner/workman was illegally terminated from his service without resorting to any disciplinary proceeding before the termination of his service from the said M/S Gobind Gas Power Co. That the M/S Gobind Gas Power Co. has not followed any rules of the termination of service of the petitioner/workman Somnath Roy. The workman was terminated from his service verbally by adopting the hire and fire policy.

The petitioner/workman Somnath Roy was afforded no opportunity for self-defence during the termination of his service from the company and thereby the company and the owner thereof have failed to comply with the principles of natural

justice and violated the rules of retrenchment of the service of the petitioner from the company. That after the termination of the service the petitioner made an application to the Asstt. Labour Commissioner, Burdwan for initiation for conciliation proceedings of settlement of the dispute and accordingly, the notice was also issued upon employer of the company for holding a tripartite meeting but the owner of the said company did not appear before this Asstt. Labour Commissioner, Burdwan and as a result of which no conciliation proceeding was conducted and the settlement of the dispute was not arrived at.

Therefore, the petitioner/workman finding no other way files this application under the provision of Industrial Tribunal Act, 1947 before this tribunal for reinstatement of service in the company of Captain Jagmohan Singh with fullback wages.

During the cross-examination of the witness O.P.W-1, Captain Jagmohan Singh when he was confronted with document Exbt.4 regarding the work of the petitioner/workman in the company of Captain Jagmohan Singh, he has stated that he issued the said document Exbt.4. Then he stated that he issued the same for the purpose of petitioner's future job. This witness P.W.1 has further stated in his cross-examination that he never issued any appointment letter to any of the employees of their Gas agencies or their Juice Shop. Therefore, as per the document Exbt.4 the petitioner/workman was working in the company of the Captain Jagmohan Singh. From the document Exbt.1 the bank account statement of PNB of the petitioner/workman Somnath Roy. Salary of the petitioner/workman was credited that not only the salary but the bonus was also found to be credited in the salary account of the statement of PNB of the petitioner/workman Somnath Roy.

It is argued by the ld.lawyer for the Captain Jagmohan Singh or M/S Gobind Gas Power Co. he submits before this tribunal when the bank Manager of the concerned PNB was confronted with the crediting of the money in favour of the petitioner for salary, the concerned bank Manager submits that this was credited in the salary account of the petitioner/workman Somnath Roy as mistake. But it is found from the bank statement of salary of petitioner/workman Somnath Roy, the salary is credited from 03.01.2017 in the said PNB till the month of February, 2022. So it is also found that Puja festival allowances was also credited in the bank statement of salary account of petitioner/workman Somnath Roy. It is further submitted by the ld.lawyer for the petitioner /workman that it may be mistake of

crediting the money in the salary account of the petitioner/workman for one or two occasions. There cannot be any mistake on the part of Bank Authority in a series of transaction regarding the crediting of money in the salary account of petitioner/workman of PNB as salary. Captain Jagmohan Singh has failed to produce any document before this court to so that the bank authority has issued any letter that the money has been credited not as a salary but for a donation. Apart from that the bank authority cannot credit a money in the holder of the salary account of the petitioner/workman as a salary as per his own whim and caprice. So, generally whenever the salary of the staffs of the bank are disbursed through the salary accounts of the respective employees, a list containing the name of employees and their respective salaries are mentioned when the same is sent to the bank Manager for crediting their respective salary accounts as a salary. Bank Manager cannot credit the amount of money in the salary account as a salary as per their own opinion.

It is further submitted by the ld.lawyer for the petitioner/workman that the ld.lawyer for the O.Ps have submitted some lists of documents containing the names of the Indian Oil Corporation regarding the M/S Gobind Gas Power Co. but the name of the petitioner/workman was not mentioned there. Therefore, the petitioner/workman is not at all an employee of the M/S Gobind Gas Power Co. belonging to Captain Jagmohan Singh and there is no relationship in between the petitioner and the O.P Captain Jagmohan Singh as workman and employer. Therefore, the petitioner cannot file such an application for reinstatement of the service from M/S Gobind Gas Power Co. and claim with full back wages including the Provident Fund and other consequential benefits.

It is the fact that Captain Jagmohan Singh has admitted in his cross-examination that he never issued any letter to any of the employees of M/S Gobind Gas Power Co. as well as Juice Shop Corner. From the document Exbt.4 certificate issued by the Captain Jagmohan Singh claims that the petitioner/workmen Somnath Roy has been working in the company of the Captain Jagmohan Singh and there was a relationship between the petitioner and Captain Jagmohan Singh as workman and employer.

Ld.lawyer for the M/S Gobind Gas Power Co. has also raised contention before this tribunal against document Exbt.4 and claimed that the petitioner/workman has inserted one line in the said document Exbt.4 which was not admitted by the owner Captain Jagmohan Singh. Ld. lawyer for the M/S

Gobind Gas Power Co. also claims to be examined the said document by handwriting expert but the O.Ps did not make any endeavour for getting said document Exbt.4 to be examined by handwriting expert. Consequently, the O.Ps do not have any right to raise any contention that this document Exbt.4 is forged document or fictitious document. The document Exbt.4 is found to be reliable and acceptable for taking into consideration in proving the case of the petitioner/workman. The petitioner/workman was verbally terminated by the O.Ps which is against the principles of natural justice as he was not afforded any opportunity to plead his self-defence against such illegal and verbal termination of the petitioner/workman from his service. Therefore, the petitioner/workman is entitled to get himself reinstated in the said service of the O.Ps M/S Gobind Gas Power Co. and with full back wages and other consequential benefits regarding his service which is admissible in the eye of law.

