

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

No. Labr/ 202 / (LC-IR)/ 22015/24/2019

Date : 12/2/25

ORDER

WHEREAS under Labour Department's Order No Labr./1794/(LC-IR)/22015(15)/75/2018 dated 15.12.2020 with reference to the Industrial Dispute between M/s. Lagan Engineering Company Ltd., Bhadreswar, Post-Angus, Dist.- Hooghly, PIN-712221 and their workman Sri Subir Kumar Barai, S/o. Late M.M. Barai, Sukantapally, Seoraphuli, Hooghly, PIN-712223, regarding the issues mentioned in the said order, being a matter specified in the Second Schedule to the Industrial Dispute Act, 1947 (14 of 1947), was referred for adjudication to the 3rd Industrial Tribunal, Kolkata.

AND WHEREAS the said 3rd Industrial Tribunal, Kolkata, has submitted to the State Government its Award dated 11.02.2025 in Case No. 16/2020/10 on the said Industrial Dispute Vide e-mail dated 11.02.2025 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

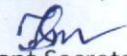
to the Government of West Bengal

No. Labr/ 202/1(5)/(LC-IR)/ 22015/24/2019

Date : 12/2/25

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

1. M/s. Lagan Engineering Company Ltd., Bhadreswar, Post-Angus, Dist.- Hooghly, PIN-712221.
2. Sri Subir Kumar Barai, S/o. Late M.M. Barai, Sukantapally, Seoraphuli, Hooghly, PIN-712223.
3. The Assistant Labour Commissioner, W.B. In-Charge, Labour Gazette.
4. The O.S.D. & E.O. Labour Commissioner, W.B. New Secretariat Building, 1, K. S. Roy Road, 11th Floor, 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/ 202 /2(3)/(LC-IR)/ 22015/24/2019

Date : 12/2/25

Copy forwarded for information to :

1. The Judge, 3rd Industrial Tribunal, Kolkata, N.S. Building, 1, K.S. Roy Road, Kolkata-700001 with reference to his E-mail dated 11.02.2025.
2. The Joint Labour Commissioner (Statistics), West Bengal, 6, Church Lane, Kolkata -700001.
3. Office Copy.


Assistant Secretary

In The Third Industrial Tribunal,
New Secretariat Buildings, Kolkata-700 001

Case No.16/2020/10; u/s. 10 of the Industrial Disputes Act, 1947

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

A W A R D

Dated : 11.02.2025

The Labour Department, Government of West Bengal has referred an Industrial Dispute between M/s. Lagan Engineering Company Ltd., Bhadreswar, Post-Angus, Dist.-Hooghly, PIN-712221 and its workman Sri Subir Kumar Barai, S/o. Late M.M. Barai, Sukantapally, Seoraphuli, Hooghly, PIN-712223 to this Tribunal vide Order No. Labr./1794/(LC-IR)/22015(15)/75/2018 dated 15.12.2020 on the following issue(s) for adjudication :

I S S U E (S)

- 1) Whether the refusal of employment w.e.f. 23.07.2016 to the workman Sri Subir Kumar Barai by the Management of M/s. Lagan Engineering Co. Ltd. is justified?
- 2) To what relief the workman is entitled ?

On receiving the 'Order' of the appropriate Government containing 'Reference of Industrial Dispute', this Tribunal on 03.02.2021 by its Order No. 1 issued Notice upon both the parties. On receiving notice, both the parties entered their appearance in this case complying the statutory provision. Subsequently, M/s. Lagan Engineering Company Ltd. and the workman Sri Subir Kumar Barai submitted their respective Written Statement.

The case of the workman, in a nutshell, is that he was appointed as a Fitter in the Company by the Management of the Company in the month of January, 2012 and since then he had been working there as a permanent employee. It is mentioned in the Written Statement that the workman never supervised any other employees' work but he performed his duty diligently and honestly without any grievance of the Management of the Company. It is mentioned in the Written Statement that the name of the workman was registered under Employees' State Insurance Corporation and thus he used to get all the benefits of the scheme of ESI. It is mentioned in the Written Statement that the workman sustained injury and thus he had not been able to attend his duty from the month of March, 2016 and he was under treatment of the Doctors of ESI panel. The Doctors advised him not to resume duty and to take rest and thus he was unable to resume duty till the Doctors advised him to resume duty. It has been mentioned that the Doctor, on examination found that he was medically fit on 21.07.2016 and thus advised him to join his duty. Accordingly, he along with medical fit certificate went to the factory to resume his duty on 23.07.2016 and submitted his medical papers at the office of the Company and thereafter he punched his attendance card to enter into the work place but the Management without assigning any reason prevented him from entering into the work place and ousted him from the factory premises. It is mentioned that the workman on repeated occasions went to the factory premises to meet the officer of the factory/mill with the intention of convincing him about the problem he faced compelling him to stay away from duty as well as his poor financial condition and the necessity of his employment, which is his only source of income for the livelihood of him and his family but the Management of the Company did not open its mind but kept him awaiting under suspense about their decision to allow him to join duty or not. It is mentioned that one

