

H.A.(IT)/Karmakar  
19/07/2023  
I/416402/2023

File No. LABR-22015(16)/30/2023-IR SEC-Dept. Of LABOUR

Government of West Bengal  
Labour Department, I. R. Branch

N. S. Building, 12<sup>th</sup> Floor, 1, K. S. Roy Road, Kolkata – 700001

No. Labr/ 601 / (LC-IR)/22015(16)/30/2023

Date : 18/07/2023

**ORDER**

WHEREAS an industrial dispute existed between Shri Bhakta Karmakar, S/o Shyama Pada Karmakar, Vill. – Khoskadampur, P.O. Paruldanga, P.S.- Shantiniketan, Dist.- Birbhum, Pin - 731235 and his employer M/s Meghna Rasayan Pvt. Ltd., Plot No. 12, Bolpur Industrial Estate, Likbazar, P.S.- Shantiniketan, Dist.- Birbhum, Pin - 731235 regarding the issues, 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, Kolkata specified for this purpose under this Deptt.'s Notification No. 1085-IR/12L-9/95 dated 25.07.1997;

AND WHEREAS the said Ninth Industrial Tribunal, Kolkata has submitted to the State Government its Award dated 28.06.2023 in case No. 18 of 2021 under section 10(1B)(d) of the I.D. Act, 1947 (14 of 1947) on the said Industrial Dispute vide Memo No. 102/I.T. dated 06.07.2023;

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,

*Sd/-*

Assistant Secretary  
to the Government of West Bengal

No. Labr/ 601 /1(5)/(LC-IR)

Date : 18/07/2023

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

1. M/s Meghna Rasayan Pvt. Ltd., Plot No. 12, Bolpur Industrial Estate, Likbazar, P.S.- Shantiniketan, Dist.- Birbhum, Pin - 731235.
2. Shri Bhakta Karmakar, S/o Shyama Pada Karmakar, Vill. – Khoskadampur, P.O. Paruldanga, P.S.- Shantiniketan, Dist.- Birbhum, Pin - 731235.
3. The Asstt. Labour Commissioner, W.B. In-Charge, Labour Gazette.
4. The OSD & EO Labour Commissioner, W.B., New Secretariat Building, (11<sup>th</sup> Floor), 1, Kiran Sankar Roy Road, Kolkata – 700001.
5. The Deputy Secretary, IT Cell, Labour Department, with the request to cast the Award in the Department's website.

*30*  
Assistant Secretary

No. Labr/ 601 /2(3)/(LC-IR)

Date : 18/07/2023

Copy forwarded for information to :-

1. The Judge, Ninth Industrial Tribunal, Durgapur, Administrative Building, City centre, Pin - 713216 with respect to his Memo No. 102/I.T. dated 06.07.2023.
2. The Joint Labour Commissioner (Statistics), West Bengal, 6, Church Lane, Kolkata - 700001.
3. Office Copy.

Assistant Secretary



*In the matter of an Industrial dispute between the proprietor of  
M/S Meghna Rasayan Pvt. Ltd. situated at Plot No.12, Bolpur  
Industrial Estate, Likbazar, P.S. Shantiniketan, dist. Birbhum-  
731235 AND Sri Bhakta Karmakar, S/O-Shyama Pada Karmakar,  
Vill.-Khoskadampur, P.O. Paruldanga, P.S. Shantiniketan, dist.  
Birbhum-731235*

Case No.18 of 2021



**BEFORE THE 9<sup>TH</sup> INDUSTRIAL TRIBUNAL,  
DURGAPUR, WEST BENGAL, KOLKATA.  
PRESENT :- SHRI SUJIT KUMAR MEHROTRA,  
JUDGE, 9<sup>th</sup> INDUSTRIAL TRIBUNAL,  
DURGAPUR.**

**Ld. Advocate for the Workmen: - Mr. Saradendu Panda  
& Smt. Anima Majhi.**

**Ld. Advocate for the O.P./Employer :- Exparte.**

**The award dated:- 28<sup>th</sup> day of June, 2023.**

**A W A R D**

The instant case has foundation upon the written application/petition U/S 10(1B)(d) of the West Bengal Amendment of the Industrial Disputes Act, 1947 – hereinafter referred to as the Act of 1947, filed by the above-named applicant/workman alongwith Form-S under Rule 12A(III) of the Industrial Disputes Rules, 1958.