Whereas on the other hand, the ld.lawyer for the petitioner/workman has further argued before this tribunal that workman namely, Somnath Roy used to get monthly salary together with incremental salary and bonus of every year at his salary account of PNB, Burdwan Branch vide A/c.No.0541000403019380 and the Branch Manager of the aforesaid bank has confirmed the same that the salary was credited from the aforesaid employer. O.P.No.-2 i.e. Captain Jagmohan Singh who has issued a certificate vide reference no.DEF/IND/WB/BWN/75 dated 22.12.2018 under the letter head of M/S Gobind Gas Power Co. to the effect that Somnath Roy is an employee of their establishment. During the absence of O.P.No.2 i.e Captain Jagmohan Singh, O.P.No-3, Mrs. Ranjit Kaur used to handle the business on 02.05.2022 and this O.P No.-3 Mrs. Ranjit Kaur, wife of Captain Jagmohan Singh had terminated the workman from service without any prior intimation. As the workman made protest against the anti labour policies regarding deprivation of Provident Fund facilities, ESIC facilities and non-issuance of appointment letter to workman and not affording any opportunity to sign the Attendance Register and non-inclusion of his name at Indian Oil Corpn. system employee list from 2019-2024 i.e the discrimination from other employees was adopted by the aforesaid employer by the O.P.No.3. Therefore, there was no connection between the employer and workman though the workman sent so many letters of communication to them. In order to protest such illegal termination on 29.08.2022 the workman filed an application before the Asstt. Labour Commissioner, Burdwan and on 08.09.2022 the Asstt. Labour Commissioner issued notice to both the

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parties for meeting on 20.09.2022 and on that date representative of the employer and the workman appeared and the Asstt. Labour Commissioner, Burdwan tried to resolve the dispute between the parties by way of conciliation.

But there was no result/resolution in favour of the workman on 05.12.2022 and the petitioner/workman wrote a letter to the Asstt. Labour Commissioner, Burdwan under subject “An application for conciliation failure certificate”. On that letter he also clearly expressed his urgency on this matter and in the last paragraph he clearly wrote further course of action i.e his intention to file this matter before the Industrial Tribunal. On being received the application dated 05.12.2022 of the petitioner/workman the Asstt. Labour Commissioner, Burdwan did not take any action and neither he called the workman to hand over conciliation pending certificate for his further course of action nor conclude the matter. As the workman did not get any response from the Asstt. Labour Commissioner, he filed the instant case before this tribunal for proper adjudication U/S 2A(2) of Industrial Dispute Act, 1947.

During the course of action the Asstt. Labour Commissioner has admitted that he received a letter dated 05.12.2022 and as per the provision of West Bengal Industrial Rules the conciliation proceeding is to be completed within the period of sixty days from the commencement of the conciliation proceeding. He could not complete conciliation proceeding within the stipulated period as he was pre-occupied with the Govt's various other programmes and as a result the conciliation proceeding was pending.

*That the Asstt. Labour Commissioner neither included the conciliation proceeding within the stipulated period as per W.B. Industrial Rules nor shown any interest to conclude this matter within stipulated time as he was busy with other Govt. works. The Asstt. Labour Commissioner also failed to call on the workman of the employer/O.Ps for conciliation proceedings on Saturday, Sunday and holiday to complete the conciliation proceedings. The Ld. Lawyer for the petitioner further relies upon the judgement reported in **National Engineering Industries Ltd. Vs. State of Rajasthan (2000)1S.S.C 371**, the larger Bench consisting of three judges of the Hon'ble Apex Court observed that “There is no bar in having conciliation proceedings on a holiday and to arrive at a settlement. A holiday atmosphere is rather more relaxed”. Therefore, the Asstt. Labour Commissioner has neither concluded the conciliation proceedings as per W.B. Industrial Rules nor complied with the provision of Sec.12 Sub-sec 2 of Industrial Disputes Act, 1947. But neither*

the W.B. Industrial Rules has been followed nor the guidelines of Hon'ble Supreme Court's judgement was followed by the Asstt. Labour Commissioner due to lack of his knowledge and experience which is a pure negligence on his part. The Asstt. Labour Commissioner had called on the next conciliation proceedings on 16.01.2024 though the workman filed the application long back before approaching this tribunal. It is, therefore, prayed for that an award may kindly be passed in favour of the workman for reinstatement of his service with full back wages on the company of the aforesaid employer/ O.P/Company with proper appointment letter together with other benefits to workman as per settled provision of law.

That M/S Gobind Gas Power Co./O.Ps have argued before this tribunal that as per provision of Sec.12 sub-sec.2 of Industrial Tribunal Act,1947 the claim of the petitioner/workman before this tribunal is not at all an Industrial Dispute. During the pendency of the conciliation proceedings this case was filed before this tribunal by the petitioner/workman. It is not a referred case from the appropriate Govt. and there is also no failure of conciliation certificate which is found to have been produced before this tribunal at the time of the filing of this case before this tribunal. This is not a proprietorship organisation but it had been converted into a Partnership Firm. The petitioner/workman has filed this case before this tribunal against the proprietorship organisation and the petitioner /workman had never any time for making an amendment of the cause title of this case as a partnership firm in spite of drawing the attention to the knowledge of the petitioner/workman. It is mandatory on the part of the petitioner/workman to file the failure of conciliation certificate before this tribunal at the time of the filing of this case before the tribunal which gives the opportunity to the workman/petitioner to have the jurisdiction to entertain this application before this Industrial Tribunal. As the petitioner/workman has not filed any failure of conciliation certificate before this tribunal as such this case filed by the petitioner/workman U/S 12 sub-sec 2 of the Industrial Disputes Act, 1947 is found to be not maintainable in the eye of law and the same is liable to be dismissed.

