Before the 2nd Industrial Tribunal, Kolkata

Present : Shri Partha Sarathi Mukhopadhyay, Judge
2nd Industrial Tribunal, Kolkata

Case No. 07/2021

Under Section 10 (1b) (d) of The Industrial Disputes Act, 1947

Shri Balaram Agarwal

Petitioner

Vs.

Jindal (India) Limited

Opposite Party

Date: 13.12.2024

J U D G E M E N T

The case of the petitioner, in short, is that he was employed in the OP company as the Assistant Accountant on and from 01.07.1991 and

he was entrusted with the job of checking of all bills for approval and informing the authority for issuance of debit and credit notes with respect to the said bills and his work was purely clerical and he used to draw a monthly salary of Rs. 36000/- alongwith other permissible perks and during his service he discharged his duties with utmost honesty, sincerity and dedication to the work of the OP company and on 31.01.2020 when he was on duty, he was asked not to come on and from 01.02.2020 and subsequently one termination letter w.e.f. 31.01.2020 was sent to him by email without giving any opportunity to the petitioner of hearing and chance to defend himself and in the termination letter the OP company did not mention any ground for his termination and the petitioner repeatedly requested the OP company to inform him the ground of termination in vain and then the petitioner approached the office of the Deputy Labour Commissioner, Howrah and the said Commissioner called both sides for conciliation amicably but no settlement took place and then after taking one certificate from the Commissioner, the petitioner has filed this case in this Tribunal and after his termination he somehow maintains his family with the help of other members of his family and he has not been working elsewhere gainfully and on these grounds he has prayed for declaration that the order of termination dated 31.01.2020 is illegal and unjustified and prayed for his reinstatement with full back wages and other consequential benefits.

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

The OP company has submitted in its written statement that the case is not maintainable in law and severance of the petitioner from the

OP company was verbally discussed with him and as he refused to acknowledge receipt of the formal severance letter by hand delivery, the said letter was sent to him by email to his personal email and one hard copy of that letter was sent to him by speed post and said severance of the petitioner was mutually agreeable between the OP company and the petitioner for which the petitioner wanted to know through his email dated 31.01.2020 how his claims will be settled by the OP company and then by a letter dated 12.02.2020 the OP company sent him a detailed reply by email and speed post and by the said letter dated 12.02.2020 the opposite party offered him Rs. 36000/- as one month's gross salary in lieu of one month's notice and Rs. 94685/- as leave encashment and his service was terminated after following proper procedures according to the Industrial Disputes Act, 1947 and all the allegations of the petitioner are false.

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

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

1. *Is the case maintainable in its present form and law?*
2. *Has the petitioner any cause of action to file this case?*
3. *Is the petitioner a workman under Section 2(s) of The Industrial Disputes Act, 1947?*
4. *Is the petitioner entitled to get relief as prayed for?*
5. *To what other relief or reliefs, if any, is the petitioner entitled?*

Decision with reasons:

Issue nos. 1 to 5

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

In order to prove the case the petitioner has examined himself as the PW1 and proved some documents while the OP company has not examined any witness but filed one petition under Section 11 of The Industrial Disputes Act 1947 read with Rule 15 of the West Bengal Industrial Disputes Rules, 1958 alongwith some documents and prayed for using the said documents in evidence and after hearing both sides the said petition of the OP company was allowed without examination of any witness on behalf of the OP company and the said documents filed by the OP company were marked Exhibits of this case.

The Ld. Lawyer for the OP company has cited the following decisions of the Hon'ble Supreme Court and Hon'ble High Court, Calcutta on the point of admission ---

1. *The Hon'ble Supreme Court has held in a case namely Nagindas Ramdas Vs. DalpatramIccharam alias Brijram as reported in AIR 1974 SC page 471 that "admissions, if true and clear, are by far the best proof of the facts admitted. Admissions in pleadings or judicial admissions, admissible under Section 58 of Evidence Act, made by the parties or their agents at or before the hearing of the case stand on a*

higher footing than evidentiary admissions. The former class of admissions are fully binding on the party that makes them and constitute a waiver of proof. They by themselves can be made the foundation of the rights of the parties.

2. *The Hon'ble Supreme Court has held in a case namely Goutam Sarup Vs. Leela Zetly as reported in 2008 AIR SCW page 4113 that "an admission made in a pleading is not to be treated in the same manner as an admission in a document. An admission made by a party to the lis is admissible against him proprio vigore"*

3. *The Hon'ble Supreme Court has held in a case namely Delhi Transport Corporation Vs. Shyam Lal as reported in (2004) 8 SCC page 88 that "it is a fairly settled position in law that admission is the best piece of evidence against the person making the admission. It is however, open to the person making the admission to show why admission is not to be acted upon."*

4. *The Hon'ble High Court, Calcutta has held in a case namely Chinnareddy and Ors. Vs. The Director of Transport as reported in (2014) 4 Cal. LT page 317 that "the admission of the witness was based on his personal knowledge and such admission is a substantive evidence of the fact admitted."*

So admissions made in pleadings or judicial admissions are admissible under Section 58 of The Evidence Act.

As per oral submission of the Ld. Lawyer for the OP company, one issue has been framed in this case to the point that "Is the petitioner a workman under Section 2(s) of The Industrial Disputes Act, 1947?"

In its written statement the OP company has not taken a specific plea to the point that the petitioner of this case is not a workman under Section 2(s) of The Industrial Disputes Act, 1947 and the said written statement is silent about it. However, as per submission of the Ld. Lawyer for the OP company, this issue has been framed in this case.

In his written statement the petitioner has mentioned that on 01.07.1991 he was appointed as the Assistant Accountant in the OP company and he was entrusted with the job of checking of all the bills and send it to the higher authority for approval and inform the authority for issuance of debit or credit note in the said bills and his work was purely clerical and routinised in nature.

