

1/472117/2024

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

No. Labr/. 34. / (LC-IR)/22015(16)/1/2024

Date: 09/01/2024

**ORDER**

WHEREAS an industrial dispute existed between Headmaster, Balitora High School, Near Madhukunda Railway Station, Madhukunda, Purulia, P.S. - Santury, Sub-Division- Raghunathpur, Dist - Purulia, Pin - 723121 [AS1] and Mr. Dilip Bauri, S/o - Lt. Nimai Bauri, Vill. - Balitora, P.O. - Murulia, Dist. - Purulia, Pin - 723121 regarding the issue, being a matter specified in the Second schedule to the Industrial Dispute Act, 1947 (14 of 1947);

AND WHEREAS the workman has filed an application under section 10(1B) (d) of the Industrial Dispute Act, 1947 (14 of 1947) to the Ninth Industrial Tribunal specified for this purpose under this Deptt.'s Notification No. 1085-IR/12L-9/95 dated 25.07.1997.

AND WHEREAS, the Ninth Industrial Tribunal heard the parties under section 10(1B) (d) of the I.D. Act, 1947 (14 of 1947) and framed the following issue dismissal of the workman as the "issue" of the dispute.

AND WHEREAS the Ninth Industrial Tribunal has submitted to the State Government its Award dated 26/12/2023 in case no. X-03/2020 under section 10(1B) (d) of the I.D. Act, 1947 (14 of 1947) on the said Industrial Dispute vide memo no. 214- I.T. dated 27/12/2023.

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,

Sgt  
Assistant Secretary  
to the Government of West Bengal



/472117/2024

-2-

No. Labr/. . 34 . . 1/(5)/(LC-IR)

Date: 09/01/2024

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

1. Headmaster, Balitora High School, Near Madhukunda Railway Station, Madhukunda, Purulia, P.S. – Santury, Sub-Division- Raghunathpur, Dist – Purulia, Pin - 723121 [AS2] .
2. Mr. Dilip Bauri, S/o – Lt. Nimai Bauri, Vill. – Balitora, P.O. – Murulia, Dist. – Purulia, Pin - 723121.
3. The Asstt. Labour Commissioner, W.B. In-Charge, Labour Gazette.
4. The O.S.D. & E.O. 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/. . 34 . . 2/(2)/(LC-IR)

Date: 09/01/2024

Copy forwarded for information to:-

1. The Judge, Ninth Industrial Tribunal West Bengal, Durgapur, Administrative Building, City Centre, Pin – 713216 with respect to his Memo No. 214 - I.T. dated 27/12/2023.
2. The Joint Labour Commissioner (Statistics), West Bengal, 6, Church Lane, Kolkata – 700001.

Assistant Secretary

*Signature*  
09/01/2024



**IN THE MATTER OF INDUSTRIAL DISPUTES BETWEEN MR.  
DILIP BAURI, S/O - LT. NIMAI BAURI RESIDENT OF VILL.-  
BALITORA, P.O – MURULIA, DIST.-PURULIA, PIN- 723121**

**A N D**

**HEADMASTER, BALITORA HIGH SCHOOL SITUATED AT  
NEAR MADHUKUNDA RAILWAY STATION, MADHUKUNDA,  
PURULIA, P.S.- SANTURI, SUB-DIVISION- RAGHUNATHPUR, DIST-  
PURULIA, PIN- 723121.**

Case No. X-03/2020 U/s 10(1B)(d) of Industrial Disputes Act, 1947.

BEFORE THE JUDGE, NINTH INDUSTRIAL TRIBUNAL,  
DURGAPUR.

PRESENT

SRI SUJIT KUMAR MEHROTRA,  
JUDGE, 9<sup>TH</sup> INDUSTRIAL TRIBUNAL

DURGAPUR.

APPEARANCE

Ld. lawyer for the applicant :- Mr. S. K. Panda & Mrs. Anima Maji

Ld. lawyer for the O.P/School :- Mr. Debashis Mondal.

Date of Award -- 26<sup>th</sup> day of December'2023.