O.Ps M/S Gobind Gas Power Co. has challenged the status of the petitioner/workman and he submits that the petitioner/workman claiming himself to be an employee under the O.P.2 is not an employee at all and once upon a time he used to work in Gobind Gas Co. Juice Centre. According to petitioner/workman, he had been doing his work in the company since 1975 till the

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year 2022. But in cross-examination this petitioner Somnath Roy has stated that he has joined in the company in the year 2015. This case is filed in the month of June, 2023. The proprietorship business organisation was converted to Partnership Firm in the year 2022. The ld.lawyer for the O.Ps has also argued before this court that PNB statement is manufactured one and on the basis of which the petitioner cannot be termed as a workman. It is a fact that the money was credited in the bank account. It is also argued by the ld.lawyer for the O.Ps on being shown a list of IOC containing the names of list of employees since the year 2019 which was a computer generated copy and in the said IOC list containing the, names of employees wherein the name of the petitioner does not contain in the said list. The petitioner in his cross-examination has stated that his service was terminated by O.P. No.3. Petitioner has further stated his service was verbally terminated on 03.05.2023.

From the document Exbt.F which contains a list of Provident Fund of employees wherein the name of petitioner was not inserted as a workman in the list of said Provident fund employees.

Petitioner has also failed to produce any document before this tribunal to substantiate his claim that he was a workman under the company of O.Ps. The document Exbt.H contains a list of names of employees and their attendance which also does not include the name of the petitioner Somnath Roy as workman. That in the documents Exbt.I, I/1, I/2 and I/3 contain the names of the employees registered wherein the name of the petitioner does not contain in the said pay register which suggests that the petitioner Somnath Roy was not a workman in the company of the O.Ps. Therefore, there was no relationship in between the petitioner and the O.Ps as a relationship of workman and employer and the petitioner was never a workman in the company of the O.Ps and the amount of money credited in the bank statement of PNB of the petitioner is mistake of fact. Therefore, the petitioner/workman has failed to substantiate his case by adducing any positive and reliable evidence to come to finding that the petitioner Somnath Roy was workman in the company of the O.Ps and he has rendered his duty in the said company for the period as has been mentioned in his application and his service was verbally terminated by the O.P.No.3, the wife of Jagmohan Singh and subsequently, he filed an application before Asstt. Labour Commissioner, Burdwan for resolving the dispute by conducting a conciliation proceeding and failure on the part of the .Labour Commissioner, Burdwan to conclude the said conciliation

proceeding within statutory period of 60 days. Therefore, the petitioner/workman is not entitled to claim of reinstatement of his service in the company of the O.Ps with full back wages and other consequential service benefits including the Provident Fund, ESIC as admissible in the eye of law. Thus, this case filed by the petitioner/workman against the O.Ps and their company M/S Gobind Gas Power Co. be dismissed with cost.

Issue No.1 :

It has been contended by the ld.lawwer for O.Ps M/S Gobind Gas Power Co. &ors. that this case is not maintainable under the Industrial Dispute Act,1947. The petitioner is neither a workman nor he was employed by the employer as a workman in the M/S Gobind Gas Power Co. It has further been advanced before this tribunal that there was no relationship between the petitioner and the O.Ps and their company as workman and employer. Consequently, the dispute arising in between the petitioner and the M/S Gobind Gas Power Co.&ors. does not come within the purview of the "Industrial Dispute". As such, this case filed by the petitioner before this tribunal in not at all maintainable under the Industrial Tribunal Act,1947.

Ld.advocate for the petitioner Somnath Roy has submitted before this court that the petitioner was an employee of the company of the O.Ps namely,M/S Gobind Gas Power Co. and he has rendered his work of dealing with the accounts deptt. of the company for a considerable period and thereafter all of a sudden the petitioner was terminated verbally by the O.P.No.3 during the absence of O.P.No.2 and their company. Therefore, the termination of the service of the petitioner by the O.P.No.3 from the M/S Gobind Gas Power Co. without giving any notice to the petitioner is wholly illegal and bad in the eye of law. The termination of the service of the petitioner ought to have been done resorting to the disciplinary action and following its procedure such as by issuance of notice, charge sheet, etc. But the termination of the service of the petitioner by the O.P.No.3 and their company M/S Gobind Gas Power Co. verbally without following rules of disciplinary action amounts to gross violation of the disciplinary rules which is beyond the scope of the law. It was also contended by the ld.lawyer for the O.Ps. and their Company that as there was no relationship between the petitioner and the O.P and their company as workman and employer. As such, there does not any question of adopting the disciplinary action for the termination of the service of the petitioner from the O.P/Company. The petitioner is not at all a workman under the O.Ps and

their company. Consequently, the termination of service of the petitioner does not arise at all.

Having heard the submission of ld.lawyer for the O.Ps and their company as well as ld.lawyer for the petitioner, I find that it is the positive case of the O.Ps and their company that petitioner is not their employee or workman in M/S Gobind Gas Power Co. and also there was no such relationship between the workman and employer between the petitioner and the O.Ps and their company. Therefore, the onus lies upon the O.Ps and their company to prove before this tribunal that the petitioner is not a workman or employee of their M/S Gobind Gas Power Co.

In order to justify their claim the O.Ps have produced some documents such as copy of payment certificate of enlistment, copy of IOCL system generated employees list, copy of computer system generated Provident Fund list, ESI monthly contribution statement and attendance register of employees from 01.01.2015 to 31.04.2023 and pay register from July,2021 to December, 2023 which are marked as Exbts. B,C,F,H and I wherein the name of the petitioner Somnath Roy does not appear which goes to suggest that the petitioner Somnath Roy was never an employee under the O.Ps and their company M/S Gobind Gas Power Co. Consequently, the dispute raised before this tribunal by the petitioner Somnath Roy as a workman against the O.Ps as an employer is not an industrial dispute and this case is found to be not maintainable before this Industrial Tribunal.

