

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

No. Labr/ 240 /(LC-IR)/ 22015/24/2019

Date : 24/02/2025


ORDER

WHEREAS an industrial dispute existed between M/s Lagan Engineering Company (P) Ltd., (Erstwhile The Lagan Jute Machinery Company Limited) 14, Dr. Mohd. Ishaque Road (Kyd Street), Kolkata-700016 and their workman Mr. Swarup Patra, 2/1, Surath Chandra Banerjee Lane, Konnagar, District-Hooghly, West Bengal-712235, regarding the issues, being a matter specified in the second schedule to the Industrial Dispute Act, 1947 (14 of 1947);

AND WHEREAS the 3<sup>rd</sup> Industrial Tribunal, Kolkata has submitted to the State Government its Award dated 20.02.2025 in Case No. 03/2021 on the said Industrial Dispute Vide e-mail dated 21.02.2025 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/ 240 /1(5)/(LC-IR)/ 22015/24/2019

Date : 24/02/2025

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

1. M/S. Lagan Engineering Company (P) Ltd., (Erstwhile The Lagan Jute Machinery Company Limited) 14, Dr. Mohd. Ishaque Road (Kyd Street), Kolkata-700016.
2. Mr. Swarup Patra, 2/1, Surath Chandra Banerjee Lane, Konnagar, District-Hooghly, West Bengal-712235.
3. The Asstt. Labour Commissioner, W.B. In-Charge, Labour Gazette.
4. The OSD & EO Labour Commissioner, W.B., New Secretariat Building, 11<sup>th</sup> Floor, 1, Kiran Sankar Roy Road, Kolkata – 700001.
5. The Deputy Secretary, IT Cell, Labour Department, with the request to cast the Award in the Department's website.

  
Assistant Secretary

No. Labr/ 240 /2(3)/(LC-IR)/ 22015/24/2019

Date : 24/02/2025

Copy forwarded for information to :-

1. The Judge, 3<sup>rd</sup> Industrial Tribunal, N. S. Building, 1, K.S. Roy Road, Kolkata - 700001 with respect to his e-mail dated 21.02.2025.
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

**Case No. 03/2021 u/s. 10(1B)(d)**

Present: Sri Mihir Kumar Mondal  
Judge, 3<sup>rd</sup> Industrial Tribunal  
Kolkata

Mr. Swarup Patra  
Residing at 2/1, Surath Chandra Banerjee Lane,  
Konnagar, District-Hooghly, West Bengal-712235.

..... Applicant

-Vs.-

M/s. Lagan Engineering Company (P) Ltd.,  
(Erstwhile The Lagan Jute Machinery Company Limited)  
14, Dr. Mohd. Ishaque Road (Kyd Street), Kolkata-700016.

.....OP/Company

**A W A R D**

**Dated : 20.02.2025**

This is a case u/s. 10(1B)(d) of the Industrial Dispute Act, 1947. The instant case was received by this Tribunal on 12.03.2021. However, according to the Order No.1 dated 10.12.2021, the applicant Swarup Patra filed the application u/s. 10(1B)(d) of the Industrial Disputes Act, 1947 before this Tribunal on 12.03.2021. So, the case was registered on 10.12.2021 although the application u/s. 10(1B)(d) of the Industrial Disputes Act, 1947 was filed on 12.03.2021. The applicant/workman on 12.03.2021 filed an application under Section 10(1B)(d) of the Industrial Disputes Act, 1947 along with Form-S under Rule 12A(3) of the West Bengal Industrial Dispute Rules, 1958 containing certificate dated 26.06.2020 issued by the Conciliation Officer, Chandannagar.

The instant case has been started on the basis of an application u/s. 10(1B)(d) of the Industrial Dispute Act, 1947 filed by one Swarup Patra, a resident of 2/1, Surath Chandra Banerjee Lane, Konnagar, District-Hooghly, West Bengal-712235 against M/s. Lagan Engineering Company (P) Ltd., (Erstwhile The Lagan Jute Machinery Company Limited), 14, Dr. Mohd. Ishaque Road (Kyd Street), Kolkata-700016 raising an industrial dispute. The applicant by filing written statement has stated that he was an employee (bearing Emp. No.8712) of M/s. Lagan Engineering Co. Pvt. Ltd. (Unit: Rishra) and he continuously performed his duty as well as performed the work allotted to him since the date of his appointment on 01.07.2017. It has been stated that he had worked for more than 240 days in a year without any break of service. It has been stated that he received a Show-Cause Notice dated 22.01.2019 from the OP/Company, in which it was alleged that on 16.01.2019 at 9 a.m. he deliberately and intentionally provoked and instigated other general workmen in order to stop their work and thereby they resorted to wildcat strike in a well concerted manner. It has been stated that the workmen in course of wildcat strike created panicky situation, pandemonium and violence inside the factory and thus, the Management alleged that he by such acts violated several provisions of the Certified Standing Orders of the OP/Company. It has been mentioned that the OP/Company made allegation against him on four points, such as – (i) participation in an illegal strike, (ii) participation in strike without serving fourteen days notice, (iii) commission of acts subversive of the discipline of the OP/Company and (iv) organizing, holding, attending or taking part in any meeting within the factory premises without prior sanction of the Manager. It has been mentioned that in the Show-Cause Notice it was directed to file