The above-named workman raises an Industrial Dispute between himself and the Head master of Balitora High School —herein after referred to as the O.P/School, by filing a petition U/S 10(1B)(d) of the Industrial Disputes Act, 1947 ( in short I.D. Act,) together with Form-S issued by the Asstt. Labour Commissioner, Raghunathpur, Dist.-Purulia on 26.11.2019 regarding pending of conciliation proceeding between the parties herein before him.

The said application of the applicant has been registered as the impugned case and the O.P/School was put to notice of the same.

*edf* JUDGE  
NINTH INDUSTRIAL TRIBUNAL DURGAPUR  
GOVT. OF WEST BENGAL





CR reveals that subsequently O.P/School appeared in this case through its ld.lawyer and also through its Headmaster.

In terms of the Industrial Disputes Rules 1958 the applicant filed his written statement alongwith list of documents and thereafter the O.P/School also filed its written statement in writing and list of documents to be relied upon by them.

Applicant's pleasing case is that he is one of the bonafide workmen of the O.P/School. He was working as Gr.-D staff under the instruction of the Headmaster of the O.P/School and used to receive salary of Rs.5,000/- per month sometimes through vouchers and sometimes through his bank accounts. His further pleading case is that he used to discharge his duty in unblemished manner but despite thereof he was retrenched illegally by the O.P/School.

It has further been averred by him that he made several representation before the school authority as well as before the BDO but as the same yielded no result so he raised industrial dispute before the ALC, Purulia. However, as the concerned ALC of Purulia District failed to complete the conciliation proceeding within 60(sixty) days so he obtained pending certificate in the prescribed Form-S and raised the industrial dispute by filing the instant case.

Per contra, O.P/School in its pleading categorically denied applicant's such claim of his being appointed as Gr.-D staff and working in the same post.

O.P/School in its pleading took number of defence by stating that it is not an industry under the Act, 1947 as well as the applicant is not a workman, so this Tribunal lacks jurisdiction to entertain applicant's application under the I.D. Act.

30/11/2019  
JUDGE  
NINTH INDUSTRIAL TRIBUNAL DURGAPUR  
GOVT. OF WEST BENGAL



O.P/School in its pleading also stated that it is a West Bengal Govt. subsidised school and it has got no power to appoint the applicant as Gr. D staff, so question of his retrenchment by it does not arise at all.

O.P/School in Para 10 of its rejoinder further stated that the applicant was taken in the school as casual labour for bringing drinking water for the student and the teachers only as there was no Govt. appointment in the Gr.D post and the teachers used to pay Rs.1,000/- p.m. from their own pockets for the help of the applicant.

Besides that, it has also been stated in para 14 that after appointment on engagement of Gr.D staff by the Govt. the applicant was not allowed to do the job any more as his further continuation would be against the policy of the school and violation of the Governing Body's direction.

CR reveals that this tribunal framed the following issues for determination of the alleged Industrial Disputes between the parties :-

- 1) Whether there exists relationship of workman and employer between the parties?
- 2) Whether the retrenchment of the workman is justified and/or in accordance with the provisions of I.D. Act, 1947?
- 3) What relief, if any, the workman is entitled to get?



**Evidence from the side of the Applicant**

In order to discharge his legal obligation of establishing his pleading case under the ambit of Act of 1947 the applicant examined himself as P.W.-1 and one Mr. Uttam Maji as P.W-2 in this case. He also produced the following documentary evidences:-

- 1) Certificate dated 19.06.2010 as Gr.-D staff issued by the Headmaster – Exbt. 1,
- 2) Certificate dated 18.02.2012 as Gr.-D staff issued by the Headmaster – Exbt. 2,