After filing of the written application by the workman notice was issued upon the O.P./employer and in consequence thereof its ld. Lawyer Mr. Bibhas Banerjee did appear and undertook to file Written Statement. However, subsequently he neither appeared nor employer contested this case and consequently the instant case has been heard in against it.

Applicant's/workman's WS case, in a nutshell, is that he was a permanent

*edh* employee of the O.P. establishment and he rendered his unblemished service  
**JUDGE  
NINTH INDUSTRIAL TRIBUNAL DURGAPUR  
GOVT. OF WEST BENGAL**



towards the employer since the date of his employment but on 18.08.2020 during the covid period the employer whimsically issued retrenchment notice without any rhyme and reason and thereby terminated his service illegally.

Applicant further averred that he was illegally retrenched from his service by the O.P/employer without following the rules and regulations of standing orders as well as in gross violation of the principle of natural justice.

He also averred that he made several representation before the management requesting for his reinstatement in his service but as the same yielded no result, so he approached the Asst. Labour Commissioner (ALC), R.L.O., Bolpur on 19.08.2020 for conciliation but as the conciliation proceeding also yielded no result and subsequently, on his application the ALC issued Form -S in the month of September, 2020.

It has further been stated by the workman that due to covid-19 pandemic situation as well as some unavoidable circumstances he could not file the instant case within the stipulated period and prays for condonation of such delay.

In the light of his such WS case, the applicant prays for his reinstatement in service with full back wages from the O.P/employer.

To adjudicate the dispute between the parties the following issues have been framed by this tribunal:-

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

### **Argument from the side of the applicant/workman**

The Ld. Sr.Lawyer argued that the retrenchment of the applicant/workman by the O.P/employer is illegal and unjustified as the same was done by the employer without following the provisions of the Act of 1947 as well as the principles of natural justice.

The Ld. Lawyer also submitted that no domestic enquiry has ever been conducted by the O.P/employer before retrenchment of the service of applicant,



which tantamounts to illegal termination of service. It has also been submitted that from the retrenchment letter it would be seen that the principles of natural justice has not at all been followed by the employer, which it is legally bound to follow.

He further submitted that since there is no evidence from the side of the O.P/employer to show that it complied with the provisions of Sec. 25F of the Industrial Disputes Act, 1947, so it cannot be said that the O.P/employer has legally terminated the service of the applicant/workman and accordingly he is required to be reinstated in his service with full back wages.

### Decisions with Reasons

To establish his pleading case, the applicant/workman only examined himself as P.W-1 and the following documents have been admitted in evidence from his side:-

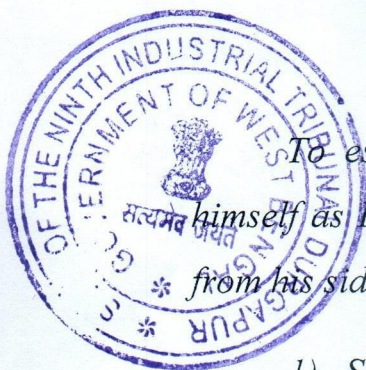
- 1) Salary Sheets --- Exbt.1,
- 2) P.F.Recepit for the month of Dec.2018--- Exbt.2,
- 3) Copy of application ---- Exbt.3,
- 4) Form P-4 --- Exbt.4,
- 5) Notice of retrenchment --- Exbt.5,

### Issue No.1 :-

Before initiating discussion regarding evidence of the workman/employee with respect to the issue it would be pertinent to discuss about the concerned provisions of law.