According to the ld.lawyer for the petitioner Somnath Roy that he was doing the work of an accountant in the M/S Gobind Gas Power Co. and he dealt with accounts of the company with the consumers and he has rendered his duty for a considerable period and thereafter all of a sudden his service was terminated verbally by the O.P.No.3 during the absence of O.P.No.2 and their company without furnishing any reason and it had come to the notice of petitioner when the salary of the petitioner was not credited to his bank salary account on 02.05.2022.

In order to come to a finding as to whether this case is maintainable under the Industrial Disputes Act,1947 before this tribunal or not the definition of the industry, industrial dispute, workman and jurisdiction of this tribunal are to be studied in their proper perspective which are described herein below:

Section 2(k) : “Industrial Dispute” means any dispute or difference between employers and employees, or between employers and workmen, or between

workmen and workmen which connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person.

Section 2(j) : “Industry” means any business, trade, undertaking, manufacture or calling of employers and includes any calling, service , employment, handicraft ,or industrial occupation or avocation of workmen.

Section 2[j) : “Industry” means any systematic activity carried on by cooperation between an employer and his workmen (whether such workmen are employed by such employer directly or by through any agency, including a contractor) for the production supply or distribution of goods or services with a view to satisfy human wants or wishes (not being wants or wishes where are merely, spiritual or religious in nature), whether or not –

- i) any capital has been invested for the purpose of carrying on such activity; or*
- ii) such activity is carried on with a motive to work any gain or profit, includes –*

a) any activity of the Dock Labour Board established u/s 5A of Dock Workers (Regulation of Employment)Act,1948,

b) any activity relating to the promotion of sales or business or both carried on by an establishment,

but does not include --

- 1) any agriculture operation except where such agricultural operation is carried on in an integrated manner with any other activity (being any such activity as is referred to in the foregoing provisions of this clause) and such other activity is the predominant one.*

Explanation – For the purpose of this sub-clause “agricultural operation” does not include any activity carried on in a plantation as defined in clause (f) of section 2 of the Plantations Labour Act,1951; or

- 2) hospitals or dispensaries; or*
- 3) educational, scientific, research or training institutions; or*
- 4) institutions owned or managed by organisation wholly or substantially engaged in any charitable, social or philanthropic service; or*

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- 5) *khadi or village industries; or*
- 6) *any activity of the Government relatable to the sovereign functions of the Government including all the activities carried by the departments of the Central Government dealing with defence research, atomic energy and space; or*
- 7) *any domestic service; or*
- 8) *any activity being a profession practiced by an individual or body of individuals, if the number of persons employed by the individual or body of individuals in relation to such profession is less than ten; or*
- 9) *any activity, being an activity carried on by a co-operative society or a club or any other like body of individuals, if the number of persons employed by the co-operative society, club or other like body of individuals in relation to such activity is less than ten.]*

Section [2s)– “workman” means any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work hire or reward, whether the terms of employment be express or implied, and for the purpose of any proceeding under this Act in relation to industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person –

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

It is found from the definition of the workman u/s 2s of the Industrial Dispute Act, 1947 that any person who has employed in any industry to do manual,

unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied for the purpose of any proceeding under the act in relation to industrial dispute includes any such person who has also been dismissed, discharged or retrenched, in connection with or as a consequence of dispute. So far as the case is concerned, the petitioner Somnath Roy used to handle the accounts of the M/S Gobind Gas Power Co. and he was dealt with the consumers of the said M/S Gobind Gas Power Co. and he was rendering his duty for a such considerable period of payment of monthly salary by the O.Ps and their company.

I have already come to a finding on going through the definition of the term “Industry” that the ‘industry’ means whether the systematic activity is carried on operation between employer and his workman, whether such workman was employed by such employer directly or by through any agency including a contractor for the production, supply or distribution of goods or services with a view to satisfy the human wants or wishes. From the document Exbt.I as well as oral evidence of witness of P.W-1, I find that he was carrying on his duty as such with Account department of O.Ps and their company for a considerable period and it is also evident from the document Exbt.Ii.e bank salary account statement, that the salary of the petitioner has been credited in the salary account of PNB, Burdwan Branch, it is also evident from the said bank account statement that the bonus and the festival allowance of the petitioner were also credited in the said salary account of the petitioner on and from 03.01.2017 to 02.03.2022. It is also evident from the document Exbt.3 certificate issued by the Chief Manager, PNB and that the every month amount was credited from the account of M/S Gobind Gas Power Co. for a period from 03.01.2017 to 02.03.2022. Therefore, the bank account of the petitioner goes to suggest that M/S Gobind Gas Power Co. used to credit the salary of the petitioner in his salary account for the purpose of rendering his duty to the company as an Employee/Workman.

Ld.lawyer for the O.Ps had contended before this tribunal that the amount of money which was credited in the bank account of PNB of the petitioner that was credited as a donation not as a salary. Bank authority has credited his said amount of money in the bank account of the petitioner of PNB as a salary. So, it was a mistake on the part of the bank authority of crediting such money in the bank account of the petitioner. Generally, whenever any salary is paid to the employees by any governmental or non-governmental company or any Govt. organisation a

list containing names of employees and their respective salary amount is forwarded to the bank authority for crediting the said amount of money as salary in the respective salary account of the employees. Therefore, there cannot be any mistake on the part of the bank authority. Generally, bank authority cannot do the same in the way the ld.lawyer for the O.Ps has submitted before this court. The bank cannot incorporate the amount of money in the accounts of the petitioner as a salary without any written instruction from the O.Ps or the employer.