In his affidavit in chief the petitioner has stated that on 01.07.1991 he was employed as the Assistant Accountant in the OP company but no formal appointment letter was issued to him and his job was purely clerical and he was entrusted with the job of checking of all the bills and sending those bills to the higher authority for approval and informing the authority for issuance of debit or credit notes with respect to the bills and he was a permanent employee under the OP company and he used to draw monthly salary of Rs. 36000/-.

Though the OP company has not taken any specific plea in its written statement regarding status of workman of the petitioner and though the OP company has not examined any witness on this point, the OP

company has cross-examined the petitioner on the point of status of workman and cited the following decisions of the Hon'ble Courts:-

1. *The Hon'ble Supreme Court has held in a case namely Sonepat Cooperative Sugar Mills Limited Vs. Ajit Singh as reported in (2005) 3 SCC page 232 that "a person would come within the purview of Section 2(s) of the Industrial Disputes Act, 1947 if he is employed in any industry and performs any manual, unskilled, skilled, technical, operational, clerical or supervisory work and a person who performs one or other jobs mentioned in the abovementioned provision only would come within the purview of the definition of workman."*

2. *The Hon'ble High Court, Calcutta has held in a case namely Ramendra Narayan Deb Vs. Eighth Industrial Tribunal and Ors. as reported in 1 LLN High Court, Calcutta 1975 that "the determining factor in deciding whether a person is a workman is the principal or main work he is required to do in his employment. Any other work which a person is required to do incidentally in connection with his principal or main work or otherwise as a small fraction of his work will not convert the nature of his employment. The principal or main work in the employment of a person will have to be determined from the letter of appointment, the nature of duties the employee hasto perform in course of his employment and other attending circumstances."*

3. *The Hon'ble High Court, Calcutta has held in a case namely ESS DEE Aluminum Ltd. Vs. State of West Bengal and Ors. as reported in 2017 LLR 1135 that "a very major part of the definition of workman includes a supervisor and the clause*

excluding the employees from the category of workman refers to a monthly salary ceiling. If the Labour Court had to hold that the private respondent was actuallynot performing the supervisory duties, it was necessary for it to come to a specific finding as to which of the enumerated types of duties was actually performed by him so as to be classed as a workman".

In his cross-examination by the OP company, the petitioner has stated that Bhabi Chand Jindal was the owner of the OP company when the petitioner joined there and he had good relation with him and his service in the OP company was related to the Accounts Department of the OP company and said Bhabi Chand Jindal used to discuss with him about different functions of the OP company and before shifting to his flat, he used to reside in the accommodation provided by the OP company and at first he used to certify the bills and ultimately the final bill used to be given to the purchaser and at the time of checking if any defect was seen by him, he would send the same to the department for rectifying the defect and according to his guidance, credit notes and debit notes were issued to the customers for the product of the OP company.

The OP company has not produced and proved the job allocation paper or job profile of the petitioner as the Assistant Accountant to show the nature of works of the petitioner and such types of papers are available in every office or company.

Admittedly the OP company has not issued any appointment letter to the petitioner at the time of his joining.

According to the written statement and affidavit in chief of the petitioner, his job was purely clerical and he was entrusted with the job of checking all the bills and sending the same to the higher authority for approval and informing the authority for issuance of debit or credit notes with respect to the said bills.

According to the cross-examination of the petitioner, his service was related to the Accounts Department of the OP company and he had good relation with the owner of the OP company Bhabi Chand Jindal and before purchasing his flat, the petitioner used to reside in the accommodation of the OP company and the OP company earns by manufacturing different materials there and at first the OP company issues bills to the purchasers for selling the said materials and receiving payment from them in respect of the said bills and he(petitioner) used to certify the bills and ultimately the final bills used to be given to the purchasers and at the time of checking if any defect was seen by him, he would send the same to the department for rectifying the said defect and according to his guidance, credit and debit notes were issued to the customers for the products of the OP company.

So in his cross-examinations the petitioner has stated that he used to certify the bills and ultimately the final bills used to be given to the purchaser and at the time of checking if any defect was seen by him, he would send the same to the department for rectifying the said defect and according to his guidance, credit and debit notes were issued to the customer for the products of the OP company and his service was related to the accounts department of the OP company. So the above cross-examinations of the petitioner do not conclusively

prove that he was employed in the OP company as the officer or supervisor and had he been appointed as the officer of the OP company, he would not have sent the defective bills to the higher authority for rectifying the said defects and as a clerk he had power to make guidance for issuing the credit and debit notes to the customers for the products of the OP company and from the examination in chief and above cross-examinations of the PW1 it is proved that he used to work as the clerk as Assistant Accountant in the Accounts Department of the OP company.

It is true that in his cross-examination the petitioner has stated that he had good relation with the owner of the OP company and before purchasing his flat he used to reside in the accommodation of the OP company which were meant for the responsible employees. Such type of his residing in the said accommodation of the OP company meant for the responsible employees cannot conclusively prove that as he was employed as the officer or any responsible employee of the OP company, the owner of the OP company allowed him to stay in that accommodation. It may be that due to good relation with the owner of the OP company, the petitioner was allowed to stay in that accommodation. The OP company has not produced any conclusive evidence to show that as the petitioner was an officer or responsible employee of the OP company, he was allowed by the OP company to reside in that accommodation.

The Hon'ble High Court, Calcutta has held in a case namely Ramendra Narayan Deb Vs. Eighth Industrial Tribunal and Ors. as reported in 1 LLN High Court, Calcutta 1975 that"Any other work which a person is required to do incidentally in connection with his principal or main

work or otherwise as a small fraction of his work will not convert the nature of his employment."

