

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

No. Labr/ 717 / (LC-IR)/ LABR-22024/18/2019

Date : 23-06-2025

ORDER

WHEREAS under Labour Department's Order No. Labr/301/(LC-IR)/IR/11L-86/17 Dated 26.04.18. with reference to the Industrial Dispute between M/s. Armenian Holy Church of Nazareth 2, Armenian Street, Kolkata-700 001 and their workman Shri Bijoy Biswas, represented by Armenian Church & Sir Cathik Paul Chater Home Workers' Union. Address: 50/1, Nirmal Chandra Street. Kolkata - 700 013 regarding the issues mentioned in the said order, being a matter specified in the Second Schedule of the Industrial Dispute Act' 1947 (14 of 1947), was referred for adjudication to the 4th Industrial Tribunal, Kolkata.

AND WHEREAS the 4th Industrial Tribunal, Kolkata, has submitted to the State Government its Award dated 11.06.2025 in Case No. VIII-08/2018 on the said Industrial Dispute Vide e-mail dated 12.06.2025 in compliance of Section 10(2A) of the I.D. Act' 1947.

NOW, THEREFORE, in pursuance of the provisions of Section 17 of the Industrial Dispute Act's 1947 (14 of 1947), the Governor is hereby pleased to publish the said Award in the Labour Department's official website i.e **wblabour.gov.in**.

By order of the Governor,



Assistant Secretary
to the Government of West Bengal

No. Labr/ 717 /1(5)/(LC-IR)/ LABR-22024/18/2019
Copy forwarded for information and necessary action to:

Date : 23-06-2025

1. M/s. Armenian Holy Church of Nazareth 2, Armenian Street, Kolkata-700 001.
2. Shri Bijoy Biswas, represented by Armenian Church & Sir Cathik Paul Chater Home Workers' Union. Address: 50/1, Nirmal Chandra Street. Kolkata - 700 013.
3. The Assistant Labour Commissioner, W.B. In-Charge, Labour Gazette.
4. The O.S.D. & E.O. Labour Commissioner, W.B. New Secretariat Building, 1, K. S. Roy Road, 11th Floor, Kolkata 700001.
5. The Deputy Secretary, IT Cell, Labour Department with request to cast the Award in the Department's website.



Assistant Secretary
to the Government of West Bengal

No. Labr/ 717 /2(3)/(LC-IR)/ LABR-22024/18/2019

Date : 23-06-2025

Copy forwarded for information to :

1. The Judge, 4th Industrial Tribunal, Kolkata, N.S. Building, 1, K.S. Roy Road, Kolkata-700001 with reference to her e-mail dated 12.06.2025.
2. The Joint Labour Commissioner (Statistics), West Bengal, 6, Church Lane, Kolkata -700001.
3. Office Copy.



Assistant Secretary
to the Government of West Bengal

In the matter of an Industrial Dispute between Armenian Holy Church of Nazareth and their workman Shri Bijoy Biswas.

(Case No. VIII-08/2018)

Reference No: Labr./301/(LC-IR) / IR /11L-86/17 Dated 26.04.18.

BEFORE THE FOURTH INDUSTRIAL TRIBUNAL, KOLKATA, WEST BENGAL

P R E S E N T

**SHRI NANDAN DEB BARMAN, JUDGE
FOURTH INDUSTRIAL TRIBUNAL
KOLKATA.**

**Shri Bijoy Biswas, represented by Armenian Church & Sir Cathik Paul Chater Home Workers' Union.
Address: 50/1, Nirmal Chandra Street.
Kolkata - 700 013**

..... Applicant/Union of Workmen.

**Armenian Holy Church of Nazareth
2, Armenian Street, Kolkata-700 001.**

..... Opposite Party/Employer.

A W A R D

Dated: 11.06.2025.

ISSUES TO BE ADJUDICATED

- 1) Whether the termination of service of Sri Bijoy Biswas, the workman, by way of refusal of employment w.e.f. 03.03.2017 by the Armenian Holy Church of Nazareth is justified?
- 2) What relief, if any, the workman is entitled to?