Consequently, submission made by the ld.lawyer for the O.Ps that the money which was credited in the salary account of the petitioner as 'donation' is not tenable in the eye of law. That the relationship between the petitioner and the O.Ps and their company can be termed as workman and employer as per the definition of the 'industry' and 'Workman' the M/S Gobind Gas Power Co.was systematically carrying on the activity by co-operation between the O.Ps and this petitioner as a workman for the production, supply or distribution of goods or services with a view to satisfy the consumers of the gas company. Therefore, the relationship between Somnath Roy and the O.Ps and their company can be termed as workman and employer. As the petitioner Somnath Roy was verbally terminated without showing any reason and the petitioner in the event of being a workman of M/S Gobind Gas Power Co., such verbal termination of service of the petitioner by O.P.No.3 during the absence of O.P.No.2 from M/S Gobind Gas Power Co. without showing any reason and tendering any notice of termination upon the petitioner it can be termed as an industrial dispute as per the definition u/s 2(k) of Industrial Disputes Act,1947. Therefore, this case is found to be well maintainable.

Apart from that, the petitioner Somnath Roy also made an application before Asstt. Labour Commissioner for the settlement before the authority concerned by conducting a conciliation proceeding and notice was also issued upon both the petitioner and the O.Ps for such conciliation but the conciliation process was not completed by the Asstt. Labour Commission, Burdwan within a period of 60 days which was mandatory on the part of the Labour Commissioner to conclude the conciliation proceeding.

The petitioner Somnath Roy made an application for issuance of a conciliation failure certificate but that certificate was also not issued by the Asstt. Labour Commissioner, Burdwan. As the Asstt. Labour Commissioner, Burdwan has not completed the conciliation proceedings within a statutory period of 60 days as such this tribunal has got ample jurisdiction to entertain the case and the said case

is also found to be maintainable before this tribunal. Thus, this Issue No.1 is decided in affirmative in favour of the petitioner/workman.

Issue No.2 :

That the next issue which was framed by this tribunal whether the applicant was a workman/petitioner under the O.Ps and their company at any point of time or not. I have come across while deciding the issue no.1 and arrived at a finding that the relationship between the petitioner Somnath Roy and the O.Ps and their company can be termed as 'Workman' and 'Employer' after discussing the issue no.1 in detail. It was the positive case of the O.Ps and their company such as M/S Gobind Gas Power Co. that there was no such relationship in between the petitioner Somnath Roy and the O.P and M/S Gobind Gas Power Co. as a relationship of 'Workman' and 'Employer'. Consequently, the petitioner cannot be termed as an employee or workman under the M/S Gobind Gas Power Co.. The O.P and M/S Gobind Gas Power Co. in order to substantiate their claim have produced some documents such as copy of payment certificate of enlistment, a copy of IOCL system generated employees list, copy of computer system generated Provident Fund list, ESI monthly contribution statement, attendance register of employees from 01.01.2015 to 30..4.2023 and pay register from July,2021 to December, 2023 which were marked as Exbts. B, C, F, H & I before this Tribunal wherein the name of the petitioner Somnath Roy is not mentioned and reflected which compels to come to a finding that the petitioner Somnath Roy was never an employee under the O.Ps and their company M/S Gobind Gas Power Co. Therefore, the petitioner is not at all an employee either under the O.Ps or under the M/S Gobind Gas Power Co. The ld. Advocate for the O.Ps and their company have also contended before this Tribunal that the petitioner has failed to produce any piece of document before this Tribunal to justify his claim that he was a workman under the company of O.Ps i.e M/S Gobind Gas Power Co. The ld.lawyer for the O.Ps and their company has further contended before this Tribunal that the document Exbt. 4 which has been produced by the petitioner before this tribunal was a document executed by the Captain Jagmohan Singh on a letter head of M/S Gobind Gas Power Co. and this certificate was issued on 22.12.2018 vide Ref.No. DEF/IND/GB/Power/75 on the basis of such document Exbt.4 the petitioner Somnath Roy claims himself to be an employee of M/S Gobind Gas Power Co. It has further been drawn to the attention of this tribunal that one line of the said

document Exbt. 4 i.e “if Rules permit he may be included ESI list of our company employees”. The ld. lawyer for the O.Ps and their company further submits before this tribunal that this is a fictitious document which requires to be examined by the hand-writing expert.

Whereas the ld.lawyer for the petitioner argued before this tribunal that this document Exbt.4 has been admitted by Captain Jagmohan Singh, the owner of M/S Gobind Gas Power Co. that he had issued the said letter in favour of the petitioner Somnath Roy. Petitioner has also submitted before this tribunal that this Captain Jagmohan Singh was the owner of M/S Gobind Gas Power Co. He has stated in his cross-examination that he never issued any appointment letter to any of his employee of their Gas agency or their Juice shop. So, according to petitioner that this Captain Jagmohan Singh, O.P.No.2, the owner of M/S Gobind Gas Power Co. did not issue any appointment letter to any of his employees of their Gas agency or their Juice shop. The petitioner has not been included in the list of IOCL system generated employee list purposefully, deliberately and motivatedly in order to remove him from the service of M/S Gobind Gas Power Co.

Having heard the submission of ld.lawyer for both the O.Ps and their company as well as ld.lawyer for the petitioner and perused the oral and documentary evidence, I find that the document Exbt.4 which was executed by Captain Jagmohan Singh, O.P.No.2, the owner of M/S Gobind Gas Power Co. and he issued a certificate on the letter head of M/S Gobind Gas Power Co. that Somnath Roy, son of Sri A.P. Roy is working for our concern since 1994. He is sincere, honest and hard working and he is doing exceedingly well. If Rule permits he may be included in ESI list of our company employees. From the said document Exbt.4 it is very much clear that petitioner Somnath Roy was working in their concern i.e M/S Gobind Gas Power Co. of the O.Ps since 1994 and it was also proposed in the said certificate, “ If Rule permits he may be included ESI list of their company employees” but the name of the petitioner Somnath Roy was not included in the ESI list of the employees of the M/S Gobind Gas Power Co. by the O.Ps purposefully and deliberately with intend to remove him from the service of the company. The O.Ps have also contended that this document was a fictitious document. But the Captain Jagmohan Singh has admitted in his cross-examination when he was confronted with the document Exbt.4 and he has stated that he issued the said document Exbt.4 in favour of the petitioner Somnath Roy.