reply within seven days from the date of receipt of such Notice and he submitted the reply on 24.01.2019 against the said Show-Cause Notice before the competent authority of the OP/Company denying all the allegations levelled against him alongwith the prayer to withdraw the Show-Cause Notice with immediate effect. It has been stated that although he submitted reply against the Show-Cause Notice and requested to withdraw the 'Notice', the OP/Company framed Charge against him ignoring such 'reply' and his 'request' alleging that – (i) he resorted to an illegal strike without Notice, (ii) he held meeting within the factory premises without obtaining permission of the competent authority and accordingly issued direction upon him to file reply within seven days of the receipt of the copy of 'Charge-Sheet'. It has been stated that on receiving the copy of the Charge-Sheet, he prepared the 'reply' against such Charge-Sheet but failed to submit such reply to the competent authority of the OP/Company because in the meantime the Management of the Company declared 'Temporary suspension of work' on 18.03.2019 and thus the gate of the factory premises remained closed. It has been stated that the OP/Company on 31.10.2019 sans conducting Domestic Enquiry by any independent Enquiry Officer, straightway dismissed him from his service illegally with immediate effect. It has been mentioned that apart from dismissing him from his service the Management of the Company illegally forfeited all his legitimate dues and claims. It has been claimed that his employer i.e. the OP/Company had no right to terminate him from his service without conducting any Domestic Enquiry as well as without holding any departmental proceedings. He has claimed in his Written Statement that the Management of the OP/Company created problems within the factory premises with a view to deprive its employees/workmen from their lawful financial demands. He has claimed in his Written Statement that his last drawn wages was Rs.12,604/- per month. He has mentioned that on 19.03.2020 he submitted application before the Deputy Labour Commissioner, Chandannagore, Government of West Bengal seeking redress against the unlawful steps taken by the Management of the Company along with the prayer for reinstatement in his service but ultimately he did not get any relief from such authority and thus, obtained appropriate certificate in Form-S under Rule 12A(3) of the West Bengal Industrial Dispute Rules, 1958.

He has prayed for passing an Award with the direction upon the OP/Company to withdraw the notice of illegal termination of service which was served upon him and to reinstate him in his original post as well as for granting full back wages.

The OP/Company i.e. M/s. Lagan Engineering Co. Pvt. Ltd. has contested this case by filing Written Statement. The OP/Company by its Written Statement has denied all the material allegations levelled against it by the applicant/workman. It is seen that the OP/Company has apportioned its Written Statement in two parts i.e. Part-I and Part-II. In Part-I of the Written Statement, the OP/Company has mentioned that from the office record it was revealed that the applicant Swarup Patra was an employee of M/s. Lagan Engg. Co. Pvt. Ltd. and he along with other workers provoked and participated in illegal strike without any notice and thus committed activities violating the provisions of Certified Standing Orders of the Company. It has been stated that the 'Company' dismissed Swarup Patra from his service by issuing dismissal letter dated 03.10.2019. It has been claimed that in view of the submission of the OP/Company in its letter dated 18.02.2020 addressed to the Deputy Labour Commissioner, Government of West Bengal, the 'application' of the workman is bad in law since the workman was dismissed from his service by M/s. Lagan Engg. Co. Pvt. Ltd. on the 'Charge' that he resorted to an illegal strike without notice and also held meeting within the factory premises sans obtaining permission from the competent authority. It has been clarified in the Written Statement that the concerned workman Swarup Patra had his duty in 'G' shift and at around 9:40 a.m. he deliberately/intentionally provoked/instigated other workmen to stop their work