day in the year 2019 the Management of the Company clearly intimated that they would not allow the workman to resume his duty as his service was no longer required for the factory and thus the workman submitted appropriate application before the Conciliation Officer and Deputy Labour Commissioner, Chandannagore on 25.02.2019. It is mentioned that the workman by letter dated 18.07.2019 requested the Conciliation Officer and Deputy Labour Commissioner, Chandannagore to interfere into the matter of illegal and arbitrary act of refusal of employment in respect of himself by the Management of the Company. It is mentioned that the Management of the Company by letter dated 04.09.2016 to the Assistant Labour Commissioner, Chandannagore stated that the workman refrained himself from attending his duty at his own will and the Management of the Company served the official intimation to the workman through peon. It is mentioned in the Written Statement that the workman in reply to the contention of the Management of the Company by letter dated 16.09.2019 asked the Management of the Company *“to provide him the service as the Management denied the fact regarding refusal of employment of the petitioner w.e.f. 23rd July, 2016.”* It is mentioned in the Written Statement that the Assistant Labour Commissioner tried his level best to solve the dispute by way of holding several joint conferences but settlement of dispute could not be achieved due to the adamant and non-cooperative attitude of the Management of the Company and having no other alternative, the Assistant Labour Commissioner had sent *“failure report to the Government who held that there was a prima facie case”*. It is mentioned that out of personal malice and grudge towards the workman and with a view to mercilessly push him into poverty, the Management of the Company in a most illegal manner refused his employment w.e.f. 23.07.2016 and thus, the workman is entitled to reinstatement in his service of the Company M/s. Lagan Engineering Co. Ltd. with full back wages for the period he compelled to remain in unemployment. It is mentioned that prior to refusal of employment the Management neither issued any notice to the workman nor paid salary in lieu of notice or retrenchment compensation in terms of Section 25F of the Industrial Disputes Act, 1947 as amended up to date. It is mentioned that – *“The Management also did not issue any notice regarding the alleged absenteeism nor any charge-sheet/show-cause has been issued.”* Further, the Management failed to hold any domestic enquiry before refusal of employment of the workman. It is mentioned that last drawn salary of the workman was Rs.195/- per day and that the workman is a very poor person and remains in complete unemployment having no source of income and thus he is in hardship to maintain his family members. The workman has claimed that inspite of his best efforts he failed to procure alternative employment. It is stated that M/s. Lagan Engineering Co. Ltd. is a Company incorporated under the Companies Act and the Management of the Company does not have adherence to the provisions of Labour Law and the Management of the Company usually terminated the service of the workmen/employees whimsically, arbitrarily and unlawful manner. The workman by his Written Statement has prayed for passing Award holding that the refusal of his employment w.e.f. 23.07.2016 by the Management of the Company was illegal and unjustified and to pass order of reinstatement in favour of him as well as for granting full back wages with all consequential benefits for the period of forced unemployment.

The Company i.e. M/s. Lagan Engineering Co. Ltd. has contested this case by filing Written Statement. M/s. Lagan Engineering Co. Ltd. (hereinafter referred to as the ‘Company’) by its Written Statement has denied all the material allegations leveled against it by the Workman. The Company has claimed that the Reference is not maintainable in the eye of the law. The Company by its Written Statement has specifically admitted that Subir Kr. Barai was one of its employees and has stated that the said employee refrained himself from attending his duty at his own will and such non-attendance was tantamount to unauthorized absence. The Company by its Written

(16/2020/10)

Statement has claimed that the Company never dismissed Subir Kr. Barai from his service and the Company in its letter dated 04.09.2019 to Assistant Labour Commissioner, Government of West Bengal clearly articulated its stands in the matter of Subir Kr. Barai. In the Written Statement the Company has claimed that the application submitted by the workman to the Assistant Labour Commissioner raising industrial dispute is bad in law since the Company never dismissed the said workman from his service. It has been claimed in the Written Statement that the Issue No.1 which has already been framed for proper adjudication of the dispute has no justification. The Company in its Written Statement has claimed that since the Company never dismissed its employee Subir Kr. Barai from his service and whereas the said employee went on unauthorized absence and failed to resume duty on and from 18.03.2016, the Company is entitled to get relieved from all the liabilities in respect of the workman Subir Kr. Barai. It has been claimed by the Company that the Management by its letter dated 02.04.2016 intimated the concerned workman about his unauthorized absence on and from 18.03.2016 but the workman never communicated to his superior, either verbally or by issuing notice, about his absence from work. It has been mentioned in the Written Statement that a domestic enquiry was initiated against the workman Subir Kr. Barai over the matter of his unauthorized absence and Mr. Surendra Kumar was holding such enquiry but notice of such enquiry could not be delivered to the workman as the door of the residence of the workman was locked. It has been claimed in the Written Statement that since the Company is in no way liable for any circumstances of the industrial dispute raised by the workman Subir Kr. Barai, as he was never dismissed from his service, the Company may be relieved from this case. The Company by their Written Statement has prayed for dismissal of this case and to pass such other order/orders as may be deemed fit and proper by this Tribunal.

After submission of Written Statements and list of documents by the parties, exchange of documents took place. Thereafter, the matter was fixed for hearing on merit.

During evidence stage, the workman Subir Kr. Barai filed his examination-in-chief on affidavit and he was examined-in-chief before this Tribunal in continuation of his examination-in-chief on affidavit and thereafter his cross-examination took place in full.

It is seen that the Company adduced three witnesses such as Manas Kr. Banerjee, Soumen Dutta and Namroj Bahadur as OPW-1, OPW-2 and OPW-3 respectively in support of the case of the Company. It is to mention here that OPW-1 and OPW-2 were cross-examined in full by the Ld. Advocate for the workman but the Ld. Advocate for the workman was deprived of cross-examining OPW-3 in full since the OPW-3 did not turn up before this Tribunal to face cross-examination after 05.09.2024.