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Apart from that, it is pertinent to mention herein that this witness O.P.W-1, Captain Jagmohan Singh has stated in his cross-examination he never issued any appointment letter to any of his employees of their Gas agency or Juice shop. Therefore, it is quite obvious that the petitioner will not be able to produce any document of his appointment letter of M/S Gobind Gas Power Co. Therefore, the captain Jagmohan Singh who happens to be the owner of M/S Gobind Gas Power Co. has admitted the said document Exbt.4 which was issued by him as such it goes to suggest that the petitioner Somnath Roy was working as an employee in the M/S Gobind Gas Power Co., though initially the O.Ps had claimed that the document is a fictitious document which is required to be examined by hand -writing expert. But the O.Ps and their company did not make any endeavour to get this document Exbt.4 to be examined and verified by the hand-writing expert. Consequently, no room is left for the O.Ps and their company to submit before this tribunal that this document Exbt.4 is a fictitious or forged document.

It is a fact that from the document Exbts. B,C,F,H & I produced by the O.Ps and their company before this tribunal the name of the petitioner does not include but the petitioner has already stated that his name has not been included in the list purposefully and deliberately in order to remove him from his service out of the M/S Gobind Gas Power Co. It is very much clear from the bank salary account of the petitioner that the salary of the petitioner has been credited in his salary account bearing no. 0541000403019380 of PNB, Burdwan Branch from 03.01.2017 to 02.03.2022 i.e Exbt. I .

Apart from that the salary, bonus, festival allowance of the petitioner were also credited in the salary account of the petitioner Somnath Roy as per the document Exbt. 1 from the accounts of M/S Gobind Gas Power Co.. Therefore, the salary account of the petitioner i.e document Exbt.I and the letter issued by the Chief Manager, PNB dated 14.12.2022 in favour of the petitioner marked as Exbt.3 go to suggest that the petitioner Somnath Roy was an employee of M/S Gobind Gas Power Co. under the O.Ps and as a result of which his salary, bonus and festival allowance were credited in the salary account of the petitioner in PNB, Burdwan Branch. Therefore, it is transparent from the document Exbt.1, 3 & 4 that the petitioner was an employee of M/S Gobind Gas Power Co. under the O.Ps and there has also been a relationship between the petitioner and the O.Ps and their company as workman and employer. Though the O.Ps and their company had contended that the money which was credited in the salary account of the

petitioner that was given to him as a 'donation' but not as a 'salary'. It is the bank authority who has committed mistake in crediting the amount of money in the salary account of petitioner as 'salary' instead of 'donation'. However, be that as it may generally, the bank authority cannot commit such type of mistakes of crediting the salary in 'salary' account instead of 'donation'.

Whenever any Public or Private Co., Govt.Org. or non-Govt. Org. paid the salary to their respective employees, they forward a list containing the names of the employees disclosing their respective salary against each employee in order to credit the said salary amount in the respective account of the respective employees. So, it is quite unbelievable that bank credited the donation amount of money as a salary amount in the salary account of the petitioner/workman. That the submission made by the O.Ps and their company as well as their ld.lawyer that the crediting the amount of money in the salary account of the petitioner as a 'salary' instead of 'donation' is a mistake of fact is not tenable in the eye of law and the same is not believable and acceptable.

As per theSection [2s)– “workman” means any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work hire or reward, whether the terms of employment be express or implied, and for the purpose of any proceeding under this Act in relation to industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person –

i)....., ii)....., iii)..... &iv)..... . Therefore, if any person renders clerical workor supervisory work on hire or rewardin the event of such terms of employment being express or implied , he can be termed as 'workman'. As the petitioner Somnath Roy was rendering the clerical work and he used to deal with accountsand the consumers of Opposite Parties and their company i.e M/S Govinda Gas & Power as such he can be termed as 'Workman'.

It is also found form the cross examination of witness OPW-2, Gobinda Kumar Das, the Assitant Labour Commissioner who has stated in his cross examination that on 20/09/2022 the representative of Gobind Gas Power Co. stated before him that Mr. Somnath Roy was not an employee but he used to work under the owner of the Govind Gas Power Co. and the dispute would be amicably

settled within 1st November, 2022. Therefore, it is also very much clear from the testimony of witness OPW-2, the Assistant Labour Commissioner, Bardhaman that Mr. Somenath Roy used to work under the owner of the Gobind Gas Power & Co. Then the petitioner Somnath Roy can be termed or regarded as Employee/Workman under the M/S Gobind Gas Power Co.

According to the Opposite Parties' case that the petitioner was an employee of "Govind Drinks Corner" and the petitioner was not an employee of M/S Gobind Gas Power Company. Therefore, it is incumbent upon the Opposite Parties to prove before this Tribunal that the petitioner was an employee of "Gobind Drinks Corner". But no document such as appointment letter or any other scrap of paper has been produced before this Tribunal by the Opposite Parties to show that the petitioner was an employee of "Gobind Drinks Corner". No such credible evidence has been produced by the Opposite Parties to prove before this Tribunal that the petitioner was an employee of "Gobind Drinks Corner". Therefore, it is not believable and acceptable that the petitioner was an employee of "Gobind Drinks Corner". Rather from the oral evidence and documentary evidence it has been arrived at the findings by this Tribunal that the petitioner, Somnath Roy was working as a employee/workman of "M/S Gobind Gas Power & Co. Opposite Parties has failed to prove his case by adducing positive evidence that the petitioner was an employee of "Gobind Drinks Corner".