and to resort to wildcat strike and thereafter in a well concerted manner, created panic and violent situation inside the factory premises for which the said workman was dismissed from his job. It has been stated that the OP/Company on 22.01.2019 issued Show-Cause Notice against the workman Swarup Patra explaining the act of misconduct, that he allegedly committed in course of working hours violating the provisions of Certified Standing Orders of the Company. Specific acts of misconduct and unlawful acts had been mentioned in the Show-Cause Notice. It has been stated that the OP/Company directed the said employee Swarup Patra by Show-Cause Notice dated 22.01.2019 to submit his reply and he submitted reply but such reply was found neither satisfactory nor reliable. Apart from that, the workman further threatened the Management to organize a big demonstration roping in many workmen. It has been stated that the OP/Company on 28.01.2019 issued Charge-Sheet against the workman alleging that – (i) he resorted to an illegal strike without Notice, (ii) he held meeting within the factory premises without obtaining permission of the competent authority and accordingly issued direction upon him to file reply within seven days of the receipt of the copy of ‘Charge-Sheet’ but the workman did not submit any ‘reply’ inspite of issuance of reminder letter. Thus, the OP/Company issued dismissal order against the workman on 03.10.2019 and consequently the OP/Company forfeited his dues to compensate the losses of the Company which it incurred due to the act of misconduct committed by the workman.

The OP/Company by filing Written Statement has prayed for dismissal of this case on the ground that the concerned workman is not entitled to get any relief as prayed for.

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

On the basis of pleadings of the parties, the following issues were framed in this case by the then Learned Presiding Officer of this Tribunal on 12.05.2022 :

### **ISSUES**

1. *Whether the termination of service of workman Sri Swarup Patra w.e.f. 03.10.2019 by the Management of M/s. Lagan Engineering Co. Pvt. Ltd. justified ?*
2. *What relief, if any, the workman entitled to ?*

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

During evidence stage, applicant/workman Sri Swarup Patra examined himself as PW-1.

It is seen that the OP/Company filed examination-in-chief on affidavit of its witness Sri Manas Kumar Banerjee for adducing the said witness as OPW-1 in support of the case of the OP/Company. It is seen that after examination-in-chief of OPW-1 Manas Kumar Banerjee, his cross-examination was started but it was not concluded because cross-examination of OPW-1 was deferred on the prayer of the Ld. Advocate for the OP/Company. It is to mention here that subsequently the OP/Company did not produce OPW-1 Manas Kumar Banerjee for completion of his cross-examination. In view of the situation, this Tribunal was compelled to close the evidence of this case.

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

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

1. Exbt.-1 : photocopy of pay slips for the months of April, 2018 to December, 2018;
2. Exbt.-2 : photocopy of ESIC;
3. Exbt.-3 : photocopy of P.F. slips for the period 2017-2018;
4. Exbt.-4 : photocopy of show-cause notice dated 22.01.2019;
5. Exbt.-5 : photocopy of letter dated 24.01.2019 to the Personnel Manager of the Company;
6. Exbt.-6 : photo copy of the charge-sheet dated 28.01.2019;
7. Exbt.-7 : photocopy of letter of dismissal dated 03.10.2019;
8. Exbt.-8 : photocopy of letter dated 20.11.2019 to the Personnel Manager of the Company;
9. Exbt.-9 : photocopy of letter dated 22.10.2019 to the D.L.C., Chandannagar;
10. Exbt.-10 : photocopy of application dated 19.03.2010 before the Conciliation Officer;
11. Exbt.-11 : Photocopy of letter dated 31.01.2019 to the D.L.C., Chandannagar; and
12. Exbt.-12 : Photocopy of Form-S.

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

1. Exbt.-A: Authorisation letter of Manas Kr. Banerjee;
2. Exbt.-B: photocopy of Standing Orders of the Company;
3. Exbt.-C: photocopy of Show-Cause Notice dated 22.01.2019;
4. Exbt.-D : photocopy of Charge-Sheet dated 28.01.2019;
5. Exbt.-E: photocopy of reminder dated 11.02.2019 for reply on charge-sheet;
6. Exbt.-F: photocopy of letter of dismissal dated 03.10.2019 issued by the Personnel Manager of the Company;
7. Exbt.-G: photocopy of letter dated 18.02.2020 to the Deputy Labour Commissioner, Chandannagore, Hooghly written by the Personnel Manager of the Company.