I have meticulously gone through the entire materials as available with the Case Record and it is evident therefrom that Form-S under Rule 12A of the West Bengal Industrial Dispute Rules 1958 has been issued on 09.10.2020 by the ALC, Bolpur in favour of the workman and that the workman preferred the instant application U/S 10 (1B)(d) of the amendment provisions of the Act, 1947 on 15.09.2021 before this tribunal.

It is a fact that after retirement of the Id. Judge on his attaining superannuation on 31.05.2021 this tribunal was lying vacant till 28.06.2021, when I took charge of this tribunal.





Now, let us consider the relevant provisions of the Act, 1947 and the West Bengal Rules formulated under the Act, 1947. Rule 12A speaks about settlement of dispute on representation from individual workman and it provides as follows:-

**[12A. Settlement of dispute on representation from individual workman.**

– (1) The Conciliation Officer on receipt of a representation relating to an individual workman shall investigate the matter and if he is satisfied that an industrial dispute exists, he shall take all such steps as he thinks fit and proper for the purpose of inducing the parties to come to a speedy, fair and amicable settlement of the dispute.

(2) If no settlement of the industrial dispute mentioned in sub-rule (1) is arrived at within a period of 60 days from the date of raising of the dispute, the party raising the dispute may apply to the Conciliation Officer personally or by registered post with acknowledgement due in Form P-4 for a certificate about the pendency of the conciliation proceedings before such Conciliation Officer.

(3) The Conciliation Officer on receipt of the application referred to in sub-section(1B) of section 10 shall within 7 days from the date of receipt of such application, issue a certificate about the pendency of conciliation proceedings to the applicant in Form S.

(4) The party may, within a period of 80 days from the date of receipt of such certificate or when such certificate has not been issued within 7 days under sub-rule (3) , within a period of 60 days commencing from the day immediately after expiry of 7 days as aforesaid, file an application in Form T to such Labour Court or Industrial Tribunal as may be specified by the State Government by notification in the Official Gazette.]

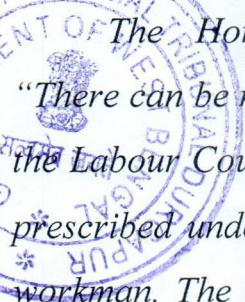
On plain reading of the sub-rule 2 it is evident that if no settlement of industrial dispute is arrived at, initiated on the representation of an individual workman, within the period of 60 days from the date of the raising disputes, the workman is entitled to knock the door of Labour Court or Industrial Tribunal constitute under the Act of 1947 within a period of 60 days from the date of raising of pendency certificate in Form-S.

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



Thus, apparently the workman has to file the case within 60 days from the date of receipt of such certificate as per Rule 12A of 1948. But, the Act of 1947 does not itself speaks about any period of limitation.

The question whether the provisions of the limitation Act or any other limitation period applied in a case U/S 10(1B)(d) of the Act, 1947 has been elaborately discussed by our Hon'ble High Court in the case of **Biswanath, 2003 (1) L.L.N 121.**



The Hon'ble Court in para 8 of its judgement observed that "There can be no doubt with regard to the matter being within the jurisdiction of the Labour Court. The jurisdiction is not ousted merely because the time frame prescribed under S.10 (1B) of the Act were not adhered to by the petitioner – workman. The provisions of S 10(1B) of the Act are beneficial provisions and thereby the procedure for adjudication of an industrial disputes relating to an individual has been simplified. The benefit of provisions is for an individual in his private capacity and does not serve any to public purpose, interest or policy. Non-compliance with the periods prescribed in the provisions would only make it an irregularity and not an illegality".

Moreover, the Hon'ble Supreme Court in the case of **Anantanag and another Vs. Mst. Kartiji and ors., AIR 1987 1353** while considering the power of the court to condone delay U/S. 5 of the limitation Act, 1963 observed that "The expression "sufficient cause employed by the legislature is adequately elastic to enable the courts to apply the law in a meaningful manner which subserves the ends of justice that being the life purpose for the existence of the institution of courts. It is the common knowledge that this court has been making a justifiable liberal approach in matters instituted in this court".