Written Statement on behalf of Applicant/Union of Workmen

The representative Union of workmen under reference i.e., Armenian Church & Sir Cathik Paul Chater Home Workers' Union espousing the cause of one of its members, Shri Bijoy Biswas in support of the case and claim of the concerned workman Sri Bijoy Biswas has submitted the following Written Statements, contending inter alia:

- (1) That the Union under reference is a registered Trade Union under The Trade Unions Act, 1926, having registration No. 22870 and is espousing the cause of one of its members, Shri Bijoy Biswas (hereinafter referred to as ("the concerned workman")) and is a bargaining agent of the workmen of the employer.
- (2) That the Union herein impugns the action of the Employer in most illegally & unjustifiably terminating the service of the concerned workman by way of refusal of employment w.e.f. March 03, 2017, which is an industrial dispute within the meaning of Section 2A (1) as amended, vide West Bengal Act, 22 of 1989.
- (3) That the Union under reference states that the concerned workman was appointed by the Employer as Caretaker of St. Gregory's Chapel at 41B, North Range, Kolkata-700 017 which is under the control of the Employer on August 07, 2003.
- (4) That the Union under reference states that the concerned workman discharged all his allotted duties with utmost dedication and to the satisfaction of the management of the Employer and without any iota of blemish, which is borne from the factum that the management of the Employer never had the occasion to proceed against the concerned Union for any reason whatsoever.
- (5) That the Union under reference states that the concerned workman performed his duties under the instruction of their higher authorities and had no power of giving job requisitions, sanction leave, etc. and no employee worked under his supervision.
- (6) That the Union under reference states that the concerned workman at the time of appointment was entitled to Basic Wages of Rs.

2,500/- with Dearness Allowance of Rs. 1275/- per month and a Tiffin allowance of Rs. 10 per day.

- (7) That the Union under reference states that since 2005, the Dearness Allowance component of wages of the concerned workman was unilaterally done away and merged with Basic Wages and have been paid consolidated wages. Since, then the increment was arbitrary and very meager in comparison with the high inflationary trend and as a matter of fact, the wages of the concerned workman was not incremented from 2010 even though all the other workmen were given increments, which discrimination was without any rhyme or reason.
- (8) That the Union under reference states that a Memorandum of Settlement dated May 16, 2016 was executed between them and the Employer but unfortunately the concerned workman was not given its benefits.
- (9) That the Union under reference states that the concerned workman became a member of the Union under reference in 2016 and the Union under reference espousing the cause of the workmen of the Employer represented before the Employer espousing the cause of the concerned workman.
- (10) That the Union under reference states that it was affiliated to All India Trade Union Congress and gave a representation dated December 24, 2016 espousing the cause of the concerned workman, whose wages were stagnant at 2010-levels, whereafter the concerned workman was intimidated by the management of the Employer that since he had taken the shelter of the Union under reference, his services will be determined in one way or the other very soon.
- (11) That the Union under reference states that the services of the concerned workman were terminated by way of refusal of employment on March 03, 2017, which factum was reported to Beniapukur Police Station on March 04, 2017 and an industrial dispute rose before the Employer on March 06, 2017. After that

concerned workman and the Union under reference requested all and sundry of the Employer through all communication channels to allow the concerned workman to join his normal duties but the same was not done without any rhyme or reason thus his just and genuine grievances was not resolved.

- (12) That the Union under reference states that it also raised an industrial dispute before the Employer however the Employer took a non-conciliatory approach to the just and genuine grievances of the Union under reference forcing the union to invoke the conciliation machinery, vide representation dated March 10, 2017 before the Employer, whereafter a conciliation proceedings was initiated, wherein the Employer submitted a Written Comments dated August 31, 2017, wherein it sought to vindicate the stand of the Employer by saying that the continuance of the services of the concerned workman was detrimental to the interests of the Employer.
- (13) That the Union under reference states that the conciliation proceedings was failed due to the uncompromising stand of the Employer and non-consideration of the just and genuine grievances of the concerned workman despite several conciliation meeting were called for to resolve the dispute.
- (14) That the Union submits that the concerned workman did all his allotted jobs without any blemish and performed his duties efficiently and honestly till the date of his illegal and unjustified termination.
- (15) That the Union submits that no show cause or charge-sheet was issued to the concerned workman and no domestic enquiry was held against him and there was an utter violation of the principles of natural justice before his illegal and unjustified termination of service by way of refusal of employment w.e.f. March 03, 2017.