- 3) Certificate dated 24.06.2010 as Gr.-D staff issued by the Secretary – Exbt. 3,
- 4) Receipt copy of written complaint dated 10.08.2018 of the applicant addressed to the Secretary, Balitora High (H.S) School --- Exbt.4,
- 5) Receipt copy of written complaint dated 10.08.2018 of the applicant addressed to the S I, Santuri Bloc --- Exbt.5,
- 6) Receipt copy of written complaint dated 10.08.2018 of the applicant addressed to the Pradhan, Balitora G.P --- Exbt.6,
- 7) Receipt copy of written complaint dated 10.08.2018 of the applicant addressed to the B D O, Santuri Bloc --- Exbt.7,
- 8) Receipt copy of written complaint dated 07.08.2018 of the applicant addressed to the D I, of school, Purulia-- Exbt.8,
- 9) Receipt copy of written complaint dated 10.08.2018 of the applicant addressed to the S D O, Raghunathpur --- Exbt.9,
- 10) Letter of Headmaster dated 29.08.2018--Exbt.10,
- 11) Receipt of the Letter dated 24.01.2019- of the applicant -Exbt.11,
- 12) Receipt of the petition of the applicant dated 10.07. 2019 addressed to the ALC, Raghunathpur- -Exbt.12,
- 13) Notice of the ALC, Raghunathpur dated 14.11.219 ---Exbt.13,
- 14) Certificate of the Headmaster dated 04.08.2014 -Exbt.14.

**Evidence from the side of the O.P/School**

The O.P/School examined its Headmaster Mr. Avijit Banerjee as O.P.W-1 but it did not produce any documentary evidence either in support of its pleading case or to rebut applicant's evidence.

**Argument of the Applicant/Workman**

Ld. Sr. lawyer submitted that it is the settled proposition of law that school is an industry under the provisions of the Act, 1947 for the purpose of an industrial dispute between it and its non-teaching staff but it cannot be considered as an industry in case of industrial disputes between teaching staff and it. He by referring the case of Miss A.Sundarambal Vs. Govt. of Goa, Daman & Diu and Ors. Reported in (1988)4 SCC 42 further contended that





the said point was duly considered by the Hon'ble Apex Court and the Hon'ble Apex Court was pleased to hold that an educational institution is an industry as per Sec. 2(j) of the I.D. Act, 1947.

He also argued that from the WS and oral evidence of O.P.W-1 and P.W-2, who are the Headmaster and the then Secretary of the Managing Committee of the school, it is clearly evident that the petitioner /workman was appointed in the year 1994 and was working as Gr.D staff in the said school till the date of his illegal retrenchment after appointment of 2(two) Gr.D staffs in the school by the Govt. of West Bengal and accordingly, he was in continuous service for about 23 years in the said school.

Ld. lawyer also argued that as it is the undisputed fact of this that the school management did not comply with the conditions of Sec.25-F of the Act, 1947 before dismissing the petitioner/workman from his service, so it is established beyond any doubt that the service of the petitioner/workman was terminated illegally and in unjustified manner and accordingly, this tribunal by invoking its power U/S 11A of the Act, 1947 reinstated him in his service with full back wages and all the benefits.

In concluding his argument he also prayed for an alternative relief by submitting that if for the sake of argument it is presumed that the petitioner/workman was not appointed in accordance with the Govt. rules and regulations but as his service as Gr.D staff was taken by the school authority for a considerable long period of 23/24 years and thereafter all of a sudden he was not allowed to continue his service, so the school authority should be liable to pay huge amount of compensation for not terminating his service in accordance with the provisions of the Act, 1947.

#### Argument from the side of the O.P/School

At the very outset of his argument ld. lawyer submitted that since the applicant initiated the instant case praying for adjudication of the alleged industrial dispute between him and the O.P/School, so burden of



proof, as per sec. 101 of the Indian Evidence Act, 1872, lies upon him to firstly prove that O.P/School is an industry as defined U/S 2(j) of the Act, 1947 and he was a workman/employee under it.

But he failed to prove the same and accordingly, this tribunal does not have the jurisdiction to entertain and adjudicate on the issue as framed in this case.

It was also contended by the ld. lawyer that since the O.P/School is a Govt. Sponsored school and/or Govt. aided school, so the question of appointment of applicant as Gr.D staff either by the Head master or by the Governing Body without following the Govt. rules and regulations does not arise at all.