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

The petitioner Subir Kr. Barai has identified and proved the following documents in course of his examination as witness:-

1. Exbt.-1 : Photo copy of temporary identity certificate;
2. Exbt.-2 (series): Photo copies of certificates on the claim for sickness/TDB;
3. Exbt.-3 : Photo copy of letter dated 18.07.2019 issued by Subir Kr. Barai;
4. Exbt.-4 : Photo copy of letter dated 04.09.2019 issued by Manas Banerjee, Personnel Manager of the Company;
5. Exbt.-5 : Photo copy of letter dated 16.09.2019 issued by Subir Kr. Barai;
6. Exbt.-6 : Photo copy of letter dated 25.02.2019 issued by Subir Kr. Barai.

In course of examination of witnesses on behalf of the Company, the following documents were identified and proved. It is to be mentioned here that in course of examination of PW-1. The exhibited documents are as follows:-

1. Exbt.-A: photocopy of Power of Attorney of authorized representative;
2. Exbt.-B: photocopy of appointment letter to Subir Kr. Barai issued by Company;
3. Exbt.-C: photocopy of letter dated 02.04.2016 to Subir Kr. Barai by S.K. Dixit, Manger HR;
4. Exbt.-D : photocopy of letter dated 15.04.2016 to Subir Kr. Barai by S.K. Dixit, Manger HR;
5. Exbt.-E: photocopy of letter dated 29.04.2016 to Subir Kr. Barai by S.K. Dixit, Manger HR;
6. Exbt.-F: photocopy of letter dated 04.09.2019 addressed to Asstt. Labour Commissioner by Manas Banerjee, Personnel Manager;
7. Exbt.-G: Certified true copy of the extract of the minutes of the meeting of the Board of Directors of Lagan Engineering Co. Ltd. issued by the Director Prakash Kr. Bhotica;
8. Exbt.-H: Letter of Authorization issued by Manas Kr. Banerjee, Personnel Manager for Lagan Engineering Co. Ltd.

Decisions with reasons

Issue No. : 1

In this case, Ld. Advocate for M/s. Lagan Engineering Co. Ltd. has submitted written notes of argument but the Ld. Advocate for the workman did not submit written notes of argument.

I would like to note down the Issue No. 1 which was framed by the appropriate Government in the referral order.

*“Whether the refusal of employment w.e.f. 23.07.2016 to the workman Sri Subir Kr. Barai by the Management of M/s. Lagan Engineering Co. Ltd. is **justified**?”*

According to the established procedure for the convenience, discussion is made Issue-wise to come to the conclusion and also for making decision on such issues, so framed.

So, it is understood that by way of referring the industrial dispute to this Tribunal, the State Government intended that this Industrial Tribunal would make decision on Issue No.1, by answering whether the dismissal of the workman Sri Subir Kr. Barai w.e.f. 23.07.2016 on the ground of refusal of employment is justified.

For the sake of making appropriate decision on Issue No.1, we are required to scan the evidence on record.

Subir Kr. Barai being PW-1 in his examination-in-chief on affidavit has stated that he was appointed as a fitter of the Company in the month of January, 2012 and he continued to work as a permanent employee of the Company but he never worked as a ‘supervisor’ of the other employees of the Company. He has stated in his examination-in-chief on affidavit that his name was enlisted under Employees State Insurance

Corporation. He has stated that he sustained injury and for that reason he was not able to attend the workplace to perform job from the month of March, 2016 and at that time he was under treatment of the empanelled Doctor of ESI. He has stated that his treating Doctors of ESI advised him from time to time not to resume duty and to stay on leave but on 21.07.2016 the empanelled Doctor of ESI advised him to join his duty on 23.07.2016. He has stated that he went to his workplace under the Company along with medical fit certificate and relevant medical documents to resume his duty and he entered into the premises by punching his attendance card but the Management of the Company without showing any reason refused him from joining his duty and ousted him from the factory premises. He has stated that subsequently he, time and again went to the factory premises and requested the authority to take back him to his job otherwise he would have to face starvation along with his family members but the Management of the Company laid deaf ear to his appeal. He has stated that in the year 2019 the Management of the Company clearly intimated him that the Management would not allow him to resume his duty and thus he submitted application before the Conciliation Officer and Deputy Labour Commissioner, Chandannagar on 25.02.2019. He has stated that before refusing his employment, the Management of the Company did not issue any notice to him as well as did not pay his salary as well as the Management of the Company did not issue any charge-sheet or show-cause notice to him. He has stated that his last drawn salary was Rs.195/- per day.

During cross-examination he has reiterated that he became permanent worker in the category of fitter of the OP/Company since January, 2022. He has stated that after becoming permanent worker in the post of 'Fitter' his job was to fit the 'carding machine' for the purpose of carding jute. He has divulged (reiterated), being cross-examined, that he sustained injury in the month of March, 2016 and he went to Bhadreswar service dispensary under ESI for treatment and the Medical Officer of that dispensary issued Certificate to him with the advice not to resume duty upto 04.04.2016. He has divulged being cross-examined that, he faced a road traffic accident as one biker dashed him while he was cycling and in the result, his right thumb was fractured and also he sustained injury in his mouth. He has divulged (reiterated) being cross-examined that, after getting physical fit certificate he went to the workplace and he punched his attendance card on 23.07.2016 in the factory premises. He has admitted that he approached before the Conciliation Officer and Deputy Labour Commissioner, Chandannagar on 25.02.2019. He has admitted that such delay was caused because he approached before the 'Union' for several times for redress but nothing has happened. He has divulged that he was not a member of workers' Union of the Company. He has denied the suggestion of the Company that he was a badli worker.