It is to mention here that after closing the evidence of this case, date of argument was fixed but on the date of argument, Ld. Advocate for the OP/Company filed adjournment petition. This Tribunal after passing a reasoned order rejected the said adjournment petition on 20.11.2024 and fixed a date for Award. It is to mention here that on 20.12.2024 i.e. the fixed date for passing Award, Ld. Advocate for the OP/Company filed a petition with the prayer for adjournment seeking opportunity to adduce evidence. On the same date, Ld. Advocate for the applicant/workman filed a petition seeking opportunity to submit written notes of argument. This Tribunal passed a detailed order on 20.12.2024 and rejected the adjournment petition submitted by the OP/Company and at the same time allowed both the parties to file written notes of argument before the date of passing Award. In fact, neither the OP/Company nor the applicant/workman has filed written notes of argument in this case. Be it mentioned here that actually there is no provision for argument hearing in a case u/s. 10(1B)(d) of the Industrial Disputes Act,

1947 as well as there is no such provision in the West Bengal Industrial Dispute Rules, 1958.

### **Evidence on Record**

PW-1 Swarup Patra in his examination-in-chief on affidavit has stated that he was appointed by the OP/Company on 01.07.2017 and from the date of his appointment he performed his duty continuously till the date of termination of his service. He has stated that he had worked for 240 days in every calendar year including the calendar year just preceding to termination of his service and there was no break in his service. He has stated that on 22.01.2019 he received a show-cause notice from the OP/Company in which it was alleged that on 16.01.2019 at 9 a.m. he deliberately/intentionally provoked and instigated other general workmen to stop their work and to resort to wildcat strike in a well concerted manner and thereby he created pandemonium and violent/panicky situation inside the factory premises. It is observed that the PW-1 in his examination-in-chief on affidavit has reproduced his statements as contained in the Written Statement submitted in this case.

During cross-examination, he has stated that he filed pay slips to show that his Employee Number was 8712. He has divulged that he was terminated from his service in the month of October, 2019. He has divulged that he filed pay slips, issued by the Company, to show that he had worked under the Company continuously on and from 01.07.2017 to the middle portion of January, 2019. He has admitted that he received the Show-Cause Notice from the OP/Company on 22.01.2019. He has admitted that due to his lack of knowledge about English language he could not realize the meaning of the contents of the Show-Cause Notice, which was prepared in English. He has admitted that he came to learn about the contents of the said Show-Cause Notice after the contents of the same was translated to him in Bengali language by a person known to him. He has admitted that he has no knowledge about several provisions of the Certified Standing Orders of the Company. He has admitted that he sent the 'reply' (Exbt.-5) dated 24.01.2019 to the Show-Cause Notice dated 22.01.2019 in English language. He has admitted that he is unable to say the contents of the Charge-Sheet dated 28.01.2019 (Exbt.-6), which was issued against him by the OP/Company. He has admitted that he received the dismissal letter dated 03.10.2019 (Exbt.-7) from the OP/Company. He has reiterated that on 22.10.2019 he raised industrial dispute in writing before the Deputy Labour Commissioner, Government of West Bengal, Labour Department, Chandannagore, Labour Office, District-Hooghly (Exbt.-9). In the reply to a question put to him by the Ld. Advocate for the OP/Company, he has admitted that in para. no.10 of his examination-in-chief on affidavit he mentioned that on 19.10.2020 he raised industrial dispute with the Deputy Labour Commissioner, Chandannagore. He has divulged that due to physical illness he was not able to take any prompt step against the dismissal order dated 03.10.2019 and he has admitted that he did not file any medical document to show that he was unwell in the intervening period of 03.10.2019 to 22.10.2019. He has divulged that he filed his pay slip for the month of December, 2018 to establish that his last drawn salary was Rs.12,604/- per month. He has admitted that he did not file any document to substantiate his claim that he had worked for 240 days in every year during his service tenure and in the calendar year just preceding to his termination as well as, there was no break in his service.

OPW-1 Manas Kr. Banerjee has stated that the workman Swarup Patra was a worker in Grade 'C' – semi skilled category. He has stated that the *“applicant worked rarely when the occasion arose however he never worked continuously for 240 days during the working period”*. It is seen that the OPW-1 in his examination-in-chief on affidavit has reproduced almost all statements as contained in the Written Statement

submitted by the OP/Company. It is seen that the OPW-1 in his examination-in-chief on affidavit has made some statements going beyond the contents of the Written Statement. For example - (i) the OPW-1 in his examination-in-chief on affidavit has stated that the applicant submitted reply to the Show-Cause Notice *but in the reply he did not admit his misconduct*, (ii) the OPW-1 has stated in his examination-in-chief on affidavit that – The Company vide its letter dated 28.01.2019 issued a charge-sheet against the applicant wherein the Company stated the charges which were levelled against the applicant. *Further, the applicant was directed to file its written submission within 7 days of receiving of the said letter*, (iii) the OPW-1 has stated in his examination-in-chief on affidavit that – “*The Company vide its letter dated 18<sup>th</sup> February, 2020 stated its stand before Deputy Labour Commissioner, West Bengal, wherein the Company stated that the applicant had received the letter dated 2<sup>nd</sup> February, 2019 and has deliberately not replied to it. It is further stated that the Company had waited for more than 7 months for response of the applicant. The company did not get any response from the applicant as such the Company dismissed the applicant. The said letter was duly received by the applicant.*” (The italic portions are not found in the Written Statement).