In view of the abovementioned decisions of the Hon'ble Supreme Court I hold that the OP company has not proved any other attending circumstances and other nature of duties to show that the petitioner was not a clerk under the OP company and he was a responsible employee or an officer of the said company and mere guidance by the petitioner for issuance of credit notes and debit notes to the customers of the OP company and certifying the bills of payment by the petitioner cannot conclusively prove that he was not a clerk under the OP company and considering the entire materials on record including the cross-examinations of the petitioner by the OP company I hold that as the clerk, the principal or main work of the petitioner was for checking the bills of payment and sending the same to the higher authority for approval and informing the authority for issuance of debit/credit notes with respect to the said bills and in case of defect of the said bills, he used to send the same to the department for rectification of the said defect and the above works of the petitioner cannot conclusively prove that he was posted as a supervisor in the OP company.

Considering the above materials on record regarding the status of workman of the petitioner I hold that the petitioner was a clerk under the OP company during tenure of his service and admittedly he was a permanent workman under the OP company for a long 29 years.

The Ld. Lawyer for the OP company has cited the following decision of the Hon'ble Supreme Court for consideration in this case:-

The Hon'ble Supreme Court has held in a case namely P. John Chandy & Company Private Limited Vs. John P. Thomas as reported in (2002) 5 SCC page 90 that "for proper appraisal of evidence, a Court must consider the whole statement. Cross-examination constitutes an important part of the statement of a witness and whatever is stated in the examination in chief, stands tested by the cross-examination."

According to Rule 24 of the West Bengal Industrial Disputes Rules, 1958, the Labour Courts and Tribunals shall have the same powers as are vested in the Civil Court under the Code of Civil Procedure, 1908 when trying a suit in respect of the following matters namely:-

a) Discovery and inspection
b) Granting adjournments
c) Reception of evidence taken on affidavit
d) Framing of additional or subsidiary issues and
e) Addition of parties.

So it can be held that quasi civil procedure is followed at the time of disposal of labour disputes by the Labour Courts or the Tribunals and practically except those five powers of the Civil Court as mentioned in the abovementioned Rule 24of the West Bengal Industrial Disputes Rules, 1958, all the major procedures of the Code of Civil Procedure, 1908 are followed during disposal of the said labour disputes and some of the mandatory procedures of the Code of Civil Procedure, 1908 have been mentioned in the West Bengal Industrial Disputes Rules, 1958 and The Industrial Disputes Act, 1947 for compliance during disposal of the said labour disputes.

There are certain decisions passed by the Hon'ble Supreme Court directing that the provisions of the Indian Evidence Act, 1872 need not be strictly followed at the time of giving evidentiary value to the statements of the witnesses and the documentary evidences during disposal of the labour disputes.

In criminal cases, the procedures of the Cr.P.C., Indian Penal Code and the Indian Evidence Act, 1872 have to be strictly followed during disposal of the criminal cases.

However, in all types of civil cases in all Trial Courts, the entire statements of both sides, their examinations in chief and cross-examinations alongwith documentary evidences have to be considered legally in order to come to a definite finding and those matters have to be appreciated as a whole to give a reasoned verdict over the dispute, and both the examinations in chief and cross-examinations have evidentiary value in respect of the cases of both sides.

In a civil case, the plaintiff files his plaint and then the defendant files his written statement and then the issues are framed on the basis of the claims of both sides and then evidences of the witnesses of both sides are recorded and then after hearingargument of both sides, Judgement is passed.

In a case under the Industrial Disputes Act, 1947, the petitioner worker files his written statement and then the OP company files its written statement and then the issues are framed on the basis ofthe

claims of both sides and then evidences of the witnesses of both sides are recorded and then after hearingargumentofboth sides, Judgement/Award is passed. When a labour dispute is referred to the Labour Court or Tribunal from the Labour Department concerned for adjudication of dispute, the Labour Department frames the issues for consideration and then both parties file their respective written statements and on the basis of said issues and any other issue if framed by the Tribunal for proper adjudication of this case, evidences of the witnesses of both sides are recorded and then after hearingargument of both sides, Judgement/Award is passed.

In this present case also which has been directly filed by the petitioner in this case as per law after not getting result from the Labour Department West Bengal, the petitioner has filed his written statement and the OP company has also filed its written statement and then issues were framed by this Tribunal and the petitioner himself was examined and he proved some documents while the OP company did not examine any witness but its documents were marked exhibit with objection of the petitioner and then argument was heard from both sides.

So, in this case both the petitioner and the OP company have filed their respective written statements to contest this case.

On perusing the written statement of the petitioner, I find that he has stated about the entire incident starting from his joining of service till dismissal of his service and he has filed affidavit in chief and proved some documents.

On perusing the written statement of the OP company I find that the OP companyhas simply denied the statements of the petitioner in paragraph nos. 1 to 6 of the written statement of the petitioner but the OP company has not denied statements of the petitioner as mentioned in paragraph nos. 7 to 9 of the written statement of the petitioner.

On perusing all the paragraphs of the written statement of the OP company I find that the OP company has not denied the paragraph nos. 1 to 6 of the written statement of the petitioner specificallyaccording to Order VIII Rule 3 of the Code of Civil Procedure, 1908 and the OP company has not specifically averred that the petitioner was not a workman under Section 2(s) of The Industrial Disputes Act, 1947 under the OP company and in view of Order VIII Rule 5 of the Code of Civil Procedure, 1908, I hold that it has been admitted by the OP company in its written statement that the petitioner was a workmanunder Section 2(s) of The Industrial Disputes Act, 1947 under the OP company because the OP company has not made any specific denial in its written statement in this matter.