However, he very candidly submitted that it is a fact that the applicant was employed by the teachers to fetch water for them as well as for the students for some period as there was no Gr.D appointed staff in the sanctioned post and the teachers used to pay some money to the applicant, who is a poor person, in lieu of his such service but the same does not make the applicant either as a casual staff or permanent staff in the post of Gr.D of the O.P/School.

Ld. lawyer also argued that it is evident from the applicant's own pleading case that although he claimed as his being appointed and employed as Gr.D staff by the O.P/School authority but his pleading is absolutely silent about the procedure of his alleged appointment as well as date of his appointment.

In concluding his argument ld. lawyer submitted that from the averments of the pleading of the workman/petitioner it is crystal clear that he himself is not aware about his claimed appointment as well as mention of alleged retrenchment from that post as because his WS is silent about any process of his alleged appointment as well as the manner of his alleged retrenchment from his said post by the school authority and accordingly, the petitioner/workman's instant case is liable to be dismissed on the merit also.



### Issue No. 1

The instant issue is the spinal cord of the alleged industrial dispute between the parties of the case in hand as the petitioner himself claimed that he does come within the definition of workman and the O.P/School is an industry under the provisions of the Act, 1947 and O.P./ School refuted his such claim

Now, let us discuss firstly the merit of argument of the ld.lawyer for the O.P/School regarding his claim that the O.P/School cannot be considered as an industry under the provisions of the Act, 1947.

He does not cite any authority in support of his such contention and he simply relied upon the definition of industry as given in Sec. 2(j) of the Act,

On the other hand, it was argued from the side of the petitioner that it has been settled by the Hon'ble Supreme Court that an educational institution /school is an industry in terms of Sec.2(j) of the Act, 1947 and its non-teaching staff such as driver, clerical staff and other staffs, who were not associated with the imparting education to the students, are workmen in terms of Sec.2(s) of the I.D. Act, 1947.

To substantiate his such argument he relied upon the case of Miss A.Sundarambal Vs. Govt. of Goa, Daman & Diu and Ors. Reported in (1988)4 SCC 42 and the case of Raj Kumar Vs. Director of Education and Ors., Civil Appeal No.1020 of 2011 decided on 13<sup>th</sup> April, 2016.

On the other hand, the ld.lawyer for the O.P/school relied upon the case of Dharangadhra Chemical Work Ltd. Vs. State of Saurashtra and Others, AIR 1957 SC 264, Union of India and Ors. Vs. Ilmo Devi and Another, Civil Appeal Nos.5689-5690 of 2021 decided on October 7, 2021 and the case of Prema Vs. The Director of School and Others, WP(MD) No.10234 of 2012 as decided by the Hon'ble Madras High Court.



I have meticulously gone through the case laws cited by the parties and is of the view that the case laws relied upon by the O.P/school have got no application on the factual matrix of the case in hand as the issue in the case of Prema (Supra) was regarding regularisation of service of the petitioner and in the case of Dharangadhra Chemical Works Ltd. (Supra) the issue was not in between a workman and a school or educational institution.

However, after having gone through the case of Raj Kumar (Supra) I find that the question before the Hon'ble Apex Court was whether a school is an industry under the I.D. Act, 1947 or not and whether driver of bus of the school is a workman in terms of Sec.2(s) of the Act, 1947 or not. The Hon'ble Supreme Court while deciding the said issue mainly relied upon its decision of Seven-Judge Bench of Bangalore Water Supply and Sewerage Board Vs. A.Rajappa and Ors., (1978)2 SCC and the case of Miss A.Sundarambal (Supra) and hold that educational institution is an 'industry' in terms of Sec.2(j) of the I.D. Act, though not all of its employees are workmen. It further came to the findings that the driver of school bus is a workman U/S 2(s) of the I.D. Act, 1947.

Similarly, the Hon'ble Supreme Court in the case of Miss A.Sundarambal (Supra) laid down the legal principle that while educational institution come within the ambit of 'industry', a teacher is not a workman for the purpose of the I.D. Act.