The OPW-1 during his examination-in-chief before this Tribunal has stated that he came before this Tribunal to depose as witness of Lagan Engineering Co. Pvt. Ltd. along with ‘letter of authorisation’ which was issued by Mr. Prakash Kumar Bhotica, Director of the OP/Company. During cross-examination, he has admitted that in the said ‘letter of authorization’ it is not written in so many words that he has been authorized to depose in this case. He has admitted that his statements as contained in para. 4 of the examination-in-chief on affidavit is not available in the Written Statement. He has admitted that Certified Standing Orders of the Company containing page nos. 1 to 31 and the cover page (Exbt.-B) does not contain any signature with seal of any authority. He has admitted that Swarup Patra was a permanent employee of the Company. He has admitted that he cannot recollect whether the Management of the Company issued any show-cause letter or caution letter to Swarup Patra regarding his habit of attending work occasionally, which he (OPW-1) stated in his examination-in-chief. He has admitted that he did not file any document to show that the applicant worked rarely when occasion arose as well as the workman never worked continuously for 240 days during the working period. (The OPW-1 made statement to the effect that he would be able to file necessary document in support of his statement in para. 4 of his examination-in-chief on affidavit but in fact the OPW-1 did not file any document to fulfill his undertaking). He has expressed his lack of knowledge whether this Tribunal directed the Management of the Company to produce the attendance register in respect of the workman Swarup Patra (In fact by virtue of order No.27 dated 08.09.2023 this Tribunal directed the Management of the Company to produce the Attendance Register in respect of Swarup Patra). He has admitted that in para. 5 of his examination-in-chief on affidavit he did not mention the names of workmen who were provoked and instigated by Swarup Patra to participate in illegal strike. He has categorically admitted that happening of alleged incident dated 16.01.2019, as mentioned in his examination-in-chief on affidavit, is not same and identical as appeared from Exbt.-C. He has admitted that alleged incident took place on 16.01.2019 but Show-Cause Notice (Exbt.-C) was issued on 22.01.2019. The OPW-1 has made self-contradictory statement in his cross-examination because he during cross-examination divulged that the Management waited for 5 days with the hope that employee Swarup Patra would resume his duty but in the Written Statement of the Company there is no whisper about such ‘waiting period’. He has admitted that inspite of issuance of charge-sheet on 28.01.2019 (Exbt.-6), the Management of the Company did not initiate any disciplinary action against the workman Swarup Patra.

### **Decisions with reasons**

#### **Issue No. 1 :**

This case has been started on the basis of an application u/s. 10(1B)(d) of the Industrial Disputes Act, 1947 by the applicant/workman Swarup Patra. It is seen that at the time of filing of this case the applicant filed the application u/s. 10(1B)(d) of the Industrial Disputes Act, 1947 along with the photocopy of Form-S issued on 26.06.2020. The fact remains that the application u/s. 10(1B)(d) of the Industrial Disputes Act, 1947 was filed before this Tribunal on 12.03.2021 although the workman received the Form-S on 26.06.2020. It is fact that 'issues' of this case were framed on the basis of the pleadings of the parties i.e. on the basis of application u/s. 10(1B)(d) of the Industrial Disputes Act, 1947 and the Written Statement submitted by the OP/Company against such 'application'. It is to reiterate that the workman Swarup Patra raised industrial dispute against his employer M/s. Lagan Engineering Co. Pvt. Ltd. by way of filing application u/s. 10(1B)(d) of the Industrial Disputes Act, 1947. So, the workman Swarup Patra is duty bound to prove/establish his 'case' by adducing reliable and trustworthy evidence. In other words, the onus of proving the 'case' lies on the shoulder of the applicant/workman Swarup Patra. The 'case' of the applicant/workman Swarup Patra is that he was 'an employee' of M/s. Lagan Engineering Co. Pvt. Ltd. and from the date of his appointment on 01.07.2017 he was in continuous service under his employer M/s. Lagan Engineering Co. Pvt. Ltd. Apart from that he being an employee of his employer worked more than 240 days in a calendar year without break in service including the just preceding calendar year of his dismissal. In spite of that, his employer i.e. the Management of M/s. Lagan Engineering Co. Pvt. Ltd. levelling some false allegations, issued Show-Cause Notice on 22.01.2019 to him with the instruction to submit time bound 'reply' to such Show-Cause Notice. He submitted reply to such Show-Cause Notice but the OP/Company framed 'charges' against him refusing to accept his reply. After issuing charge-sheet against him on 28.01.2019, he was asked to submit reply against it within 7 days from the date of receipt of the 'Notice' regarding charge-sheet but he was not able to submit the reply against charge-sheet as the OP/Company declared 'temporary suspension of work' on 18.03.2019. The applicant/workman has claimed that the OP/Company was duty bound to initiate domestic enquiry and/or departmental proceeding against him by any independent Enquiry Officer but the OP/Company straightway dismissed him from his service without holding domestic enquiry or initiating departmental proceeding, and thus the OP/Company committed gross illegal act and violated the provision of relevant law and procedure in the matter of issuance of Dismissal Order dated 03.10.2019. Accordingly, the applicant/workman has claimed that the act of terminating him from his service by way of issuance of dismissal letter on 03.10.2019 is unjustified and violative of relevant law and procedure.