The witness of the Company Manas Kr. Banerjee being OPW-1 in his examination-in-chief on affidavit has stated that the workman had joined the Company on 31.03.2012 in the post of 'Fitter' and the workman was in the category of 'B' skilled and the Company used to provide daily wages of Rs.195/-. (The appointment letter of the workman was marked as Exbt.-B) He has stated that the workman refrained himself from attending his duty on and from 18.03.2016 and his such absence was treated as 'unauthorized absence'. He has disclosed that the Company by his letter dated 02.04.2016 informed the workman about his 'unauthorized absence' on and from 18.03.2016 and in such communication, the Company stated that no verbal communication or notice from the end of the workman was received by the office of the Company relating to his absence in the work. He has stated that a **domestic enquiry** was initiated against the workman in the matter of his unauthorized absence without prior notice and Mr. Surendra Kumar was leading the enquiry and notice of such enquiry could not be delivered to the workman personally as the door of the house of the workman was

locked. Thus, the notice was affixed to the door of his house. During cross-examination he has admitted that appointment letter dated 31.03.2012 (Exbt.-B) was issued by the Company to the workman Mr. Subir Kr. Barai and the said workman was selected as 'permanent workman'. He has admitted that the Company did not file the copy of 'Certified Standing Orders' of the Company in this case. He has admitted that Exbt.-C, Exbt.-D and Exbt.-E do not contain the signature of the 'workman' Sri Subir Kr. Barai. He has admitted his knowledge to the effect that according to the established procedure of serving any notice to any workman/employee by the Company, the original copy of the 'Notice' is served upon such workman/employee after obtaining his/her signature/LTI on the copy of such 'Notice', which becomes the 'service return' of such 'Notice' to establish that the 'Notice' has been actually served upon the workman/employee physically. He has stated that in the matter of Exbt.-C, Exbt.-D and Exbt.-E such procedure was followed. He has admitted that the service return copies of such 'Notices' have not been filed in this case to establish that actually all those 'Notices' were served upon the workman Subir Kr. Barai. He has admitted that the Company did not file the copy of the file of 'domestic enquiry proceeding' against the workman (as stated by him in para. 10 of his examination-in-chief on affidavit) in this case along with list of documents. He has expressed his lack of knowledge about whether the Company issued any show-cause notice upon the workman in the matter of unauthorized absence or whether any charge-sheet was issued upon him over the same matter. He has admitted that he did not file any document to establish his statement (made in the examination-in-chief on affidavit) that the workman worked rarely and occasionally as well as the workman never worked continuously for 240 days during his working tenure.

OPW-2 Soumen Dutta has stated that the workman was working as skilled 'B' category workman and he used to get daily wages at the rate of Rs.195/-. [It is seen from the examination-in-chief on affidavit of OPW-2 Soumen Dutta that no document was filed corresponding to his statements contained in para. 6, para.7 and para. 8 of such examination-in-chief on affidavit]. He has divulged that the applicant failed to establish any valid point stating reason for his absence in the work. He has stated that the workman was never dismissed by the Company. During cross-examination he has divulged that he have been working under Angus, Bhadreswar Unit of Lagan Engineering Co. Ltd. since joining in the service. He has divulged that he knows Subir Kr. Barai. He has admitted that Exbt.-C, Exbt.-D and Exbt.-E do not disclose that the Management of the Company levelled allegation of negligence in performing the duty and disobedience to the Management against Mr. Subir Kr. Barai. During cross-examination he has divulged that although he has stated in his examination-in-chief on affidavit that the workman Subir Kr. Barai started to absent himself from his duty on and from 18.03.2016 but the Company did not file any satisfactory document such as attendance register etc. to establish the allegation that concerned employee started to absent from duty on and from 18.03.2016. He has again divulged being cross-examined that although he has stated in his examination-in-chief on affidavit that from the beginning the workman Subir Kr. Barai never performed his work continuously for a span of 240 days but in fact the Company did not send any letter to the concerned employee informing his frequent absence from the Company. He has admitted that the Company did not file any document in support of his statement in para. 5 of his examination-in-chief on affidavit. He has divulged that he has no knowledge whether Exbt.-C was received by the workman or not. He has divulged his lack of knowledge whether the workman received the Exbt.-D and Exbt.-E i.e. letters dated 15.04.2016 and 29.04.2016 issued by S.K. Dixit, Manager, HR of Lagan Engg. Co. Ltd. to the workman Subir Kr. Barai. He has lack of knowledge whether any disciplinary action against the workman was started or not. He has confirmed that the Company did not file any document in support of his statement made in para. 9 of his examination-in-chief on affidavit. He has admitted that the workman

Subir Kr. Barai did not avail the benefit of the scheme of voluntary retirement at any point of time. He has admitted that he has no idea about the contents of the written statement submitted by the workman Subir Kr. Barai or the contents of his deposition before this Tribunal in connection with this case.