This apart, from the definition of workman as provided in Sec.2(s) of the Act, 1947 it is crystal clear that any person who is employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward is a workman for the purpose of any proceeding under this Act in relation to an industrial dispute. Said provision does exclude certain categories of persons employed in an industry by virtue of their holding supervisory or managerial post but I refrain from carry on discussion on that issue as the fact of this case does not require same for effective and proper adjudication of the industrial dispute as raised in the case in hand.

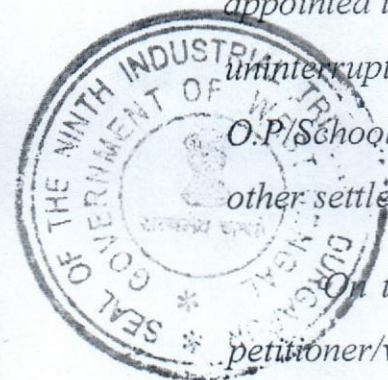


From the pleading of the petitioner/workman as well as the O.P/employer it is evident that the petitioner/workman claimed himself to be appointed in the post of Gr.D of the management of the O.P/School and he was alleged to have been terminated from his service by the O.P/School. Thus, admittedly the petitioner/workman claimed himself being a non-teaching staff of the O.P/School. Thus, in view of above discussed provisions of law as well as dictum of the Hon'ble Supreme Court, as discussed herein above, I am of the view that argument put forward from the side of the O.P/School is completely devoid of any merit and the petitioner/workman is a workman in terms of Sec.2(s) of the Act, 1947 for the purpose of adjudication of the alleged industrial dispute between the parties.

Now, let us consider the merit of the second part of argument of the parties. It was argued from the side of the petitioner/workman that he was appointed in the Gr. D post by the O.P/School and he was performing his duty uninterruptedly till the date of his illegal retrenchment by the authority of the O.P/School without following the principles of natural justice as well as the other settled proposition of law.

On the other hand, the ld. lawyer for the O.P/School argued that the petitioner/workman was never appointed in any sanctioned post of Gr.D by the authority of the O.P/School as it does not have the power to appoint any staff or teacher being a Govt. aided school.

In my considered view, to consider the alleged retrenchment of the petitioner/workman from his service and the relief prayed for by him in consequence of his alleged retrenchment this tribunal has to firstly see whether the petitioner/workman was at all appointed legally in accordance with the rules and the procedure laid down by the Govt. of West Bengal or not. Only thereafter the question of alleged retrenchment can be considered. However if it is found that the petitioner/workman was not appointed in accordance with the relevant rules as framed by the Govt. of West Bengal, then this tribunal is to look into the effect of such irregular appointment which could be said to be void ab initio.



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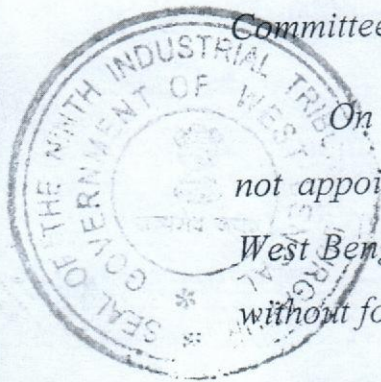


Now, let us firstly consider the evidence of the petitioner to see how far he has been able to prove that he was appointed in the post of Gr-D in the O.P/School.

At the cost of repetition it must be mentioned once again herein that the petitioner/workman's pleading is absolutely silent about the procedure of his alleged appointment as well as the date of his appointment and his alleged employment tenure. His such pleading raises great deal of doubt regarding his claim of such appointment as because if it is a ~~fact~~ fact that he was actually appointed in the said post by the O.P/School authority in accordance with the relevant rules of the Govt. of West Bengal applicable with respect to the appointment of non-teaching staff, then he would be the best person to say when the advertisement was published; who published the advertisement; how he applied for the post; when he appeared in the written or oral examination; when the result was published and ultimately when he joined in the said post. Conspicuously, petitioner/workman in his entire evidence-in-chief, on affidavit nowhere stated about any of such factor for the reason best known to him. On the contrary, he in his evidence-in-chief, which is it is nothing but the replica of his WS, simply stated he was a bonafide workman of the O.P/School and he discharged his duty in unblemished manner and used to draw sum of Rs.5,000/- as a monthly salary from the O.P/School. He in his cross-examination tried to build up a new case than that of his pleading case by stating that he was appointed as Gr.D staff by the Managing Committee of the school.