It is seen from the examination-in-chief on affidavit of PW-1 Swarup Patra that he has stated that he prepared the 'reply' to the charge-sheet, as he was instructed by the Management but he could not be able to submit the same since the Management declared temporary suspension of work on 18.03.2019. The applicant Swarup Patra averred similar statement in his Written Statement i.e. he took the plea of 'temporary suspension of work on and from 18.03.2019' as a reason for becoming himself unable to submit such 'reply'. But, the OP/Company did not cross-examine him on such statement made by him. It is seen that in course of cross-examination of PW-1, the OP/Company did not challenge such statement with a view to controvert the same. In fact, in course of cross-examination of PW-1, the OP/Company kept untouched such statement made by him in course of his examination-in-chief on affidavit. Moreover, the OP/Company did not deny such statement of PW-1 by putting suggestion to him. In view of such facts and circumstances, it can be safely said that truthfulness of PW-1 in respect of such statement has not been



shaken as it was not challenged and controverted by the OP/Company. Thus, there is nothing to disbelieve such statement of PW-1. In this space, it is to mention here that the OP/Company actually brought some charges against the workman by way of levelling some sorts of allegations in the Show-Cause Notice dated 22.01.2019 (Exbt.-4). The workman submitted 'reply' to such show-cause notice denying all kinds of allegations and the OP/Company did not accept the 'reply to the show-cause' submitted by the workman. Charge-sheet dated 28.01.2019 has been marked as Exbt.-6. It is seen that the allegations in the form of 'charges' as contained in the charge-sheet dated 28.01.2019 (Exbt.-6) have close similarity with the 'allegations' against the workman as contained in the 'show-cause dated 22.01.2019' (Exbt.-4). In view of 'similarity' of allegations as contained in Exbt.-4 and Exbt.-5, I think it would not be wrong to say that situation would not have been changed, had the workman been able to submit his reply to the charge-sheet, as directed by the Management. Thus, in my view, the 'case' of the applicant/workman has not suffered any harm/damage due to non-submission of reply to the charge-sheet and the 'case' of the OP/Company is not entitled to get any benefit on this point.

The PW-1 Swarup Patra in his cross-examination has admitted that he has not filed any document to substantiate his claim that he had worked for 240 days in every year during his service tenure and also in the calendar year just preceding to his termination. He has denied the suggestion of the OP/Company that he did not work 240 days in every year during his service tenure under the Company.

It is found from the cross-examination of OPW-1 that he has denied his knowledge whether this Tribunal directed the Management of the Company to produce the 'attendance register' in respect of the workman Swarup Patra. He has further divulged in course of cross-examination that he has not filed any document to show that the applicant/workman worked rarely when occasion arose as well as the workman never worked continuously for 240 days during the working period. Apart from that, he undertook to file necessary documents in support of his statement made in his examination-in-chief on affidavit to the effect that the applicant/workman worked rarely when the occasion arose, and that, he never worked continuously for 240 days during the working period. It is to mention here that the OPW-1 in his examination-in-chief on affidavit made such statement going beyond the Written Statement submitted by the OP/Company.