In its written statement the OP company has mentioned specific statements as its submissions to the points that the petitioner's severance from the OP company was verbally discussed with the petitioner but the petitioner refused to acknowledge receipt of the formal severance letter by hand delivery and the severance letter was sent to him by an email dated 31.01.2020 to his personal email and one hard copy of the severance letter was sent to him by speed post and in the said letter dated 31.01.2020 it was clearly mentioned that

the OP company had already initiated the process of his full and final settlement and the petitioner will be intimated shortly once all the calculations for his full and final settlement is done by the OP company and the severance of the petitioner was mutually agreeable between the OP company and the petitioner and as a result of which the petitioner wanted to know through his email dated 31.01.2020 as to how his claims will be settled by the OP company and in reply to the petitioner's said email dated 31.01.2020 and his subsequent emails, the OP company sent one detailed reply by a letter dated 12.02.2020 to him by email and speed post and by the said letter the OP company offered him Rs. 36,000/- as gross salary for one month in lieu of one month's notice and Rs. 94,685/- on account of his leave encashment and it was also conveyed to him that the OP company has already initiated his gratuity payment process and shall make all efforts to facilitate the same.

Only the above specific statements have been mentioned by the OP company in its written statement in response to the written statement of the petitioner and I have already discussed above that regarding other statements of the petitioner in his written statement since before his termination, the OP company has not specifically pleaded anything in the written statement and only the company has simply denied the said statements of the petitioner in his written statement.

So it is clear that the OP company has made evasive denialregarding other statements of the petitioner in his written statement since before his termination according to Order VIII Rule 4 of the Code of Civil Procedure, 1908, and accordingly as per Order VIII Rule 5 of the

Code of Civil Procedure, 1908, the said evasive denialregarding other statements of the petitioner in his written statement since before his termination has to be taken as admitted by the OP company.

Though in paragraph nos. 10& 11 of the written statement of the OP company the OP company has stated that severance of the petitioner from the OP company was verbally discussed with him and he refused to acknowledge receipt of formal severance letter by hand delivery and the severance of the petitioner was mutually agreeable between the OP company and the petitioner, the OP company has not examined any witness in this respect and has not proved any document also in this respect. Hence, I hold that the OP company has failed to prove legally that severance of the petitioner from the OP company was verbally discussed with him and he refused to acknowledge receipt of formal severance letter by hand delivery and severance of the petitioner was mutually agreeable between the OP company and the petitioner.

Regarding specific statements of the OP company in its written statement in paragraph nos. 10 & 11, both sides have proved documents concerned and the said documents are related to the periods after termination of the petitioner.

It is legally true that in every cases both parties have legal right to submit affidavit in chief in respect of their evidences concerned by examining witnesses on their behalf and both parties have legal right to cross-examine the said witnesses in respect of their deposition in chief by affidavit but the depositionin chief by affidavit and cross-examination by both sides must have basis on their written

statements i.e. the said deposition in chief by affidavit and cross-examination must follow the respective pleadings of both sides in their written statements and according to the settled principles of law, evidence in chief or cross-examination cannot be made in respect of any matter if the same are not mentioned in their respective pleadings, and evidence and cross-examination of any party should not be beyond the pleadings.

In this case the petitioner has deposed in chief by filing affidavit and proved documents in respect of his pleadings but the OP company has not examined any witness in respect of its written statement and proved some documents with objection and cross-examined the petitioner.

The OP company has cross-examined the petitioner to the points that the petitioner has medical insurance policy and he regularly maintains it and at the time of joining his service in the OP company, he did not submit any employee personal information in the OP company and Bhabhi Chand Jindal was the owner of the OP company when he joined in the OP company and the petitioner had good relation with him and after his joining said Bhabi Chand gave service to his brother Pawan Agarwal in the OP company and the petitioner is the owner of the flat in Ganesh Apartment and at the time of purchasing the said flat he did not take any loan from any person and according to the order of the Hon'ble High Court, Calcutta, the OP company has paid Rs. 5,00,000/- to him and at present his brother Pawan Agarwal does not work in the OP company and his service has been terminated by the OP company and the petitioner knows that the person who earns for their livelihood files

income tax return and said Bhabi Chand used to discuss with him about different functions of the OP company and during the tenure of his service the petitioner had no enmity with any employee of the OP company and at the time of termination of service of the petitioner the OP company had two units, one at *Jangalpur* while another in *Ranihati* and about 3000 workers used to work in those two units and the OP company would provide accommodations to the responsible employees and before shifting to his flat, the petitioner used to reside in the said accommodation of the OP company and he has not taken any loan from any person and after receiving Rs. 5,00,000/- as per order of the Hon'ble High Court, Calcutta, he has invested the same and the OP company earns by manufacturing different materials in the said company and at first the OP company issues bills to the purchaser for selling the said materials and then receives payment from them in respect of the said bills and at first the petitioner used to certify the said bills and ultimately the final bills used to be given to the purchasers and at the time of checking if any defect was seen by him, he would send the same to the department for rectifying the same defect and after termination of the petitioner, the service of his brother has been dismissed with the allegation of theft and his brother was posted as supervisor in the OP company before his termination, but all the above cross-examinations of the petitioner by the OP company regarding the abovementioned circumstances have not been mentioned specifically in the written statement of the OP company and in the written statement of the petitioner also and accordingly the said cross-examinations are beyond the pleadings of the OP company, which cannot be considered legally though the OP company has right to cross-examine the petitioner about this case.

However, though the abovementioned cross-examinations by the OP company are beyond the pleadings of the OP company and the petitioner and cannot be legally considered in this case, still the said cross-examinations are being considered for proper adjudication of this case.