- (16) That the Union submits that the termination of the concerned workman was done in utter violation of law operating in the field, i.e. The Industrial Disputes Act, 1947 as no proper notice or compensation was ever paid to him.
- (17) That the Union states that after his illegal termination, the workman remained unemployed and his last drawn gross wages was about Rs. 7,281/- per month.
- (18) That the Union states that the concerned workman is passing his days in tremendous hardships and financial crisis along with his family members and has been made to be dependent upon the charities of near relatives, friends and well-wishers for 2 square meals.

Written Statement of OP/Employer

Save and except their specific admitted facts the OP/Employer denying and disputing the allegations made against them in the Written Statement of Applicant/Union of workmen made the following statements in their Written Statement, contending inter-alia:

- 1. That the written statement filed by the union dated 06.07.2018 contains various statements and / or allegations and / or contentions which are incorrect, baseless and misleading. The OP/Employer would advert to those of the said statements and / or allegations and / or contentions as are material for the proper disposal of the Reference.
- 2. That the OP/Employer divides its contentions into two parts i.e., Part-1 and Part-II. Part-1 deals with the preliminary points relating to maintainability of the Reference and Part-II deals with the merit of the case. Since the points raised in Part-1 relates to maintainability of the Reference touching the jurisdiction of the Tribunal, the same should be heard and disposed of first before going into the merit of the case.

Part -1

3. That the OP/Employer submits that the Reference is not maintainable since the Government of West Bengal has no material on the basis whereof the issues under reference could be referred.
4. That the OP/Employer submits that the reference is not maintainable since Armenian Holy Church of Nazareth is not an 'Industry' as contemplated in Section 2 (j) of the Industrial Disputes Act, 1947.
5. That the OP/Employer submits that the reference is not maintainable since no dispute proper has been raised as to transform the alleged dispute to be an Industrial Dispute.
6. That the OP/Employer submits that the reference is not maintainable since the union under reference has got no locus-standi and / or representative character to espouse the cause of the concerned person.
7. That the OP/Employer submits that the reference is not maintainable since Sri Bijoy Biswas is not a 'workman' within the meaning of Section 2 (s) of the Industrial Disputes Act, 1947.
8. That the OP/Employer submits that the reference is not maintainable since the Govt. of West Bengal has prejudged the issue under reference thereby acting quasi-judicially although the act of making a reference is an administrative Act by the appropriate government.
9. That the OP/Employer submits that the reference is not maintainable since the same suffers from the infirmity of non-application of mind being based on incorrect assumption.

Part-II

10. That without prejudice to the aforesaid submissions and fully relying upon the same the OP/Employer replies to the paragraphs of the union's written statement (hereinafter referred to as the "said statement")

11. That before dealing with the paragraphs of the written statement submitted by the union, the OP/Employer sets out herein-below the material facts pertaining to the issues under reference and points involved therein: -
- a) That the Armenian Holy Church of Nazareth is a spiritual institution. The OP/Employer has a home known as Sir Cathik Paul Chater Home. The said home is an accommodation for the economically distressed Armenians; particularly the aged ones and it forms part of Philanthropic and Religious duties of the Church. It is not open to general public. Unlike other homes no donation fees etc. is charged. The home is principally to provide permanent shelter/accommodation for the aged distressed Armenians in Kolkata.
 - b) That the activities of the church are spiritual in nature and the OP/Employer manages home for the distressed Armenians. The home was founded by the OP/Employer to prevent human suffering and to extend necessary relief to the needy towards the distressed Armenians. The object and purpose of forming the home is evangelical being corner stone of the OP/Employer's religious endowment.
 - c) That the activities of the OP/Employer are not a systematic activity carried on with the co-operation of personnel for the production of supply of distribution of goods or services with a view to satisfy human ones and wishes".
 - d) That the OP/Employer carries its activities primarily from the funds received through contributions, donations, endowment received from various churches, missions, and or philanthropic organizations.
 - e) That in the given fact of the case the OP/Employer is neither a factory nor an establishment such as industrial, commercial, agricultural or otherwise.