On scrutiny of the record it appears from the Order No.27 dated 08.09.2023 that this Tribunal disposed of petition dated 21.06.2023 submitted on behalf of the applicant/workman Swarup Patra under Rule 20E of the West Bengal Industrial Dispute Rules, 1958. It is seen that by such petition, it was prayed on behalf of the workman Swarup Patra for a direction upon the OP/Company to produce five sets of document such as, (i) attendance register of the workman, (ii) wage register of the workman, (iii) Muster Roll of the Company, (iv) register showing the deposit of ESI contribution of the workman and (v) register showing deposit of PF contribution of the workman. It is seen from the said order that this Tribunal allowed the said petition in part and directed the OP/Company to produce (i) attendance register of the workman, (ii) wage register of the workman, (iii) Muster Roll of the Company but the OP/Company did not comply the direction of this Tribunal as it appears from the Order No.32 dated 12.03.2024. So, it is clear that the OP/Company inspite of specific direction from this Tribunal, did not produce the 'attendance register' in respect of the workman Swarup Patra. In view of such facts and circumstances, it can be reasonably presumed that had the OP/Company produced the 'attendance register' in respect of the workman Swarup Patra, it would have been established before this Tribunal that the workman Swarup Patra had worked for 240 days in every calendar year during his service tenure and also in the calendar year just

preceding to his termination. So, it can be safely said that such presumption certainly goes against the OP/Company. Apart from that, it can be said that due to such adverse presumption against the OP/Company, there is nothing to disbelieve the claim/statement of the applicant/workman that he had worked for 240 days in every calendar year during his service tenure and also in the calendar year just preceding to his termination.

The 'case' of the OP/Company, as it transpires from the Written Statement, that the applicant Swarup Patra was an employee of M/s. Lagan Engineering Co. Pvt. Ltd. and that workman "*along with other workmen provoked and participated in illegal strike without any notice and against the provisions of the Certified Standing Orders of the Company Appendix D(2)*". It is revealed from the Written Statement that the workman was dismissed from the service by M/s. Lagan Engineering Co. Pvt. Ltd. on 03.10.2019 on the ground that the workman resorted to an illegal strike without notice and held meeting within factory premises without obtaining the permission of the competent authority. Since the workman Swarup Patra deliberately and intentionally provoked other workmen to stop their work and to resort to wildcat strike as well as creating panic and violent situation inside the factory premises, the Management of the Company issued a Show-Cause Notice to the workman on 22.01.2019 asking him to reply within 48 hours on receipt of the Show-Cause Notice and accordingly the workman submitted his reply to the show-cause but his reply was found not satisfactory and thus charge-sheet was issued against the workman and he was asked to submit his reply to the charge-sheet within seven days but the workman did not submit any 'reply' to the charges levelled against him by way of issuance of charge-sheet. It is further revealed that the Management of the Company waited for considerable period with the hope that good sense of the workman would prevail but observing no response from the side of the workman, the Management of the Company was compelled to issue 'dismissal order' on 03.10.2019.

After going through the averment made by the OP/Company in its Written Statement, it is glaring that it did not make any whisper about 'domestic enquiry'/'disciplinary action' against the workman Swarup Patra in the matter of allegations brought against him as contained in 'show-cause dated 22.01.2019' (Exbt.-4) and 'charge-sheet dated 28.01.2019' (Exbt.-6).

The OPW-1 Manas Kr. Banerjee in course of cross-examination has admitted that although in Exbt.-4 and Exbt.-6 it was mentioned specifically that if the workman would not have filed 'show-cause' and 'reply' respectively, the Management of the Company would take 'disciplinary action' against him (workman).

The OPW-1 in his cross-examination in an unequivocal language, has admitted that inspite of issuance of charge-sheet dated 28.01.2019, the Management of the Company did not initiate any disciplinary action against the workman Swarup Patra.

Thus, from the exhibited documents, such as, Exbt.-4 and Exbt.-6 and from the oral evidence of OPW-1 it is well understood that the OP/Company had given clear caution of initiating disciplinary action to the workman Swarup Patra if he failed to submit reply to the charge-sheet dated 28.01.2019 (Exbt.-6), but in reality the OP/Company did not initiate either any 'domestic enquiry' or any 'disciplinary action' against the workman Swarup Patra. Moreover, it is to mention here that the OP/Company in his Written Statement did not aver the reason for not initiating domestic enquiry proceeding or disciplinary action against the workman Swarup Patra in respect of the allegation brought against him by way of issuance of Show-Cause Notice dated 22.01.2019 and subsequently charge-sheet dated 28.01.2019. However, the applicant/workman Swarup Patra claimed that the Management of the Company intentionally avoided to hold domestic enquiry by any independent Enquiry Officer or disciplinary action against him over the allegations levelled against him firstly, in the

Show-Cause Notice dated 22.01.2019 and subsequently, in the charge-sheet dated 28.01.2019, straightway dismissing him from the service of the OP/Company by way of issuance of Dismissal Order on 03.10.2019. It has been noticed that the OP/Company in its Written Statement did not make any averment seeking opportunity to prove the charges levelled against the dismissed/terminated workman in the adjudication proceeding of this case before this Tribunal.