On the contrary, his evidence in cross-examination proves that he was not appointed through any examination or recruitment process of Govt. of West Bengal but simply appointed by the Managing Committee of the school without following any rules and regulations.

The ld. lawyer for the petitioner/workman failed to show any Govt. rules and regulations empowering the Managing Committee of any Govt. School or Govt. aided school to directly appoint any non-teaching staff in the school. In other words, no relevant provision of law has been cited from the



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side of the petitioner/workman to prove that his alleged appointment by the Managing Committee or the Headmaster was made legally and/or as per relevant rules and regulations of the Govt. of West Bengal.

So far as the appointment of the Gr.D staff in a Govt. aided school of Govt. of West Bengal is concerned, the same is to be done under the W.B. School Service Act. The said rules Act categorically provides that any non-teaching staff in a Govt. school is to be appointed by the Commission and the same does not empowers the Managing Committee or the Headmaster of a Govt. aided school to make such appointment directly and/or bypassing the Commission.

As the petitioner/workman failed to produce any evidence to prove that he was appointed in the said post in accordance with the rules and regulations, so it cannot be said he has been able to prove his appointment as legal.

The petitioner/workman in his cross-examination categorically stated that he does not have any appointment letter regarding his appointment in the O.P/School and he never signed on the attendance register of the school during his entire service career. Not only that, he further stated in his cross-examination that he could not file any document regarding his monthly salary as received from the school. His such evidence in cross-examination clearly goes to demolish his pleading case that he was legally appointed or he used to get monthly salary for his working as Gr.D staff from the O.P/School.

During the course of argument ld. lawyer for the petitioner/workman argued that as the certificate issued by the Headmaster, Secretary of the O.P/School i.e Exbt.1,2,3 & 14 itself proved that they themselves admitted that the petitioner was working as Peon as a casual and temporary staff, so their such admission itself proves the petitioner's appointment and working as workman in the O.P/School and no further evidence is required to be produced. But, I fail to accept such argument as no law permits either the Headmaster or Secretary or Managing Committee of a Govt. aided school to



appoint any non-teaching staff, so their making written admission regarding appointment of any non-teaching staff has got no value in the eye of law. At the same time, it cannot be said that their such written or oral admission makes status of any irregular non-teaching staff in a Govt. aided school as legally appointment staff of a Govt. aided school under West Bengal Govt.

However, this tribunal should take note of such unwanted and undesirable conduct on the part of the Headmaster of a Govt aided school as he being the Headmaster is supposed to be well conversant and aware of all the rules and regulations regarding appointment of any staff and management of his school. Issuance of certificate by the Secretary of the Managing Committee could be understood to have been issued under some compelling circumstances not known to this tribunal as because the Secretary of any managing committee is appointed by the guardian of the wards of the school and there is no prerequisite educational qualification for any person to be appointed in the said post. But, the same cannot be consider to be the only reason for a Headmaster to issue such certificate which he knows that he has no authority to issue the same.

To prove his appointment in the said post of the O.P/School the petitioner examined the then Secretary, Mr. Uttam Maji as P.W-2 in this case. He in his evidence-in-chief stated that he was the Secretary of the managing committee of the O.P/School from 2011 to 2016 and he had seen the petitioner to work as Gr.D staff in the school. But, he in his entire evidence-in-chief nowhere stated that the petitioner was appointed by him during his such tenure. In other words, his evidence-in-chief itself does not support the petitioner's evidence in cross-examination, although the same stands beyond his pleading and having no evidentiary value in the eye of law, that he was appointed by the P.W-2 in his school. Furthermore, as the petitioner's pleading and the evidence-in-chief is absolutely silent about the date of his alleged appointment, so his such evidence in cross-examination also fails prove that he was appointed during the tenure of P.W-2, Secretary of the O.P/School.