- f) In order to fulfil the needs of the aged or ailing humanity with devotion to duty the Home was established to service the ailing humanity with utmost care. There was no profit motive. It is only to provide aid or help to the distressed Armenians in Kolkata.
- g) Sri Bijoy Biswas was offered the position of care-taker of the Church. His duties *inter-alia*, includes: -
 - (i) Preparation of St. Gregory's Chapel on Sundays for Church service.
 - (ii) Maintenance of the Chapel during the other days of the week and
 - (iii) Any other duties that he may be asked to perform in connection with the Chapel and campus of Sir C. P. Chater Home.
- h) Sri Bijoy Biswas is conspicuous for his acts of indiscipline.
- i) Sri Bijoy Biswas was in the habit of committing all sorts of irregularities and violated the disciplines, rules and regulations of the Church. Adequate and reasonable opportunities were afforded to him before affecting termination. Moreover, the investigations were carried out for the misdemeanor made by him. For the misconducts committed by him he was warned several times but it has not yielded any result. There was complete ignorance of instructions and warnings and indeed those were open defiance of Authority. The gravity of the misconducts and the gravity of the activities of the Church as well as his arrogance prompted the management to take measure as his presence is detrimental to the Church.
- j) The OP/Employer craves leave to establish the misconduct, if requires, by adducing evidence before this Ld. Tribunal. The nature of misconduct committed by her gave no room to protract the matter for an indefinite period when the activities of the church are being seriously suffered.

The OP/Employer has adequately replied to the representation made before the Conciliation Officer. The purported grievance is beyond the scope of Industrial Dispute. The comments sent to the Labour Commissioner by the OP/Employer reflect the exact state of affairs. It is denied that Shri Bijoy Biswas did all his allotted jobs without any blemish and performed his duties efficiently and honestly. Adequate opportunity was provided to him to rectify himself but he did not pay any heed over the said instructions. It is denied that there is illegal and unjustified termination as alleged or at all. The plea of violation of law has no basis. The wretched condition as sought to be projected is afterthought and it transpires that he is gainfully employed elsewhere. The OP/Employer submits that the Ld. Tribunal be pleased to hold in answer to the issues under reference that the reference is not maintainable and the union has no case for reinstatement and back-wages with consequential benefits either in fact or in law. The OP/Employer prays for an award dismissing the claim of the Union/Applicant Workman Sri Bijoy Biswas.

DECISIONS WITH REASONS

The Applicant/Workman in order to establish his case adduced his oral evidence as PW-1 and also adduced so many documentary evidences, which have been exhibited as Exhibit-1 to Exhibit-9 respectively.

The documents as exhibited by the Applicant/Workman are as follows:

Exhibit-1	Appointment letter Dated 31.07.2003 issued in favour of Shri Bijoy Biswas by the OP Employer Armenian Holy Church of Nazareth.
Exhibit-2	Memorandum of Settlement Dated 29.07.2016.
Exhibit-3	Representation of Secretary AITUC Dated 24.12.2016 to the Employer.

Exhibit-4	Letter dated 04.03.2017 to the OC Beniapukur PS by the workman.
Exhibit-5	Letter dated 06.03.2017 to the Employer by the workman.
Exhibit-6	Representation Dated 07.03.2017 to ALC by the President AITUC.
Exhibit-7	Representation Dated 10.03.2017 to the Employer by the President Of Armenian Church & Sir Cathick Paul Chater Home Workers Union.
Exhibit-8	Written comments Dt. 31.08.2017 by employer to the ALC
Exhibit-9	Pay slip of the workman Mr. Bijoy Biswas for the month of Feb., 2017.

On the other hand, the OP / Employer in order to establish their case adduced evidence by tendering affidavit-in-chief of one Mr. Ujjal Rakshit, who has been examined and cross-examined as OPW-1.

In addition to his oral evidence, this OPW-1 also exhibited some documentary evidence for and on behalf of OP / Employer, which have been marked as Exhibit-A to Exhibit-D respectively.