OPW-3, Namroj Bahadur in his examination-in-chief on affidavit has stated that he has been working as 'security guard' under the Company since 2008 and he has whole knowledge about the facts and circumstances of this case. He has divulged that the workman Subir Kr. Barai was assigned to work as skilled category 'B' worker. He has stated that he went to the Post Office to post the notices dated 02.04.2016 and 29.04.2016 upon the workman Subir Kr. Barai. He has stated that the workman did not come to the office premises on 18.03.2016. He has divulged that he went to the residence of the workman Subir Kr. Barai to serve the notice of domestic enquiry to him (workman) but he compelled to affix the said notice to the door of the house since the door was locked. He has stated that the workman was never dismissed by the Company. During cross-examination he has admitted that it is not specifically mentioned in Exbt.-H that he is an employee of Lagan Engineering Co. Ltd. He has further admitted that although in his examination-in-chief on affidavit he has mentioned that he has been working in the Company since 2008 but no document has been filed in support of his such statement/claim. Being cross-examined he has divulged that in his examination-in-chief on affidavit he did not mention specifically at which place he has been performing duty as security guard i.e. whether at the Head Office or at Mill premises. He has divulged that he has no idea about how many categories of workman are there in respect of skilled workman. He has admitted that he has no idea about which workman comes under skilled category and which category comes under unskilled category. He has divulged that Manas Banerjee, Personnel Manager of the Company put his signature below the verification annexed with the written statement submitted on behalf of the OP/Company. Being cross-examined he has admitted that Exbt.-C, Exbt.-D and Exbt.-E bears endorsement 'By Hand' on their top. He has admitted that actually he did not go to the Post Office to post letters dated 02.04.2016 (Exbt.-C), 15.04.2016 (Exbt.-D) and 29.04.2016 (Exbt.-E). He has further admitted that Exbt.-C, Exbt.-D and Exbt.-E do not contain signatures of workman Subir Kr. Barai as a mark of receiving those letters. He has stated that he did not file postal receipts in respect of all those letters to establish that those were sent through post.

It is to mention here that on 05.09.2024 the cross-examination of OPW-3 was deferred on the prayer of the Ld. Advocate for the OP/Company but thereafter the Ld. Advocate for the workman did not get opportunity to complete his cross-examination.

From the written statements submitted by the workman Subir Kr. Barai it is seen that he has claimed himself as a permanent workman under M/s. Lagan Engineering Co. Ltd. and he was appointed in the month of January, 2012. The Company i.e. M/s. Lagan Engineering Co. Ltd. by his written statement has admitted that Subir Kr. Barai was an employee of M/s. Lagan Engineering Co. Ltd. From the evidence on record it appears that the workman being PW-1 has claimed that he was appointed in the post of 'fitter' of the Company and he was appointed in the month of January, 2012 and he was a permanent employee of the Company. The Company in course of cross-examination of PW-1 has extracted from him that he became permanent worker in the category of 'fitter' in the Company since January, 2012. OPW-1 in his evidence has divulged that workman Subir Kr. Barai joined in the service of the Company on 31.03.2012 and he produced and identified the copy of appointment letter dated 31.03.2012 in respect of Subir Kr. Barai. The said appointment letter dated 31.03.2012 was marked as Exbt.-B. Similarly, OPW-2 and OPW-3 also divulged in their respective evidence that workman Subir Kr. Barai was appointed in the post of 'fitter' of the Company. So, it is clear that the workman Subir Kr.

Barai was appointed in the post of 'fitter' of M/s. Lagan Engineering Co. Ltd. in the year 2012 in the month of March (31.03.2012) of 2012. Although the PW-1 has stated that he was appointed in the month of January, 2012. In view of Exbt.-B, which was not challenged or controverted by the Ld. Advocate for the workman, it is established that the workman Subir Kr. Barai was appointed on 31.03.2012 in the post of 'fitter' of M/s. Lagan Engineering Co. Ltd. It is realized that there is no dispute regarding the employment of the workman Subir Kr. Barai in the post of 'fitter' of M/s. Lagan Engineering Co. Ltd. **Upon scrutiny of the evidence on record and going through the written statements submitted by the parties to this case, it is realized** that this industrial dispute has arisen at the fag end of the month of March 2016 when the workman Subir Kr. Barai started his absence in attending duty. The workman Subir Kr. Barai in his written statement has claimed that he sustained injury and went to the ESI paneled Doctors for treatment and the treating Doctors from time to time advised him not to resume duty but to stay on leave. He has claimed that according to the advice of his treating Doctors under ESI, he was compelled to absent from attending his duty and thereafter he went to the factory premises on 23.07.2016 along with medical fit certificate and relevant medical document to join his duty and he punched his attendance card but the Management without showing any reason or cause disallowed **him to join his duty and ousted him from the factory premises**. The PW-1 in his examination-in-chief on affidavit has made statements in this matter corroborating his earlier statements contained in his written statement filed before this Tribunal. The Company by cross-examining the PW-1 has extracted that one day in the month of March while he was cycling, he faced a road traffic accident as one biker dashed him and in the result his right thumb was fractured and he also sustained injuries in his mouth. Again, in the cross-examination he has divulged that after sustaining injury he went to Bhadreswar Service Dispensary under ESI and Medical Officer, in-Charge of that dispensary issued certificate [Exbt.-2(6)] and asked him not to resume duty after 04.04.2016. It is seen that the workman being PW-1 identified photocopies of eight numbers of certificates issued by the ESI. All those certificates go to show that Subir Kr. Barai was under treatment of the empanelled Doctors of ESI and treating Doctors from time to time advised him to take rest or not to join his duty but by the certificate dated 21.07.2016 advised him to resume his duty w.e.f. 23.07.2016. It is seen from the cross-examination of PW-1 that the Company did not put any question to PW-1 controverting or challenging those 'Certificates' issued by the Doctor(s) of ESI. Even the Company did not put suggestion denying the validity and authenticity of those 'Certificates' issued by the Doctor(s) of ESI. It is found that the Company by cross-examining the PW-1 has extracted from him that he during his cross-examination has reiterated that he went to the factory i.e. his workplace after obtaining physical fit certificate from the Doctor and his attendance card was punched on 23.07.2016. So, it is clear that the Company did not challenge or controvert the claim of the workman i.e. PW-1 that he after obtaining medical fit certificate from the empanelled Doctor(s) of ESI went to his workplace i.e. factory on 23.07.2016 and his 'Attendance Card' was punched. But, in fact the Company in course of cross-examination has extracted corroborative statement from PW-1 of his earlier statement contained in the written statement over the main issue/dispute. The Company in course of cross-examination did not put suggestion denying the claim of PW-1 i.e. workman that he faced road traffic accident and sustained injury in his right thumb and mouth and went to Bhadreswar Service Dispensary under ESI and he was under treatment of the Medical Officer, In-Charge of the dispensary. It is found that the Company did not ask the PW-1 whether he would be able to produce his 'Attendance Card' to show that it was punched on 23.07.2016. If such 'Attendance Card' is lying under the custody of the authority of the factory of Company, then it is supposed that the Company ought to have produced the said 'Attendance Card' to establish whether it was punched on 23.07.2016 as a mark of