In the said case the Hon'ble Supreme Court also gives a caution to all other courts for not following its such approach in the matter of condonation of delay.

Furthermore, we should keep in our mind that a court of law should give primary emphasis in doing substantial justice and should not be inclined in dismissing a matter primarily on the issue of limitation.



In view of such dictum of our Hon'ble High Court it cannot be said that the period of limitation as prescribed in Rule 12A Sub-rule 4 is strictly applicable for invoking jurisdiction of this tribunal for adjudication of the industrial dispute at the instant of a workman.

As per applicant / workman he could not file the instant application U/S 10(1B)(d) of the Act of 1947 within the stipulated period due to the prolonged Covid 2019 pandemic situation and some unavoidable circumstances.

It is evident from Exbt.4 i.e the Form-P.4 that the workman applied for issuance of certificate about pendency of conciliation proceedings on 01.10.2020 before the Asstt.Labour Commissioner, Bolpur and Form-S, as available with the CR, reveals that the same was issued on 09.10.2020 by the A. C, Bolpur. Thus, as per above discussed provisions of the West Bengal Industrial Rules, 1958 the workman ought to have filed the application with 60 (sixty) days from the date of issuance of but CR reveals that the same has been filed on 15.09.2021 i.e after about more than 9(nine) months from the stipulated period.



In my considered view, this Tribunal should take judicial notice of the unprecedented situation of Covid, 2019 pandemic faced by the our country since the month of March,20020 till the last first part of 2022. The Hon'ble Supreme Court also took into consideration of such unprecedented situation and lock-down of the country as well as restricted movement of the people and by invoking its extraordinary constitutional power extended the period of limitation from time to time under all the laws including special laws in Suo Motu Writ Petition (Civil) No.3 of 2020.

Thus, taking into consideration of all these circumstances and the settled proposition of law regarding condonation of delay, I am of the view that this Tribunal by invoking its discretionary power should condone the delay of around 275 days in preferring the instant case by the workman. Accordingly, such delay is condoned for the interest of justice and the instant issue is decided in favour of the applicant/workman.

### Issue Nos.2 & 3 :-

Both these issues are taken up together for discussion for the sake of convenience and brevity.



Applicant/workman's pleading case is that he joined the O.P Industrial Establishment as permanent employee and had discharged his duty in unblemished manner but the O.P / employer taking advantage of the Covid situation illegally retrenched him from his service. He further stated that the O.P/employer did not follow the principles of natural justice while terminating his service.

He in his unchallenged oral evidence on oath also stated about his such pleading case. That apart, he also produced relevant page of salary slips, P.F contribution statement and the notice of retrenchment, which have been marked as Exbt.1,2 & 5 in this case. Those documentary evidence clearly corroborate oral evidence of the applicant/workman. Besides that, it is also evident from Exxbt.5 that undisputedly the applicant/workman was employed in the O.P industrial establishment and he has been retrenched on the ground of his acts, behaviour and attitude during the Covid,2019 lock-down situation by the management of the O.P industrial establishment.

In other words, from the contents of the Exbt.5 it is absolutely clear that the service of the applicant/workman was not terminated merely on the ground of prevailing Covid,2019 situation but the management retrenched him on the allegation of his acts, behaviour and attitude concerning the discipline of the employment of its establishment. However, Exbt.5 is absolutely silent regarding holding of any domestic enquiry or disciplinary proceeding against the applicant/workman by the management before retrenchment of his service.

During the course of argument it was argued by the ld. lawyer that as the mandatory requirement of law for holding domestic enquiry or following the principles of natural justice have not been followed by the management of the O.P industrial establishment, so its action of retrenchment by issuance of Exbt.5 is not tenable under the provisions of the Act of 1947.