If any party wants to cross-examine other party in civil types of cases to test the examination in chief of the other party, that cross-examining party must plead the said cross-examinations regarding the facts and circumstances in his written statement inorder to falsify the examination in chief of the other party and get advantage in this case.

Admittedly the petitioner was a permanent workman under the OP company till his termination and on 31.01.2020 the OP company sent one termination letter to him and the petitioner has proved the said termination letter as Exhibit – 02 series.

On perusing the said termination letter issued by the OP company dated 31.01.2020, I find that the OP company has mentioned that the petitioner had worked since 01.07.1991 and he had been working as Assistant Accountant and the OP company has terminated his service w.e.f. 31.01.2020 and process for his full and final settlement has been initiated which will be intimated to him shortly.

It is very much peculiar and ridiculous as well as illegal and unjustified to see that though the petitioner was a permanent workman for a long time, the OP company did not mention any

ground of his terminationin the said dismissal letter dated 31.01.2020 and no enquiry was held for any reason against the petitioner by the OP company and nothing was heard from the petitioner and this conduct of the OP company is nothing but whimsical, illegal and beyond any imagination.

The petitioner has proved further letters dated 01.02.2020, 03.02.2020, 06.02.2020 and 13.02.2020 (Exhibit – 02 series), to show that he challenged the said order of termination before the OP company and prayed for withdrawal of the same and his reinstatement.

The petitioner has also proved one letter dated 12.02.2019 (Exhibit – 02 series) sent by the OP company to him and this letter mentions that by sending two cheques for Rs. 36000/- and Rs. 94685/- by email to the petitioner for his salary of one month and leave encashment, the OP company asked him to receive the said cheque amount and informed him that gratuity payment will be informed him shortly.

Admittedly the petitioner did not accept the said cheques which were sent by the OP company by the said letter dated 12.02.2019.

The Ld. Lawyer for the OP company has cited a decision passed by the Hon'ble High Court, Delhi in a case namely New Delhi Municipal Council Vs. Harish Kumar as reported in 2017 SCC Online Del 7981 and in that case the Hon'ble High Court has held that *"during the course of hearing, the Court was informed by the counsel of the respondent that by now, the workman is aged more than 55 years. In*

such a situation it is deemed appropriate to modify the impugned Award to the extent of substituting the relief granted with direction to the petitioner to pay the compensation to the respondent workman and then the Hon'ble High Court directed for payment of Rs. 50000/- as compensation to the workman in lieu of putting the workman on regular muster roll".

In this present case the petitioner has deposed on 19.11.2024 by saying that at present he is 57 years old but admittedly he was terminated from service on 31.01.2020.

So it is clear that at the time of termination the petitioner was aged about 52 years.

In India the retirement age of all the Central and State Government's employees is 60 years and there are some governmentservices also where the retirement age is 70 years and the retirement age of all the staff and workers of every company is 60 years. Of course, before attaining 60 years of age, any officer or staff or workman may be terminated from their services if they are unable to work due to their acute physical problem and if they commit any offence in respect of their services and convicted.

In this case there is no cogent evidence on record to show that at present at about 57 years of age, the petitioner of this case is unable to perform his duty in the OP company due to his acute physical problem or he has been convicted in any case regarding his personal problem or official matter.

In this case the petitioner has been terminated from his service on 31.01.2020 without any reason for which he has prayed for reinstatement of his service and if he gets an order of reinstatement in his 57 years of age on the basis of the materials on record of this case, there cannot be any legal bar to deprive him of right of reinstatement in the OP company in his previous post.

Hence, I hold that reinstatement of a workman even before some days of his 60 years of age can be ordered if he is not medically unfit, and compensation of any amount instead of reinstatement before 60 years of age cannot be justified according to the law of the land because a service man or workman acquires special prestige and status in the society for his service though he may have income from other sources and whenever he looses his service for any ground, he losses also the said prestige and status in the society and for this reason if he is found eligible for his reinstatement after being terminated, he should be reinstated in his previous service and there is no codified law to prove that even if he is entitled to be reinstated after his termination, he will not be reinstated and only some amount will be given to him as compensation though an employee works for the employer under a contract of service and the employee enjoys more protection under the employment legislation.

It is also a matter of judicial thinking that if the serviceman is found guilty of any offence, he will be terminated from service and he will not be reinstated if his ground of termination is proved as per law in the Court but if his guilt is not proved, then why he will not be reinstated and why he will accept the compensation instead of reinstatement and if he was found guilty of any offence, then

compensation of any amount will not be given to him but if he is found not guilty, then why compensation instead of reinstatement will be given to him. The law should consider mental scar suffered by the petitioner due to his termination.

The petitioner has proved documents (Exhibit- 02 series) to show that on 31.01.2020 he was dismissed from service and on 12.02.2020(though the date has been mentioned as 12.02.2019 in the letter) by a letter(Exhibit -02 series) the OP company sent the petitioner by email and speed post two cheques for Rs. 36000/- and Rs. 94685/- for gross salary of one month and leave encashment for accepting the said cheque amount but admittedly the petitioner did not accept the said amount of the said cheques.

So on 31.01.2020 the petitioner was terminated from his service and on 12.02.2020 the OP company sent the said cheques to him.

So it is proved that at the time of termination of service of the petitioner on 31.01.2020, the OP company did not comply all the mandatory conditions of Section 25-F of the Industrial Disputes Act, 1947 regarding one month's notice indicating the reasons for retrenchment or wages for one month or compensation or informing the appropriate government by a notice about such termination and admittedly the petitioner was a permanent workman under the OP company.

Admittedly on 31.01.2020 the service of the petitioner was terminated by the OP company and on 12.02.2020 the OP company sent to him Rs. 36000/- as gross salary for one month and Rs.