attendance of the workman Subir Kr. Barai in the factory premises for attending his duty or the PW-1 i.e. workman made false statement over the matter. It is to mention here that the PW-1 in course of his evidence has identified the photocopy of 'Employees State Insurance Corporation - Temporary Identity Certificate' in the name of Subir Kr. Barai and the same has been marked as Exbt.-1. It is to mention here that the Company in course of cross-examination of PW-1 did not challenge or controvert the said Certificate issued by Employees State Insurance Corporation in the name of Subir Kr. Barai. So, the validity and genuineness of Exbt.-1 remains unchallenged and uncontroverted. Similarly, it is seen from the evidence of PW-1 that the Company did not put any question to him relating to documents under Exbt.-2 (series) although the PW-1 relied on the documents of Exbt.-2 (series) to justify his absence from duty on and from 29.03.2016 until getting medical fit certificate from the Medical Officer of ESI on 21.07.2016. In view of the evidence of PW-1 it can be said that the Company had no intention to challenge or controvert the validity and genuineness of documents under Exbt.-2 (series). In other words, it can be said that the Company conceded with all the documents under Exbt.-2 (series). Moreover, it is evident from the evidences of OPW-1, OPW-2 and OPW-3 that none of them has made any statement challenging the validity, authenticity and genuineness of the documents under Exbt.-2 (series). Apart from that, the Company in course of its evidence did not adduce any documentary evidence with a view to discard the claim of PW-1 that after sustaining bodily injury due to road traffic accident faced by him, he went to Bhadreswar Service Dispensary under ESI and he received treatment by the Medical Officer in-charge of such dispensary continuously till 21.07.2016.

From the materials on record and from the evidence of the witnesses of Company it is revealed that the Company sent three separate letters dated 02.04.2016, 15.04.2016 and 29.04.2016 to the workman Subir Kr. Barai. All those letters in photocopies were produced before this Tribunal and the OPW-1 Manas Kr. Banerjee identified all those documents. Accordingly, all those letters dated 02.04.2016, 15.04.2016 and 29.04.2016 were marked as Exbt.-C, Exbt.-D and Exbt.-E respectively. After having a glance on those exhibits, it is seen that there is endorsement 'By Hand' on the top of each and every letters issued by the Manager (HR) of M/s. Lagan Engineering Co. Ltd. The OPW-1 in his cross-examination has admitted that Exbt.-C, Exbt.-D and Exbt.-E do not contain any signature of the workman Subir Kr. Barai. He did not explain the reason behind non-existence of signatures of the workman Subir Kr. Barai on each and every letters although all those letters were supposed as served 'By Hand'.

It is seen that the OPW-3 in his examination-in-chief on affidavit has stated that he went to post the letters dated 02.04.2016, 15.04.2016 and 29.04.2016 i.e. Exbt.-C, Exbt.-D and Exbt.-E respectively. But, in course of his cross-examination he has divulged that actually he did not go to the Post Office to post the letters dated 02.04.2016, 15.04.2016 and 29.04.2016 i.e. Exbt.-C, Exbt.-D and Exbt.-E respectively. Moreover, he has admitted that there are endorsement 'By Hand' on the top of each and every letter (Exbt.-C, Exbt.-D and Exbt.-E). Apart from that he has admitted that he did not file any postal receipt to establish that he sent all those letters (Exbt.-C, Exbt.-D and Exbt.-E) through post.

It is evident from the evidence of OPW-2 that he has denied his knowledge whether the workman Subir Kr. Barai received the Notices i.e. Exbt.-C, Exbt.-D and Exbt.-E and further he has denied his knowledge about the process of dispatch of letters from the office of the Company. Moreover, he has divulged that he learnt the matter of sending letters to the workman from their 'Department' but he did not divulge the name of the employee of the 'Department' from whom he 'learnt' such matter. So, it is clear that the OPW-2 has made vague, indefinite and general statements in the matter of service of Notices i.e. Exbt.-C, Exbt.-D and Exbt.-E.