In my considered view, to consider merit of such argument we are to first deal with the definition of retrenchment as provided in the Act, 1947.

Now, let us discuss the relevant provisions of law under the ID Act, 1947 concerning retrenchment / termination of employee under the I D Act of 1947. Section 2(00) of the ID Act, 1947 defines the term retrenchment in the following manners :



2[(oo) "retrenchment" means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action but does not include -

- a) voluntary retirement of the workman; or
- b) retrenchment of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf, or

2[(bb) termination of the service of the workman as a result of the non-renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein; or]

- c) termination of the service of a workman on the ground of continued ill-health;].



## WEST BENGAL

In clause (oo)-

- i) after the words "termination by the employer" the words "by notice or otherwise" shall be inserted.
- ii) Sub-clause (c) shall be omitted [vide West Bengal Act No.57 of 1980] (w.e.f. 30.11.1981)].

On perusal of the above definition of retrenchment I am of the view that the term "retrenchment" leaves no manner of doubt that the termination of the service for any reason whatsoever, otherwise than as punishment inflicted by way of disciplinary actions, is termed as retrenchment with certain exception and it is not dependent upon the nature of employment and the procedure pursuant to which the workman has entered into service.

From plain reading of the above provisions of law it is also clear that retrenchment means termination of service of a workman by the employer for any reason whatever, save and accept termination of service as punishment inflicted by way of disciplinary action. In other words, termination of service of a workman does not come within the ambit of retrenchment for determination of

an industrial dispute, if the employer can establish that the service was



terminated as a punishment by way of disciplinary action taken as per provisions of law and not otherwise. In all other cases, termination of service amounts to retrenchment.

The words "punishment inflicted by way of disciplinary action" certainly denotes the disciplinary action must be taken in accordance with the provisions of law either as per the Industrial Employment (standing orders) Act 1946 or under the by-laws of the employer concerned. In any case, the onus is on the employer to establish the same.

The very purpose of domestic enquiry is to restrain arbitrary and whimsical exercise of power of hire and fire. It is also necessary to mainly find out the truth of the allegations made against the workman. By holding such enquiry the delinquent workman is provided with an opportunity to place his case against the charges and also to examine the witnesses and providing opportunity to the delinquent workman to cross-examine the witnesses.

In holding enquiry either preliminary or domestic the employer has to follow the principle of natural justice, namely, first that the person who holds enquiry must be impartial and disinterested, and secondly, the person whose interests is going to be affected ought to be given an opportunity of having say or explanation before the order is passed against him.

The next step comes after filing of the enquiry report by the enquiry officer. After submission of the same and before acting upon it, the employer has to see whether the enquiry officer arrived at his findings based upon the some cogent and reliable evidence or not and his findings are based upon reasons or not. After being satisfied with all those requirements of law the employer has to give an opportunity to the delinquent workman inviting his explanation regarding the proposed punishment which he intends to inflict as disciplinary action. After receiving explanation from the delinquent workman the employer can take disciplinary action either by way of termination of service or by imposing any other punishment proportionate to the nature of proved charge/s.

In my considered view only after fulfilment of above discussed mandatory requirements of holding valid enquiry the punishment of termination of service is the consequence of a disciplinary action and it does not amount to retrenchment under the Act of 1947.





But, in the instant case the Exbt.5 is absolutely silent about following of all such mandatory requirement of law by the O.P establishment before terminating the service of the applicant/workman.


So far as the procedure to be adopted for retrenchment of workman under the ID Act, 1947 is concerned, we are to look at the provisions of section 25B and 25F of the Act of 1947.

Section 25 B provides definition of continuous service:- For the purpose of this Chapter :-

- (1) A workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service; including service which may be interrupted on account of sickness of authorised leave or an accident or as strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;
- (2) Where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer –
- a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-
    - i) one hundred and ninety days in the case of a workman employed below ground in a mine, and
    - ii) two hundred and forty days, in any other case;
  - b) for a period of six months, if, the workman, during a period of six calendar months preceding the date with reference to which calculations to be made, has actually worked under the employer for not less than –
    - i) ninety-five days, in the case of workman employed below ground in a mine, and
    - ii) one and twenty days, in any other case.