List of Documents as exhibited by the OP / Employer are as follows:

Exhibit A	Photocopy of Letter of Appointment dated 31.07.2003 Mr. Bijoy Biswas issued by the OP / Employer.
Exhibit B	Photocopy of Letter of Termination dated 03.03.2017 Issued by the OP / Employer upon Mr. Bijoy Biswas.
Exhibit C	Photocopy of a letter to DLC Dated 16.05.2017 issued the OP / Employer.
Exhibit D	Letter of Authority of Shri Ujjal Rakshit.

Now, let us to discuss the respective arguments of the Ld. Counsels of the concerned parties to this case.

At the very outset Ld. Counsel of the OP / Employer in his argument submits that in view of the order of the Hon'ble High Court Dated 02.09.2024 passed in FMA No. 145 of 2020 with CAN 2 of 2024 this Industrial Tribunal has to decide first the preliminary issue, "as to whether the Armenian Holy Church of Nazareth OP / Employer herein, is an industry or not within the meaning of the Industrial Disputes Act."

In this regard the Ld. Counsel of the OP / Employer argued that there is no pleading from the end of the representative of applicant / workman that the OP / Employer being a 'Church' is an industry within the meaning of section 2(j) of Industrial Disputes Act, 1947. According to his further argument onus are lies upon the representative Union of the applicant/workman to establish that the OP/Employer being a 'Church' is an industry. But the representative Union of applicant/workman has failed to discharge their onus to prove that the OP/Employer being a 'Church' is an industry. There is no denial from the end of the OP/Employer that the applicant Shri Bijoy Biswas was not their employee or that he was not terminated from the service.

Having a thorough discussion about the meaning of 'Industry' within the purview of the provision of section 2(j) of Industrial Disputes Act, 1947 and relying on the decisions of Bangalore Water Supply and Sewerage Services as reported in 1978 LLJ Vol-1, the Ld. Counsel of the OP/Employer has argued that the OP/Employer being a 'Church' is no way can be termed and considered as an 'industry' to redress the disputes in connection with this case in view of the provisions of Industrial Disputes Acts, 1947. It was his argument that the OP/Employer is a religious institution and there is a church inside its compound and in accordance with the appointment letter the Applicant/Workman was appointed as a caretaker with some other duties related to church services. There is a home maintained by the OP/Employer to give shelter and livelihood to the poor Armenian in Kolkata and there is no such factory or productive unit inside the church and it is not involved in any type of trading or business.

The Ld. Counsel further argued that during evidence it was admitted by the workman Shri Bijoy Biswas as P.W-1 that “it is true that the OP/Church is involved in various types of voluntary services to the society”. He also admitted that the society has no factory or productive unit and it has no involvement in any type of trading business or industrial occupation. So, undoubtedly it can be held that the OP/Employer being a ‘Church’, since involved in various types of voluntary services to the society having no factory or productive unit and it has no involvement in any type of trading business or industrial occupation then it is not an “Industry” within the meaning under section 2(j) of Industrial Disputes Act, 1947. Accordingly, the instant case with the alleged dispute raised by the Union being representative of the Applicant/Workman Shri Bijoy Biswas is not maintainable in law, for which he is not entitled to get any relief as prayed for. Beside his above discussed arguments, he also relied upon some decisions of Hon’ble High Courts and the Hon’ble Apex Court which are as follows: -

- 1) 1978 Vol. 1 LLJ Bangalore Water supply and Sewerage Board etc. Vs. A Rajappa and others etc.
- 2) 1970 Vol. 20 FLR page 54 Asiatic Society Employees Union Vs. Asiatic Society. (*Industry*)
- 3) 1996 Vol. II LLJ Page 750 Union of India Vs. Joy Narayan Singh. (*Industry*) with section 25(f)
- 4) 1965 VOL. 1 LLJ page 501 Harihar Bahlnipati & Ors. Vs. State of Orissa. (*Industry*)
- 5) 2003 LAB IC VOL 1 page 917. (*Industry*)
- 6) 1993 VOL 1 CLR 103 (*Industry*)
- 7) 2002 VOL 1 CLR (*Industry*) Rajarappa case followed.
- 8) 2001 VOL 3 CLR 463 Bharat Bhawan Trust Vs. Bharat Bhawan Artist Association & Anr. (*Industry*) Rajarappa case followed.
- 9) 1996 VOL 3 LLJ Page 364. State of U.P. & Ors. Vs. Arun Kumar Singh.