Considering the aforesaid discussion, I am constrained to hold that the petitioner Somnath Roy was an employee / workman under the O.Ps and their company M/S Gobind Gas Power Co. Thus, the Issue No. 2 is also decided in affirmative in favour of the petitioner.

The claim of the O.Ps. and their company that the petitioner, Somnath Roy was never an employee/workman in their company and there is no such relationship of 'Workman' and 'Employer' in between the petitioner and Ops and their Company i.e M/S Gobind Gas Power Co. as 'Workman' and 'Employer' is turned down.

Issue Nos.3 &4 :

As both the issue nos.3 & 4 are interlinked with each other they are taken up together for discussion for arriving at just decision of this case. Now, the question to be discussed herein is "whether the service of the applicant/workman was terminated on 02.05.2022 by the O.Ps or not ?"

*Sd/-
Judge*

It is submitted by the ld.lawyer for the petitioner Somnath Roy that the petitioner was an employee of the company of the O.Ps namely, M/S Gobind Gas Power Co. and he used to render his work to deal with the accounts of the company for a considerable period and thereafter all of a sudden the service of the the petitioner was terminated verbally by the O.P.No.3 during the absence of O.P.No.2 and their company. Therefore, the termination of the service of the petitioner by the O.P.No.3 during the absence of OP No.2 and their Company M/S Gobind Gas Power Co. without giving any notice to the petitioner is wholly illegal and without the basis of any law. The termination of the service of the petitioner ought to have been done by resorting to disciplinary rules and following its proper procedure or methodology such as by issuance of notice, charge sheet and framing of charge etc. But the termination of service of the petitioner by O.P.No.3 and their company M/S Gobind Gas Power Co. verbally without following the rules of disciplinary action amounts to gross violation of the disciplinary rules which is beyond the scope of the law.

It has been contended by the ld.lawyer for the O.Ps and their company that as there was no relationship between the petitioner and the O.P.s and their company as 'Workman' and 'Employer' as such there does not arise any question of adopting the procedure of disciplinary action for termination of the service of the petitioner from the O.Ps and their company. Consequently, the termination of service of the petitioner does not arise at all.

Having heard the submission of the ld.lawyer of the petitioner and the O.Ps, I have already arrived at a finding in foregoing issue no.2 that the petitioner Somnath Roy was an employee/workman under the O.Ps and their company M/S Gobind Gas Power Co. Therefore, this tribunal has already come to a finding that the petitioner Somnath Roy was an employee of M/S Gobind Gas Power Co. under the O.Ps. Therefore, it cannot be submitted by the ld.lawyer for the O.Ps and their company that there was no relationship between the petitioner and O.Ps and their company as 'Workman' and 'Employer'. As the petitioner Somnath Roy was verbally terminated by the O.P.No.3 on 03/05/2022 during the absence of the O.P.No.2 of his service from the M/S Gobind Gas Power Co. as such termination of the service of the petitioner verbally by O.P.No.3 during the absence of O.P.No.2 of the company on 03/05/2022 is wholly illegal and against the rules of disciplinary action. As the petitioner Somnath Roy has been held to be a workman / employee under the M/S Gobind Gas Power Co. as such his service is to be

*Sd/-
Judge*

terminated following the rules of disciplinary action such as causing of service of notice upon the petitioner of show-cause, holding preliminary enquiry and submitting enquiry report, charge sheet, framing of charge and the trial of the charge which was brought against the Petitioner /Workman. But neither the O.P.No.2 or his company nor O.P.No.3 has adopted any such procedure or rules of disciplinary action causing the termination the service of the petitioner from M/S Gobind Gas Power Co. Consequently, the termination of service of the petitioner/workman from the M/S Gobind Gas Power Co. is not justified. It has been submitted by the ld.lawyer for the petitioner Somnath Roy that when his salary was not credited in the salary account on 02.05.2022 and on query he came to know that his service was verbally terminated on 03/05/2022 which is against the principle of disciplinary rules and it's proceeding by the O.P.No.3 during the absence of O.P.No.2 and his company M/S Gobind Gas Power Co. That the submission made by the ld.lawyer for the O.Ps and their company that there was no relationship between the petitioner and the O.Ps and their company as workman and employer is not tenable in the eye of law and this tribunal has already arrived at a finding that the petitioner is a workman under the O.Ps and their company i.e M/S Gobind Gas Power & Co i.e. the Employer.

In view of the discussion made herein above, this tribunal is compelled to hold that the termination of the service of the petitioner/workman on 03/05/2022 is not justified by the Ops and their Company i.e M/S Gobind Gas Power Co. in the event of verbal termination of service of petitioner/workman being wholly illegal and gross violation of disciplinary rules and the service of the workman/applicant was terminated on 03.05.2022 by the O.P.No.3 during the absence of O.P.No.2 and their company when the salary of the petitioner was not credited in his salary account on 02.05.2022. Thus, both the issue nos. 3 & 4 are decided in affirmative in favour of the petitioner/workman.

It is found from the case record that the issue no.3 was formulated inadvertently by my ld. predecessor as to “ Whether the service of the applicant /workman was terminated on 02/05/2022 was justified or not in place of date 03/05/2022. It is the case of the petitioner /workman that his service was verbally terminated on 03/05/2022 by the OP No.3 during the absence of OP No.2 and their company i.e M/S Gobind Gas Power Co.