Explanation – For the purposes of clause (2) the number of days on which a workman has actually worked under an employer shall include the days on which –



- 
- i) he has been laid-off under an agreement or as permitted by standing order made under the Industrial Employment (Standing Orders) Act, 1946 (20 of 1946), or under the Act or under any other law applicable to the industrial establishment;
  - ii) he has been on leave with full wages, earned in the previous years;
  - iii) he has been absent due to temporary disablement caused by accident arising out of and in the course of his employment, and
  - iv) in the case of a female, she has been on maternity leave, so, however, that the total period of such maternity leave does not exceed twelve weeks.]

Section 25F speaks about conditions precedent to retrenchment of workmen:-

No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

- a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired or the workman has been paid in lieu of such notice, wages for the period of the notice;
- b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay [for every completed year of continuous service] or any part thereof in excess of six months; and
- c) notice in the prescribed manner is served on the appropriate Government [for such authority as may be specified by the appropriate Government by notification in the Official Gazette].

*sdr*  
JUDGE  
NINTH INDUSTRIAL TRIBUNAL DURGAM CHATTERJEE  
GOVT. OF WEST BENGAL

From above mentioned provisions of law it is clear that the condition precedent for retrenchment has been defined U/S 25F of the Act of 1947 which postulates that workman employed in any nature who has been in continuous service for not less than one year can be retrenched by the employer after clause(a) & (b) of section 25 have been complied with and not otherwise.



The Hon'ble Supreme Court in catena of its decision and recently in the case of K.V. Anil Mithra & Another Vs. Sree Sankaracharya University of Sanskrit & Anr., Civil Appeal No. 9068 of 2014 observed that "The scheme of the Act of 1947 contemplates that the workman employed even as a daily wager or in any capacity, if has worked for more than 240 days in the preceding 12 months from the alleged date of termination and if the employer wants to terminate the services of such a workman, his services could be terminated after due compliance of twin clauses (a) & (b) of section 25F of the Act 1947 and to its non-observance held the termination to be void ab initio bad and so far as the consequential effect of non-observance of the provisions of section 25F of the Act 1947, may lead to grant of relief of reinstatement with full back wages and continuity of service in favour of retrenched workman, the same would not mean that the relief would be granted automatically but the workman is entitled for appropriate relief for non-observance of the mandatory requirement of section 25F of the Act, 1947 in the facts and circumstances of each case".

Reverting back to the facts of the case in hand, it is the specific case of the applicant/workman that he was employed as a permanent worker by the O.P/employer and his such claim has not been also admitted by the O.P/employer in its retrenchment letter i.e Exbt.5. Moreover, it is further evident from e-challan of ESI subscription of the applicant/workman that his date of appointment is prior to 31.03.2018. Thus, it is established that the applicant/workman fulfil the criteria of Sec 25B of the Act of 1947.

Since, admittedly the O.P/employer did not comply with the mandatory requirement of Clause (a) (b) Sec.25F of the Act, 1947 before terminating service of the applicant/workman by virtue of Exbt.5, so, it cannot be said that the O.P/employer was justified in terminating the service of the applicant/workman by virtue of the Exbt.5. In other words, Exbt.5 has no legal sanctity in the eye of law.

In view of my such findings regarding not following up of the provisions of the Act of 1947 in terminating service of the applicant/workman by the O.P/employer, I find no reason to carry forward further discussion on the alleged ground of termination as the same would not change fate of this case and would amount to wastage of valuable time. Thus, I decide both these issues in favour of the applicant/workman.