94685/- as leave encashment by cheques and admittedly the petitioner did not accept the said amount. As the petitioner did not accept the said amount sent to him on 12.02.2020 by email, it cannot be said legally that for complying with the provisions of Section 25-F of the Industrial Disputes Act, 1947, the OP company sent the said money to him and he refused to accept the same and accordingly he has waived his legal right to accept the said money according Section 25-F of the Industrial Disputes Act, 1947 and accordingly he has been legally retrenched Section 25-F of the Industrial Disputes Act, 1947, because the OP company should have sent the said money to the petitioner on 31.01.2020 at the time of termination of service of the petitioner though the OP company did not comply all the mandatory conditions of the saidSection 25-F of the Industrial Disputes Act, 1947.

So,it is clear that the OP company has not complied with the mandatory provisions of Section 25-F of the Industrial Disputes Act, 1947 and I hold that the petitioner has been illegally retrenched from his service.

The Hon'ble Supreme Court has held in a case namely Divisional Manager, New India Assurance Company Limited Vs. A. Sankaralingam as reported in AIR 2009 SC page 309 that *an employee employed on part-time basis but under control and supervision of the employer is a workman and he is entitled to benefit of continuous service under Section 25-B and protection under Section 25-F of The Industrial Disputes Act, 1947.*

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

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

Though the petitioner was admittedly the permanent worker under the OP company, the OP company violated the mandatory provisions of Section 25- F of The Industrial Disputes Act, 1947.

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

The Ld. Lawyer for the OP company has cited the following decisions for consideration: -

1. The Hon'ble Supreme Court has held in a case namely Management of Regional Chief Engineer, Public Health and Engineering Department, Ranchi Vs. Their Workmen represented by the District Secretary as reported in (2019) 18 SCC page 814 that "the workman has to plead and prove with the aid of evidence that after his dismissal from service,

he was not gainfully employed anywhere and had no earning to maintain himself or his family. The employer is also entitled to prove it otherwise against the employee namely that the employee was gainfully employed during the relevant period and hence not entitled to claim any back wages and initial burden in on the employee and the Court is required to keep in consideration several factors which are set out in the cases and then to record a finding as to whether it is a fit case for Award of the back wages and if so, to what extent."

2. The Hon'ble Supreme Court has held in a case namely P. Karupaiah (dead) through legal representatives Vs. General Manager, Tshruuvalluvar Transport Corporation Limited as reported in (2018) 12 SCC page 663 that "the employee in order to claim the relief of back wages alongwith the relief of reinstatement is required to prove with the aid of evidence that from the date of his dismissal order till the date of his rejoining, he was not gainfully employed anywhere. The employer too has a right to adduce evidence to show otherwise that an employee concerned was gainfully employed during the relevant period and hence not entitled to claim any relief of back wages."

3. The Hon'ble Supreme Court has held in a case namely North East Karnataka Road Transport Corporation Vs. M. Nagangouda as reported in 2007 (2) MLJ page 452 (SC) that "gainful employment would also include self-employment wherefrom income is generated. Income, either from employment in and establishment or from self-employment,

> merely differentiate the sources from which income is generated, the end use being the same. Since the respondent was earning some amount from his agricultural pursuits to maintain himself, the Labour Court was not justified in holding that merely because the respondent was receiving agricultural income, he could not be treated to be engaged in gainful employment."

In paragraph no. 8 of his written statement the petitioner has pleaded that after termination of his service he tried to get an employment to save his family but he was prevented due to his age and since after termination he is unemployed and somehow maintains his family with the help and co-operation of other members of his family and in his affidavit in chief the petitioner has stated that in spite of his best efforts he could not get employment elsewhere due to his age and he has been maintaining his family from the help of his family members.

So according to the decisions of the Hon'ble Supreme Court as reported in (2018) 12 SCC page 663 and (2019) 18 SCC page 814, the petitioner has pleaded in his written statement that after his termination from his service he did not get any job anywhere to maintain his familyand also has stated the same in his affidavit in chief.

In its written statement the OP company has not specifically denied the said paragraph no. 8 of the written statement of the petitioner to the point that after termination of the petitioner the petitioner was not employed elsewhere to maintain his family due to age and since

his termination, he is unemployed and somehow, he has been maintaining his family with the help of other members of his family. So as the OP company has not specifically denied the said statements of the petitioner in paragraph no. 8 of his written statement at all, it shall be held that the OP company has admitted the said statements in paragraph no. 8 ofthe written statement of the petitioner according to Order VIII Rule 5 of the Code of Civil Procedure, 1908.

Actually, in its written statement the OP company has not challenged the said paragraph no. 08 of the written statement of the petitioner on any ground.

The OP company has proved one bank statement of the petitioner as Exhibit – A series and Income Tax statements of the petitioner as Exhibit – B series and the OP company has produced those documents from its custody. So, it can be easily presumed that the company had full knowledge about existence of the said documents in its custody before producing it before this Tribunal.

Now the question is as to why the OP company did not take any plea in its written statement regarding income of the petitioner from other sources after his termination and why the OP company did not even challenge in its written statement the said paragraph no. 8 of the written statement of the petitioner-- the answer is that with malafide intention the OP company did not take the said plea in its written statement but it has asked the said questions to the petitioner in his cross-examination.

In cross-examination of the petitioner the OP company has asked him to the points that the petitioner has medical insurance policy and he regularly maintains it and in his written statement and affidavit in chief the petitioner has not mentioned that he has been running his family by taking loan from his in-laws house of brothers or sister and he has not filed any document in this case to show that after termination of his service he filed any application before any place to get any job and he knows that the persons who earn for their livelihood file income tax return and he has not taken any loan from any person and for this reason after receiving Rs. 5,00,000/- as per the order of the Hon'ble High Court, Calcutta, he has invested the said amount and on perusing the bank statements submitted by him (Exhibit- 2 series) and bank statements (Exhibit – A series), he has stated that the amount of his bank balance has increased after his termination of service and he tries to make stock trading and in his affidavit in chief he has not mentioned that he has suffered loss in stock trading.