Sd/-
Judge

Issue No.5 :

That despite the petitioner Somnath Roy being the workman under the O.Ps and their company, his termination from his service by the O.Ps and their company being wholly illegal and without any basis of law the petitioner Somnath Roy is entitled to get full back wages from the date of his termination of service i.e 03.05.2022 together with other consequential service benefits including the arrear salary for the month of April, 2022 being an 'Employee'/ 'Workman' of M/S Gobinda Gas Power & Co. The salary of the petitioner pending on and from March, 2022 – July, 2022 is not acceptable and reliable as because his service was terminated on 03/05/2022 and naturally he cannot claim the salary alleged to be pending from the month of May, June, July, 2022 in M/S Gobind Gas Power Company. The salary of the petitioner/workman was not credited on 02/05/2022 as per the claim of the petitioner, therefore, it is quite obvious that the salary for the month of April was not credited in the Salary Account of the Petitioner, Sommath Roy, workman. He is entitled to get the salary for the month of April, 2022. At the end of the month of March, 2022, the petitioner did not take any initiative to come to know in the month of April, 2022 as to why the salary of the month of March, 2022 was not credited to his Salary Account as such the claim of salary for the month of March, 2022 is not found to be acceptable. The petitioner is only entitled to get the arrear salary for the month of April, 2022 only.

Considering all the facts and circumstances of this case and taking into consideration the oral and documentary evidence of this case as well as the finding arrived at after analysing the issue nos. 1 to 5, I am of the considered view that this industrial dispute arising in between the petitioner, Somnath Roy and the O.Ps and their company is found to be maintainable before this Tribunal and this Tribunal has got the ample jurisdiction to entertain this case. That the petitioner, Somnath Roy was an 'Employee' / 'Workman' under the O.Ps. and their company M/S Gobind Gas Power Co. and there was a relationship between the petitioner and the O.Ps and their company as 'Workman' and 'Employee' as the petitioner used to deal with the accounts of the office of the M/S Gobind Gas Power Co. with their daily consumers and other petty accounts work. Opposite Parties have failed to prove his case that the petitioner, Somnath Roy was an employee of "Gobind Drinks Croners" by adducing any oral and documentary evidence in this case. That the verbal termination of the 'Petitioner'/ 'Workman', Somnath Roy from his service is not found to be justified by this tribunal and the said verbal termination

of the service of the petitioner from the M/S Gobind Gas Power Co. by the O.P.No.3 during the absence of the O.P.No.2 and his company M/S Gobind Gas Power Co. has been held to be illegal, unlawful and not in conformity with disciplinary rules. As the petitioner / workman was terminated from M/S Gobind Gas Power Co. without following the norms of the disciplinary rules as such the termination of service of the petitioner/workman has been held to be illegal and without any basis of law. Therefore, the petitioner/workman was entitled to get the full back wages of his service from the O.Ps. and their company M/S Gobind Gas Power Co. on and from 03.05.2022 and the petitioner is also entitled to get his reinstatement in the service of M/S Gobind Gas Power Co. on and from 03/05/2022 as he was unlawfully and illegally terminated from his service of the M/S Gobind Gas Power Co. by the O.Ps.

Though the petitioner, Somnath Roy has prayed for issuance of Appointment letter from February, 2015 as he has claimed himself to have been joined in his service in the month of Februray, 2015 in M/S Gobind Gas Power Company. But it is evident from the cross- examinaiton of petitioner, Somnath Roy he has stated that he joined his service in the month of March, 2015, therefore, it can be arrived at the conclusion that the petitioner has not joined in his service in the month of February, 2015 but he has joined in his service in the month of March, 2015. The appointment letter can be issued in favour of the petitioner Somenath Roy since the month of March, 2015 in place of Februray, 2015.

Viewed above, the instant application U/S 2A(2) of Industrial Dispute Act,1947 filed by the petitioner for passing an award for his reinstatement in service since 03.05.2022 with full back wages and issuance of appointment letter with effect from February,2015 and other consequential benefits and holding the terminationof service of the petitioner on 03/05/2022 illegal and unlawful deserves to be allowed in part.

Hence, it is

ORDERED

that the petition filed by the petitioner/workman Somnath Roy U/S 2A (2) of Industrial Disputes Act,1947 for passing an award for holding that the termination of service of the petitioner/workman, Sommath Royas illegal and unjustified, reinstatement of his service in the M/S Gobind Gas Power Co. since 03.05.2022 with full back wages with other consequential benefits as admissible

*Sd/-
Judge*

under the law and issuance of an appointment letter since February,2015 be and the same is considered and allowed in part against the Opposite Parties and their Company M/S Gobind Gas Power & Co. on contest and without any cost and/or costs.

Accordingly, the petitioner Somnath Roy is regarded or termed as a 'Workman' under the O.Ps and their company M/S Gobind Gas Power Co.i.e 'Employer' and it is further held that there is a relationship between the petitioner and the O.Ps and their company as 'Workman' and 'Employer'. That the verbal termination of service of the petitioner / workman, Somnath Roy from M/S Gobind Gas Power Co. by the O.P No.3 during the absence of OP No.2 is held illegal, unjustified and not in conformity with the principles of the disciplinary Rules. The petitioner/workman Somnath Roy is reinstated in his service on and from 03.05.2022 with full back wages.i.e from the date of termination of his service from M/S Gobind Gas Power Co. of the O.Ps together with other consequential service benefits including the arrear salary for the month of April, 2022 as admissible under the law. Ops and their Company M/S Gobind Gas Power Company are also directed to issue an appointment letter to the petitioner Somnath Roy, Workman since March, 2015 for rendering his duty or job as Workman in the office of M/S Gobind Gas Power & Co.

O.Ps are directed to comply the aforesaid order of the Tribunal as directed herein above within a period of two (02) months from the date of passing of the order failing which the petitioner / workman is at liberty to execute the said judgement and order by adopting the appropriate proceeding in accordance with law.

Thus, this Case No.05 of 2023 U/S 2A(2) of Industrial Disputes Act,1947 hereby stands disposed of.

Sd/-

D/C by me

Judge.

Sd/-

(Nandadulal Kalapahar),

Judge, 9 th Industrial Tribunal.

at Durgapur, Paschim Bardhaman.

Date : 30-01-2025.