#### Issue No.4 :-

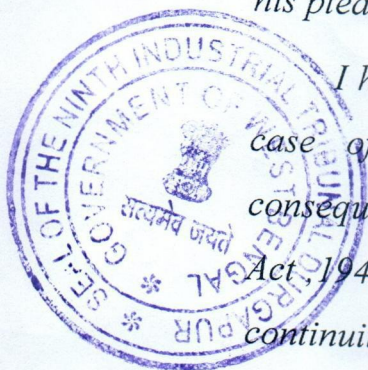
Applicant/workman in his WS prays for relief of his reinstatement in the service with full back wages.

He in his uncontroverted evidence-in-chief has also stated in the line of his pleading case.

I have already mentioned herein above that the Hon'ble Apex Court in the case of K.V.Anil Mithra and another (Supra) clearly observed that consequential effect of non-observance of the provisions of section 25F of the Act, 1947, may lead to grant of relief of reinstatement with full back wages and continuity of service in favour of the retrenched workman, the same would not mean that the relief would be granted automatically and the workman is entitled for appropriate relief for non-observance of the mandatory requirement of section 25F of the Act of 1947 in the facts and circumstances of each case. Thus, while granting relief the tribunal has taken into consideration the entire facts and circumstances of the case in hand, so while granting the relief the same is to be decided facts and circumstances are to be taken into consideration.

This apart, Sec.11A of the Act of 1947 also empowers the tribunal that in the adjudication proceeding if it is satisfied that the order of dismissal or discharge was not justified, it may set aside the order of discharge and direct reinstatement of the workman on such terms and conditions as it thinks fit or to give such 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.

Since this tribunal has already decided the Issues No.3 in favour of the applicant workman mainly on technical ground and not on the merit of the allegations as mentioned in the Exbt.5, so it cannot be said that he was terminated only because of Covid,2019 pandemic. Such nature of allegations against a workman certainly directly relates to the work culture of an industrial establishment. Accordingly, the same itself is a mitigating circumstances against him for granting relief in his favour especially when the workman has not pleaded for any reason for his being falsely implicated by the employer. Furthermore, the Tribunal while considering the relief should also take into consideration the fact that after the termination vide Exbt.5 the applicant/workman did not have the opportunity to render any service to the O.P/ Industrial establishment.





Having regard to the above settled proposition of the law as well as the facts and circumstances, I am of the view that justice would be subserved if the order of retrenchment/termination vide Exbt.5 is set aside and applicant/workman is reinstate in his service in the same post in which he was employed at the time of retrenchment/termination with 20% back wages. Thus, the issue No.4 is disposed of accordingly.

Thus, all the issues are disposed of accordingly.

The instant proceeding succeeds in ex-parte.

Hence, it is

**ORDERED**

that the proceeding U/S 10(1B)(d) of the I D Act, 1947 succeeds in ex-parte against the O.P / M/s Meghna Rasayan Pvt. Ltd. but without cost and the order of termination of service of the workman namely, Mr. Bhakta Karmakar vide letter dated 01.08.2020 (Exbt.5) is hereby set aside.

The termination of service of the workman/employee Mr. Bhakta Karmakar by the employer- O.P / M/s Meghna Rasayan Pvt. Ltd.. vide letter dated 01.08.2020 is hereby declared as illegal and unjustified and he is reinstated alongwith 20% of back wages from the date of his such termination.

The employer- O.P / M/s Meghna Rasayan Pvt. Ltd. is hereby directed to reinstate the workman Mr. Bhakta Karmakar in the post in which he was working at the time of his termination alongwith 20% of the back wages within the period of 2(two) months from the date of publication of the award by the appropriate Govt.

Send a copy of this award to the Additional Chief Secretary, Labour Department, Govt. of West Bengal for information and necessary action from his end.

D / C by me,

*Sd/- Shri Sujit Kumar Moharana*  
Judge, 28.6.23

**JUDGE**

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

*Sd/- Shri Sujit Kumar Moharana*  
Judge, 28.6.23

9<sup>th</sup> Industrial Tribunal, Durgapur

**JUDGE**

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