OPW-1 in his cross-examination in an unequivocal language has admitted that Exbt.-C, Exbt.-D and Exbt.-E do not contain the signatures of the workman Subir Kr. Barai. Apart from that, he has disclosed that he has knowledge about how a Notice upon a person is served and he has divulged his knowledge about the nature of 'Service Return' of a Notice. In spite of that he has admitted that 'Service Return' copies of Notices i.e. Exbt.-C, Exbt.-D and Exbt.-E have not been filed in the case record to establish the matter of proper service of Notices upon the workman Subir Kr. Barai.

In view of the evidence on record, it can be safely said that the Company M/s. Lagan Engineering Co. Ltd. has miserably failed to establish that the Management of the Company actually sent letters dated 02.04.2016, 15.04.2016 and 29.04.2016 which have been marked as Exbt.-C, Exbt.-D and Exbt.-E respectively, to the workman Subir Kr. Barai. Thus, in view of such evidence, it is now clear that the statement of PW-1 in his examination-in-chief on affidavit to the effect that the Management never issued any notice to him prior to refusal of his employment is established as truth.

It is revealed from the evidences of OPW-1 and OPW-2 that they in their respective examination-in-chief on affidavit has stated in the fashion that the workman Subir Kr. Barai had worked occasionally and he never worked continuously for 240 days during the working period. But, on scrutiny of the Written Statement submitted on behalf of M/s. Lagan Engineering Co. Ltd. there was no such averment to the effect that the workman Subir Kr. Barai had worked occasionally and he never worked continuously for 240 days during the working period. So, it is clear that both OPW-1 and OPW-2 have made such statements beyond the averment of the Company as contained in its Written Statement submitted before this Tribunal. Moreover, the OPW-1 in his cross-examination has admitted that the Company has not filed any document to establish the allegation that the workman Subir Kr. Barai had worked occasionally and he never worked continuously for 240 days during working period. Apart from that he has admitted that in the Written Statement of the Company there is no whisper about the allegation as mentioned in para. 5 of his examination-in-chief on affidavit. The OPW-2 has also made similar statement in that matter. Apart from that OPW-2 in his cross-examination has admitted that the Company never sent any letter to the workman Subir Kr. Barai informing his frequent absence from duty.

Thus, we have got that the OPW-1 and OPW-2 have made similar statement alleging that the workman Subir Kr. Barai had worked frequently as well as he never worked for 240 days continuously during the working period going beyond the averment of the Company as contained in the Written Statement of the Company. Apart from that they have admitted that the Company did not file any document to establish such allegation against the workman as well as the Company never sent any letter to the workman informing his frequent absence from duty as alleged. Thus, such statements of OPW-1 and OPW-2 have no legal validity and it does not come to dent the case of the workman Subir Kr. Barai.

It is evident from the Written Statement of the Company that a domestic enquiry was initiated against the workman Subir Kr. Barai who allegedly absented himself to attend his duty unauthorisedly.

On perusal of the Written Statement submitted by the workman Subir Kr. Barai it appears that he did not make any whisper about the 'Domestic Enquiry' started against him as claimed by the Company in its Written Statement. On perusal of the evidence of PW-1 it appears to me that the Company did not put any question to him in the matter of domestic enquiry, allegedly started against the workman (PW-1). Moreover, no suggestion was put to him regarding the alleged domestic enquiry.

The OPW-1 in his examination-in-chief on affidavit has stated that domestic enquiry was initiated against the workman in the matter of his unauthorized absence in the duty and Mr. Surendra Kumar led the enquiry and Notice of such enquiry was delivered to the workman by way of affixing on the door of his house because at the time of service of Notice the door was locked. During cross-examination he has admitted that the Company did not serve the copy of the 'Notice' of domestic enquiry as well as the 'File of Domestic Enquiry Proceedings' to the workman. Apart from that he was unable to recollect whether the Company issued any show-cause notice to the workman over the issue of his unauthorized absence or whether charge-sheet was issued against him over the said matter.

It is seen that the OPW-2 in his examination-in-chief on affidavit has stated that a domestic enquiry was initiated against the workman in the matter of his unauthorized absence from duty and the workman failed to attend enquiry proceeding although several notices were sent to him and those notices were served by way of affixing on the door of his house. During cross-examination he was unable to say whether the Management of the Company initiated any disciplinary action against the workman in terms of the provision of Company's Certified Standing Orders.

In spite of all such statements in the matter of domestic enquiry, the fact remains that the Company did not file the copy of the 'File of Domestic Enquiry Proceedings' in this case to establish that actually domestic enquiry was held and the Enquiry Officer submitted report after completion of the domestic enquiry proceeding.

In view of all such facts and circumstances and the evidence on record in this matter as mentioned above, it can be safely said that actually no domestic enquiry was started and even if it was held, it was started and held beyond the knowledge of the workman Subir Kr. Barai i.e. it was held surreptitiously. So, in my view, the plea of the Company in the matter of starting domestic enquiry is discarded.

The OPW-1 Manas Kr. Banerjee in his examination-in-chief on affidavit stated that due to unauthorized absence from duty, the workman was liable for strict disciplinary action. In the cross-examination he has disclosed that he cannot recollect whether Company had taken any disciplinary action against the workman under the provision Certified Standing Orders of the Company or not. It is to mention here that the OPW-1 has made his statements in the matter of 'disciplinary proceeding' going beyond the averment of Written Statement of the Company. So, such statement of OPW-1 Manas Kr. Banerjee carries no evidential value.