Though the OP company has asked the above questions to the petitioner in his cross-examination regarding his income after his termination, the OP company has not mentioned the said matters in its written statement and those questions in the cross-examination are beyond the pleadings of the OP company and accordingly the said cross-examinations cannot be considered legally according to law.

According to the decisions of the Hon'ble Supreme Court as reported in (2018) 12 SCC page 663 and (2019) 18 SCC page 814, the OP company has not pleaded and has not produced any evidence to

prove that after termination the petitioner was gainfully employed and accordingly, he was not entitled to claim back wages.

In order to prove by evidence that after his termination the petitioner was gainfully employed elsewhere, the OP company should have pleaded the same in its written statement according to law but instead of pleading, the OP company has asked some questions to the petitioner regarding gainful employment in his cross-examination and the said cross-examinations cannot be given any legal value in absence of pleading to that effect.

From the bank statements and income tax return of the petitioner (Exhibit – 2 series, A series & B series), it is proved that after termination of his service the petitioner has earned some amount but the OP company has not produced and proved further documents to show that since his termination till now the petitioner has been earning sufficient money from any other sources regularly to maintain himself and his family.

Though in his examination in chief and written statement the petitioner has not whispered anything about any income from stock trading and the written statement of the OP company is also silent over it, the OP company has asked the petitioner in his cross-examination about this stock trading and in his cross-examination the petitioner has stated that he tries to make stock trading and in his affidavit in chief he has not mentioned that he has suffered loss in stock trading.

The OP company has not pleaded and proved by any evidence to show that since after termination of service till now the petitioner has been earning sufficient money from the stock trading and the petitioner has not pleaded in his written statement and affidavit in chief that he was involved in the stock trading and accordingly he had no legal liability to prove this stock trading while the OP company has legal liability to produce document to show that by means of stock trading, the petitioner has been earning sufficient money since after termination of service till now and accordingly the said cross-examinations by the OP company on this point are baseless and valueless.

The Ld. Lawyer for the OP company has cited the following decision: - The Hon'ble Supreme Court has held in a case namely North East Karnataka Road Transport Corporation Vs. M. Nagangouda as reported in 2007 (2) MLJ page 452 (SC) that "gainful employment would also include self-employment, wherefrom income is generated. Income, either from employment in an establishment or from self-employment, merely differentiates the sources from which income is generated, the end use being the same. Since the respondent was earning some amount from his agricultural pursuits to maintain himself, the Labour Court was not justified in holding that merely because the respondent was receiving agricultural income, he could not be treated to be engaged in gainful employment."

So it is to be considered now what is gainful employment and what is self-employment though income is earned from both the said sources.

According to Oxford Dictionary of Law and Oxford English Dictionary, the word *'employ'* means giving work to someone and pay him for it. The word *'employer'* means a person who engages another to work under his direction and control in return for a wage or salary. The word *'employee'* means a person who works under the direction and control of another i.e. employer in return for a wage or salary and an employee works for the employer under a contract of service and the employees enjoy more protection under the employment legislation.

According to Oxford Dictionary of Law and Oxford English Dictionary, the word 'self-employed' means a business on one's own account i.e. not engaged as an employee under a contract of employment. Statutory employment provisions do not apply to the self-employed. A self-employed person may nevertheless be the employer of others.

So the above definition of employment and self-employment are different from each other and an employee works under the employer under a contract of service while statutory employment provisions do not apply to the self-employed person and the self-employed person is not engaged as an employee under a contract of employment.

It is true that from employment and self-employment the person concerned earns money but the basis of the said categories is not the same.

According to Oxford Dictionary of Law and Oxford English Dictionary, the word *'gain'* means obtain or an increase in wealth or profitable.

The terms *'gainful employment'* and *'self-employment'* are not found in the Industrial Disputes Act, 1947 and West Bengal Industrial Disputes Rules, 1958 and the said terms are found in the decisions of the Hon'ble Supreme Court and High Courts in different cases.

The Hon'ble Supreme Court has held in a case namely Commissioner of Central Excise, Bangalore-Vs-Srikumar Agencies Etc. as reported in LAWS(SC) 2008 11 200 that Courts should not place reliance on decisions without discussing as to how the factual situation fits in, with the fact situation of the decision on which reliance is placed. Observations of Courts are neither to be read as Euclid's Theorems nor as provisions of the statute and that too taken out of their context. These observations must be read in the context in which they appear to have been stated. Judgements of Courts are not to be construed as statues. To interpret words, phrases and provisions of a statute, it may become necessary for Judges to embark into lengthy discussions but the discussion is meant to explain and not to define. Judges interpret statutes, they do not interpret judgements. They interpret words of statutes, their words are not to be interpreted as statutes. Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases. Disposal of cases by blindly reliance on a decision is not proper.

In view of the abovementioned decision of the Hon'ble Supreme Court passed in a case namely Commissioner of Central Excise, Bangalore-Vs-Srikumar Agencies Etc. as reported in LAWS(SC) 2008 11 200, I hold thatthe petitioner in the present case, being the employee under the OP company under a contract of service, used to enjoy protection under the employment legislation and as he has filed this case for

reinstatement and full back wages after his termination, he has prayed for the same under the employment legislation and for this reason it is to be considered as to whether after his termination he was gainfully employed in any other company or officeto earn equal salary which he used to draw monthly from the OP company before his termination and his income from stock trading or any other source, if any, cannot be considered as his income as self-employed for this case because the statutory employment provisions do not apply to the self-employed person and a self-employed person cannot be the employer of others and a self-employed person is not engaged as an employee under a contract of employment.