Most interesting fact emerges from the cross-examination of P.W-2 wherein he was asked whether that before issuance of this certificate dated 04.08.2014 i.e Exbt.14 regarding appointment and service of the petitioner he verified appointment letter or other relevant documents of appointment or not, he stated that he did not verify the said document. His such evidence also makes the Exbt.14 of no evidentiary value but the same goes to establish the fact that he is only interested to justify the alleged appointment of the petitioner by any means for the reason best known to him.

O.P.W-1, who is the Headmaster of the O.P/School, in his evidence-in-chief stated that the petitioner was never appointed in the post of Gr. D but he was engaged as casual labour by the teachers for bringing drinking water for them and the students and they used to pay Rs.1,000/- to him in lieu of his such service. He also stated that on employment of 2(two) Gr. D staffs namely, Barnali Bauri and Chandan Kr. Sahoo by the Govt. of West Bengal the petitioner was not allowed to work in the school.

After having gone through the entire pleading case of the O.P/School as well as the evidence of Headmaster there remains no grains of doubt in my mind that he and the P.W-2 jointly allowed petitioner to work in school in gross violation of all the relevant rules and regulations of the Govt. of West Bengal for some unknown reason and subsequently also tried to justify the same by issuing of certificate i.e Exbt.1,2,3,& 14 in favour of the petitioner. Such conduct on their part although does not make the appointment of the petitioner/workman in the post of Gr.D as legal and regular but leaves a big question mark about unfair manner of discharge of duty by the Headmaster of a school who is supposed to impart lessons of honesty, integrity and rule of law to his students.

Recently, the Hon'ble Supreme Court in the case of **Smt.Dulu Deka vs. State of Assam, Civil Appeal No.4455 of 2012, decided on August,22,2023** had the occasion to dealt with the right of an employee to continue in service when it is found that his appointment is illegal and void ab initio and hold



that once appointment is found to be illegal and void ab initio the employee cannot claim right to continue in service.

In view of such observation of the Hon'ble Supreme Court I find no merit in the argument of ld.lawyer for the applicant/workman that as he was allowed to work for continuous period of about 24 years, so even if his appointment is not in accordance with rules and regulations of the Govt.of W.B. he should be allowed to continue with his service in the same post. In other words, applicant had / has no legal right to continue in service.

From the discussion of the materials which includes pleading and evidence of the parties there remains no doubt in my mind to come to the findings that the applicant himself fails to prove that he was appointed as Gr.-D staff in the O.P/School in accordance with the provisions of law as laid down by the Govt. of West Bengal for appointment of the non-teaching staff in its aided school, so his alleged appointment cannot be said to be legal in the eye of law but the same is void ab initio. Consequently, it cannot be said that his such illegal appointment confers any right upon him to claim relief to continue in the service under the provisions of Act, 1947. Hence, it cannot be said that there existed or exists any relationship of workman and employer between the parties under the I.D.Act,1947. Accordingly, I decide this issue against the applicant.

### Issue No.2:-

In view of my findings regarding issue no.1 there remains nothing for decision on this issue as the appointment of the applicant has been found illegal and void ab initio by this tribunal. In other words, the question of legality of alleged retrenchment/termination by the O.P/employer does not arise at all. Thus, the instant issue is disposed of accordingly.

### Issue No.3:-

Ld. Senior lawyer also submitted by praying for an alternative relief by referring Sec.11A of the I.D.Act,1947 and submitted that the same



*empowers this tribunal to award compensation to a workman/an employee even in cases where he was found to be not appointed to a particular post in accordance with the rules and regulations.*

*His such argument was countered by the ld. lawyer for the O.P/employer by submitting that such provisions only empowers the tribunal to give relief which it deems fit and proper only when the tribunal comes to the finding that the termination of service was not justified.*