Ld. Counsel representing the Applicant/Workman in his argument submitted that the Applicant/Workman joined his employment under the OP/Employer after getting a letter of appointment Dated 31st July, 2003 from the employer i.e., Armenian Holy Church of Nazareth and bare perusal of the said appointment letter which has been exhibited from the end of Applicant/Workman as Exhibit-1 and from the end of OP/Employer as Exhibit-A, clearly goes to show that it contains some specifically declared duties of the appointed employee Shri Bijoy Biswas. It contains some other provisions i.e., for his transfer at any other location under the Church's jurisdiction at the discretion of the management without any change of emoluments. In addition to regular duties undertaking emergency duty as and when directed by the management, including the quantum of monthly emoluments with basic salary of Rs. 2,500 + dearness allowance of Rs. 1275/- and tiffin allowance of Rs. 10/- per day. It has specifically mentioned the age of retirement of the employee as 60 years and in case of his service not found satisfactory pre-matured termination of service by the management by giving one month notice in writing or by paying one month salary in lieu thereof and similar condition applicable if he intends to resign from his service. It was specifically mentioned in Para-5 of the said appointment letter that his perquisites/benefits/obligations and other condition of service may be determined from time to time by subsequent 'bipartite settlement'.

Ld. Counsel for the Applicant/Workman has further argued that in consonance with the said condition of service as per appointment letter subsequently a 'bipartite settlement' had arrived at between the employer 'Armenian Holy Church of Nazareth' and the Union 'Armenian Church and Sir Cathik Paul Charter Home Workers Union', by executing a 'Memorandum of Settlement' which has been exhibited as Exhibit-2. According to his further argument this Exhibit-2 i.e., the 'Memorandum of Settlement' as executed by and between the OP/Employer and the applicant Union unequivocally established the fact that the disputes arising out of employment of the workers, including

Applicant/Workman Shri Bijoy Biswas shall be dealt with by the provision of Industrial Disputes Act, 1947. It was settled by and between the said parties under the said 'Memorandum of Settlement' that in addition to some allowances and uniform and advance loan the workman shall be paid gratuity in accordance with the Payment of Gratuity Act, 1972 and the workman will get leave in accordance with the provisions of West Bengal Shops and Establishment Act. It was settled by and between the parties in the said 'Memorandum of Settlement' that the copies of the said settlement will be jointly forwarded to the 1) Secretary, Labour Department, Govt. of West Bengal, Writers' Buildings, Kolkata, 2) Labour Commissioner, Govt., of West Bengal, Kolkata and to the 3) Conciliation Officer, Central, Labour Department, Govt. of West Bengal, New Secretariat Building, 11th floor, Kolkata as per Rules and Regulations of the Industrial Disputes Act, 1947. It was also agreed that the demands raised by the workers through their Charter of Demand Dated 16th May, 2016 have been settled by and between the parties for the next 3 years w.e.f. 29.07.2016.

Ld. Counsel further argued that the aforesaid 'Memorandum of Settlement' was not declared Null and Void by any Court of Law. According to his further argument had there been no relation by and between the parties as Employer and Workman and had there been no existence of any registered trade union of workers, then why the aforesaid bipartite settlement had arrived at between the employer 'Armenian Holy Church of Nazareth' and the Union 'Armenian Church and Sir Cathik Paul Charter Home Workers Union' and why they executed the said 'Memorandum of Settlement' containing the conditions in consonance with the practice and procedure as well as the provisions of Industrial Disputes Act, particularly keeping the clause of forwarding copies of the settlement to those authorities of Labour Department of West Bengal in terms of the Rules and Regulations of Industrial Disputes Act, 1947. So, relying upon the said documents i.e., Exhibit-1 (Exhibit-A) & Exhibit-2, undoubtedly it can be held that the instant case is maintainable by treating the disputes between the parties

as Industrial Disputes to be dealt with the provision of Industrial Disputes Act.