We know that it is a well settled position of law that the Management has got every right to prove the charges before the Industrial Tribunal in course of adjudication proceeding of the relevant industrial dispute by observing due process of law.

The **Hon'ble Supreme Court of India** in a matter reported in **(2021) 3 Supreme Court Cases 108** has been pleased to observe – *“This Court has in a catena of decisions held that where an employer has failed to make an enquiry before dismissal or discharge of a workman, it is open for him to justify the action before the Labour Court by leading evidence before it. The entire matter would be open before the tribunal, which would have the jurisdiction to satisfy itself on the evidence adduced by the parties whether the dismissal or discharge was justified”*.

In this case, the OP/Company has failed to cooperate with this Tribunal for completion of the cross-examination of OPW-1 by the workman. It is to mention here that due to the absolute lacuna on the part of the OP/Company, the workman has failed to complete the cross-examination of OPW-1. Actually, the workman has been deprived of the opportunity to cross-examine the OPW-1 in full. Consequently, the workman was deprived from confronting and challenging the OPW-1 in respect of his various statements made in the examination-in-chief on affidavit. In such situation, as the workman was deprived from disproving some statements of OPW-1 by which he indicted the workman, all such statements are liable not to be considered as evidence against the workman. In fact, this Tribunal has every reason to expunge the evidence of OPW-1, since due to fault of OP/Company the evidence of OPW-1 could not be completed. But, taking a lenient view, this Tribunal did not pass order to expunge the evidence of the OPW-1 completely. In course of scrutiny of the evidence of OPW-1, it was revealed that he made several statements going beyond the statements of the OP/Company as contained in the Written Statement. It has been found that OPW-1 in his evidence made several statements disclosing new facts going beyond the Written Statement of the OP/Company as well as he has made several exaggerations. Such improvement and exaggeration has made the evidence of OPW-1 a weak piece of evidence.

In view of evidence on record, it is well transpired that the OP/Company by adducing evidence has failed to prove several allegations (as contained in Exbt.-4 and Exbt.-6) brought against the workman Swarup Patra.

It is to mention here that inspite of getting opportunity to prove the charges levelled against the workman Swarup Patra before this Tribunal in course of adjudication proceeding of this case, the OP/Company has failed to prove the charges brought against the workman Swarup Patra by Exbt.-6.

In view of the above observation, it seems that practically the Management of the OP/Company had predetermined to dismiss the workman from his service whenever it issued Show-Cause Notice on 22.01.2019 but with a view to maintain the mere formalities, issued charge-sheet on 28.01.2019 and not keeping any avenue open for reconciliation, issued dismissal order on 03.10.2019 just pending its predetermined decision for a couple of months.

Now, considering the above discussion, it is now obvious that the termination of service of the workman by way of order of dismissal on 03.10.2019 by the Management of M/s. Lagan Engineering Co. Pvt. Ltd. is not justified at all.

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

**Issue No. 2 :**

In this case, Issue No.2 was framed as follows :-

“What relief, if any, the workman is entitled to?”

In view of the decision on the Issue No.1, in my opinion the workman Swarup Patra is entitled to get certain reliefs from this Tribunal after taking into consideration his grievance and claim as made out in his Application u/s. 10(1B)(d) of the Industrial Disputes Act, 1947.

The applicant/workman Swarup Patra has narrated his case in the Application u/s. 10(1B)(d) of the Industrial Disputes Act, 1947. After churning the narration/version of the applicant/workman as contained in his said ‘Application’, it is found that the applicant/workman Swarup Patra was working as an employee 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 dismissed the employee Swarup Patra from his service on and from 03.10.2019, he is entitled to get back his job/employment 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 applicant/workman Swarup Patra.

Hence,

it is,

**Ordered**

that the Application u/s. 10(1B)(d) of the Industrial Disputes Act, 1947 is allowed on contest and after full adjudication of the industrial dispute raised by the applicant through such ‘Application’.

In view of the decision made in the Issue No.1 and Issue No.2, M/s. Lagan Engineering Co. Pvt. Ltd. is directed to reinstate the applicant/workman Swarup Patra to his original post with full back wages from the date whence 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. Pvt. 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, 12<sup>th</sup> 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  
20.02.2025