*Sec.11A of the I.D. Act provides that "Where an industrial dispute relating to the discharge or dismissal of a workman has been referred to a Labour Court, Tribunal or National Tribunal for adjudication and, in the course of the adjudication proceedings, the Labour Court, Tribunal or National Tribunal as the case may be, is satisfied that the order of discharge or dismissal was not justified, it may, by its award, set aside the order of discharge or dismissal and direct reinstatement of the workman on such terms and conditions, if any, as it thinks fit, or give such other relief to the workman including the award of any lesser punishment in lieu of discharge or dismissal as the circumstances of the case may require.*

*Provided that in any, proceeding under this section the Labour Court, Tribunal or National as the case may be, shall rely only on the materials on record and shall not take any fresh evidence in relation to the matter.*

*On bare perusal of the above provisions it appears that when an industrial dispute relating to discharge or dismissal of a workman has been found to be not justified by a tribunal it may set aside the order of discharge or dismissal and direct re-instatement of the workman of such terms and conditions as it thinks fit or give and other reliefs including depending upon the circumstances of a particular case. In other words, power of giving other reliefs can only be invoked by the tribunal when it is satisfied that the discharge or dismissal order is unjustified and it cannot be said that the tribunal has the power to give other relief as it thinks fit even in a case where the appointment of a workman is itself found to be illegal.*



However, it does not mean that the tribunal which functions as a court within the limits of its jurisdiction does not have the inherent power as that of civil courts for doing complete justice in a particular case. The Hon'ble Supreme Court in the case of **Union of India and Another Vs. Paras Laminates(P) Ltd. AIR 1991 S.C 696** while dealing with the question whether the tribunal has the power to set aside ex-parte published award under the I.D.Act has been pleased to observe that "there is no doubt that the tribunal functions as a court within the limits of its jurisdiction. It has all the powers conferred expressly by the statute. Furthermore, being a judicial body, it has all those incidental and ancillary powers which are necessary to make fully effective the express grant of statutory powers. Certain powers are recognised as incidental and ancillary, not because they are inherent in the tribunal, nor because its jurisdiction is plenary, but because it is the legislative intent that the power which is expressly granted in the assigned field of jurisdiction is efficaciously and meaningfully exercised. -----



Taking shelter in the same analogy of the Hon'ble Apex court as well as the proven fact of the case in hand that the applicant was although not appointed in accordance with the law but his service was enjoyed by the O.P/School for considerable long period of 23/24 years and although he cannot be legally reinstated but justice be subserved by giving him some amount of compensation in the instant case.

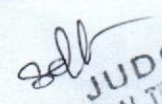
Having regard to the claimed wages of the applicant, length of his service taken by the O.P/school as well as the fact that the O.P/School is a Govt. aided school; I am of the view that Rs.1.5 lakh would be the just amount of compensation to be paid to him by the O.P/school. Thus, the instant issue is also disposed of accordingly.

In the result, the instant case succeeds in part.

Hence, it is

### ORDERED

That the instant case U/s 10(1B)(d) of the I.D Act, 1947 is allowed in part against the O.P/Balitora High School, Madhukunda, Purulia.

  
JUDGE  
NINTH INDUSTRIAL TRIBUNAL DURGAPUR  
GOVT. OF WEST BENGAL



Applicant is entitled to get compensation of Rs.1.5 lakh (one lakh and fifty thousand) from the O.P/school and the Managing Committee shall make arrangement of the compensation amount without making any curtailment of the benefits of the student and shall pay the same within three months from this order to the applicant. In case of non-compliance from the part of the O.P/school the applicant shall be at liberty to realise the same in accordance with the provisions of law.

Sent a copy of this award to the Addl. Chief Secretary, Labour Department, Government of West Bengal for his doing the needful.

D/C by me

*Sd/ Sri Sujit Kumar Melra*  
Judge. 26/12/23.

JUDGE

NINTH INDUSTRIAL TRIBUNAL DURGAPUR  
GOVT. OF WEST BENGAL

*Sd/ Sri Sujit Kumar Melra*  
Judge 26/12/23.

9<sup>th</sup> Industrial Tribunal

Durgapur

JUDGE

NINTH INDUSTRIAL TRIBUNAL DURGAPUR  
GOVT. OF WEST BENGAL