Accordingly I hold that the income of a self-employed person cannot be considered as the income of gainful employment.

Moreover, the OP company has not proved any document in this case to show that after his termination the petitioner was gainfully employed in any company or office.

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

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

i) The Hon'ble Supreme Court has held in a case namely Narottam Chopra Vs. Presiding Officer as reported in 1988(36) BLJR page 636 that if the services of an employee are terminated in violation of Section 25-F of The Industrial Disputes Act, 1947, the order of termination is rendered ab initio void and the employee is entitled to continuity of service alongwith his back wages.

ii) The Hon'ble Supreme Court has held in a case namely Promod Jha and Ors. Vs. State of Bihar and Ors. as reported in Indian Kanoon in case no. – Appeal(Civil 4157) of 2000 that payment of tender of compensation after the time when the retrenchment has taken affect would vitiate the retrenchment and non-compliance with the mandatory provision which has a beneficial purpose and a public policy behind would result in nullifying the retrenchment and compliance of clauses (a) & (b) of Section 25 strictly as per the requirement of the provision is mandatory and compliance with Clause (c) is directory.

iii) The Hon'ble Supreme Court has held in a case namely Anoop Sharma Vs. Executive Engineer, Public Health, Division No. 01, Panipath (Haryana) as reported in (2010)2 Supreme Court cases(L & S) page 63 that termination of service of an employee by way of retrenchment without complying with the requirement of giving one month's notice or pay in lieu thereof and compensation in terms of Sections 25-F(a) & (b) has the effect of rendering the action of the employer as nullity and the employee is entitled to continue in employment as if his service was not terminated.

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

It is very much shocking as well as alarming to see that since 01.07.1991 the petitioner had been working as the permanent worker under the OP company without any allegation against him but on 31.01.2020 suddenly by a letter dated 31.01.2020 the OP company terminated his service without mentioning a single ground or allegation for that termination and generally such type of termination letter for a permanent worker is not seen and such type of the conduct of the OP company sufficiently proves that without any reason and in the colourable exercise of the rights of the employer, the OP company victimised him and terminated his service and in this was the OP company committed unfair labour practice upon the petitioner.

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

The above conduct of the OP company sufficiently proves that by way of victimisation and not in good faith but in the colourable exercise of

the employer's rights according to the *Fifth Schedule under The Industrial Disputes Act, 1947*, the OP company has committed unfair labour practice to terminate the petitioner of this case.

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

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

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

In view of the above discussions made on the materials on record I hold that the petitioner has to be reinstated in his previous post and place and as there is no proof to show that after termination of his service, he was gainfully employed elsewhere, I hold that he is

entitled to get full back wages alongwith other consequential benefits.

Hence it is,

O R D E R E D

That the case no. 07/2021 under Section 10(1b)(d) of The Industrial Disputes Act, 1947 is allowed on contest against the OP company with a compensation of Rs. 3,00,000 and Rs. 300000/-, total Rs. 6,00,000/- (Six lakhs) to be paid to the petitioner by the OP company within 30 days from this date of order.

It is hereby declared that the order of termination dated 31.01.2020 passed by the OP company against the petitioner is illegal, invalid, baseless and unjustified.

The OP company is directed to reinstate the petitioner in his previous post immediately.

The OP company is directed to pay the full back wages alongwith other consequential relief from 31.01.2020 till the date of payment with a compound interest of 10% per annum on the entire arrear amount of back wages and consequential reliefs to the petitioner within 30 days from this date of order.

Let this judgement and order be treated as an Award.

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

The case is disposed of today.

Dictated & corrected by me.

Judge

(Shri P.S. Mukhopadhyay)
Judge
2nd Industrial Tribunal, Kolkata

I/593411/2025

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

No. Labr/ 26 /(LC-IR)/22015(16)/2/2025 Date : 08/01/2025

ORDER

WHEREAS an industrial dispute existed between M/s. Jindal (India) Limited and their workman Shri Balaram Agarwal, regarding the issues, being a matter specified in the second schedule to the Industrial Dispute Act, 1947 (14 of 1947) ;

AND WHEREAS the 2nd Industrial Tribunal, Kolkata has submitted to the State Government its Award dated 13.12.2024 in Case No. 07/2021 on the said Industrial Dispute vide e-mail dated 19.12.2024 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 as shown in the Annexure hereto.

ANNEXURE

(Attached herewith)

By order of the Governor,

Assistant Secretary
to the Government of West Bengal

No. Labr/ 26 /1(5)/(LC-IR)/ 22015(16)/2/2025 Date : 08/01/2025

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

1. M/s. Jindal (India) Limited.
2. Shri Balaram Agarwal.
3. The Asstt. Labour Commissioner, W.B. In-Charge, Labour Gazette.
4. The OSD & EO Labour Commissioner, W.B., New Secretariat Building, 11th Floor, 1, Kiran Sankar Roy Road, Kolkata – 700001.
5. The Deputy Secretary, IT Cell, Labour Department, with the request to cast the Award in the Department's website.

Assistant Secretary

No. Labr/ /2(3)/(LC-IR)/ 22015(16)/2/2025 Date :

Copy forwarded for information to :-

1. The Judge, 2nd Industrial Tribunal, N. S. Building, 2nd Floor, 1, K.S. Roy Road, Kolkata - 700001 with respect to his e-mail dated 19.12.2024.
2. The Joint Labour Commissioner (Statistics), West Bengal, 6, Church Lane, Kolkata - 700001.
3. Office Copy.

Assistant Secretary