It is seen from the Written Statement of M/s. Lagan Engineering Co. Ltd. that it is the case of the Company that the workman Subir Kr. Barai was never dismissed from his service under Company but the said workman Subir Kr. Barai refrained himself from attending his duty at his own will and as he '*went on unauthorized absence*'. Whereas the workman Subir Kr. Barai in his Written Statement has pleaded that he was a permanent workman in the post of 'Fitter' under M/s. Lagan Engineering Co. Ltd. and in the month of March, 2016 he sustained injury on his person in a road traffic accident as one biker dashed him while he was cycling and thus he went to Bhadreswar Service Dispensary under ESI and his treatment was started by the Medical Officer in-charge of that dispensary. He has also pleaded that the Medical Officer of ESI dispensary time to time advised him not to join duty and to stay on leave and subsequently on 21.07.2016, advised him in the Medical Certificate to join his duty on and from 23.07.2016. He has claimed that after obtaining Medical Fit Certificate, he went to the factory premises on 23.07.2016 to resume duty along with medical papers and submitted his medical papers to the office of the Company and thereafter he punched his attendance card but

subsequently the Management, showing without any cause whatsoever disallowed him to join his duty and ousted him from the factory premises.

In the above, we have discussed that the Company either by adducing evidence or by cross-examining the PW-1 has miserably failed to establish that the workman Subir Kr. Barai whimsically, voluntarily or without any cogent reason absented himself from attending his duty on and from 29.03.2016 till obtaining Medical Fit Certificate dated 21.07.2016 from the Medical Officer of ESI S.D. Bhadreswar, Hooghly in which the attending Medical Officer advised him to resume duty on and from 23.07.2016. It is to mention here that in fact the medical documents i.e. Exbt.-2 (series) remains unassailed in course of evidence of this case. Moreover, the Company has miserably failed to establish that actually Exbt.-C, Exbt.-D and Exbt.-E were served upon the workman Subir Kr. Barai while he remained absent from attending duty on medical reason, as claimed by the workman. Apart from that, the Company has failed to establish that domestic enquiry proceeding was started against the workman as claimed by it (Company). Actually the Company has become unsuccessful to negate the claim of the workman Subir Kr. Barai (PW-1) that on 23.07.2016 he went to the office of the Company (M/s. Lagan Engineering Co. Ltd.) and submitted medical papers and thereafter he punched his attendance card to join his duty but subsequently he was ousted from the factory premises by the Management of the Company and thus he was disallowed to join his duty. In other words, such claim of the workman Subir Kr. Barai (PW-1) remains uncontroverted and unchallenged inspite of cross-examination of PW-1 and evidence of OPW-1, OPW-2 and OPW-3. However, considering the evidence on record, I am of the view that there is nothing to believe the statement/version of the Company that it never refused the employment of its workman Subir Kr. Barai and thus the claim of the Company that it never dismissed its workman Subir Kr. Barai from its service, is not tenable in the eye of the law. From the above discussion on the materials on record coupled with the evidence on record it is now surfaced that the Company actually dismissed its workman Subir Kr. Barai under the guise of refusal of employment.

Accordingly, it is held that the Management of M/s. Lagan Engineering Co. Ltd. unlawfully and without any justification whatsoever dismissed the workman Subir Kumar Barai from his service or terminated his service w.e.f. 23.07.2016 in the disguise of refusal of employment putting false allegation that he according to his whim refrained from attending his duty on and from 29.03.2016 and never joined his duty subsequently.

Thus, the time has come to conclude in terms of Issue No.1 that the refusal of employment w.e.f. 23.07.2016 to the workman Subir Kumar Barai by the Management of M/s. Lagan Engineering Co. Ltd. is not justified.

So, the Issue No.1 is decided in negative but in favour of the workman.

Issue No. 2

In the Referral Order the Appropriate Government framed the Issue No.2 as follows :-

“To what relief the workman is entitled?”

In view of the decision on the Issue No.1, in my opinion the workman Subir Kr. Barai is entitled to get certain reliefs from this Tribunal taking into consideration his grievance and claim as made out in his Written Statement.

The workman Subir Kr. Barai has narrated his case in the Written Statement. After churning the narration/version of the workman as contained in his Written Statement it is found that the workman Subir Kr. Barai was working as a permanent workman in the post of ‘Fitter’ under M/s. Lagan Engineering Co. Ltd. Since it has been decided that the Management of M/s. Lagan Engineering Co. Ltd. in an unjustified

manner and illegally refused the employment of the workman Subir Kr. Barai on and from 23.07.2016, he is entitled to get back his job as well as he is entitled to get full back wages from the date the Management of the Company stopped payment of his wages and benefits. Thus, the Issue No.2 is decided accordingly in favour of the workman.

Hence,

it is,

Ordered

that the Order of Reference is adjudicated by way of making decision on the Issue No.1 and the Issue No.2 in favour of the workman Subir Kumar Barai. In view of the decision made in the Order of Reference, M/s. Lagan Engineering Co. Ltd. is directed to reinstate the workman Subir Kumar Barai to his original permanent post of 'Fitter' with full back wages from the date the Management of the Company stopped payment of his wages and benefits till the date of his reinstatement in the service. Further, M/s. Lagan Engineering Co. Ltd. is directed to provide other consequential benefits in accordance with law within 60 days from the date of publication of this Award.

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

sd/-
Judge

sd/-
(Mihir Kumar Mondal)
Judge
Third Industrial Tribunal
Kolkata
11.02.2025