Beside his above discussed arguments, he also relied upon some decisions of Hon'ble High Courts and the Hon'ble Apex Court which are as follows: -

- 1) 1978 LLJ Vol 1 Bangalore Water supply and Sewarage Board etc. Vs. A Rajappa and others etc.
- 2) 2005 Vol 1 LLJ page 1089 Jadhav J.H. Vs. Forbes Gokak Ltd.
- 3) 1989 LAB IC 806 Mohanlal Vs. the management of M/s. Bharat Electronics Ltd.
- 4) 2013 Vol. 139 FLR 541 Deepali Gundu Surwase Vs. Kranti Junior Adhapak & Ors.
- 5) 1978 LLJ 322 K.C.P. Employees Association Vs. Management of K.C.P. Ltd. Madras.

Having heard the arguments of Ld. Counsel of OP/Employer and the Ld. Counsel of the Applicant/Workman and on careful perusal of the materials on record, including the oral as well as documentary evidences on record, particularly Exhibit-1 and Exhibit-A (Appointment Letter), admittedly it appears that there is no gross denial about the relationship between the parties as Employer and Workman, rather appointment in employment through appointment letter (Exhibit-A) and termination from employment through letter of termination (Exhibit-B) has duly been admitted by the OP/Employer. So, keeping in mind the relevant pleadings of the parties and the evidences on record, particularly Exhibit-1 with (Exhibit-A) the appointment letter issued to the concerned workman Sri Bijoy Biswas by the employer 'Armenian Holy Church of Nazareth' and Exhibit-2 the 'Memorandum of Settlement' executed by and between the said employer and the concerned Union of Workmen i.e., 'Armenian Church and Sir Cathik Paul Charter Home Workers Union' to resolve the 'Charter of Demands' of the Union undoubtedly it is established that the applicant Shri Bijoy Biswas is an employee under the OP/Employer 'Armenian Holy Church of Nazareth'.

The dispute raised by the Union of Workmen i.e., ‘Armenian Church and Sir Cathik Paul Charter Home Workers Union’ espousing the cause of one of its members, Shri Bijoy Biswas (Applicant/Workman) claims to have an industrial dispute for which it was raised before the Employer and the Conciliation Officer of the Labour Department, Govt. of West Bengal with an allegation that his service was terminated by way of refusal of employment on March 3, 2017 without issuing any notice to show-cause or charge-sheet, even no domestic enquiry was held before his alleged illegal and unjustified termination of service.

There is no denial from the end of the OP/Employer that the service of the concerned workman Shri Bijoy Biswas was not terminated w.e.f. March 3, 2017, rather it was alleged by the OP/Employer that Shri Bijoy Biswas was in the habit of committing all sorts of irregularities and violated the discipline, rules and regulations of the Church. It was also contended by the OP/Employer that adequate and reasonable opportunities were afforded to the said workman before effecting his termination. Investigations were conducted for his misdemeanor and misconduct and in several times, he was cautioned but there was complete ignorance of instructions and cautions from his end.

With regard to the dispute raised by the concerned Workman and having allegation or counter allegation by and between the parties i.e., Employer and Workman, the main issue under reference has to be decided, “whether termination of service of the concerned Workman by the concerned Employer was justified or not”? But keeping in mind the direction of Hon’ble High Court, passed on 02.09.2024 in FMA 145 of 2020 with CAN 2 of 2024, this Industrial Tribunal has to decide first, “as to the maintainability of this adjudication on the perspective of nature of activities of OP/Employer, whether comes within the purview of ‘Industry’ and whether the concerned Union of workmen has got any locus-standi to espouse the alleged grievance of the workman Shri Bijoy Biswas and continuation of the proceeding of this case by the concerned

workman Shri Bijoy Biswas even after the concerned union of workmen representing him submitted the written statement but subsequently became inactive to proceed with the regular affairs of the case”.

In this regard, relying upon the decision of Bangalore Water Supply and Sewerage Board Vs. Rajarappa and Others the Ld. Counsel for the OP/Employer submitted that the activities of the OP/Employer since spiritual and charitable without having any profit motive, it cannot be termed as ‘Industry’ but relying upon the observation of the self-same judgement the Ld. Counsel of the Applicant/Workman has argued that the observation of Seven Judges Bench of the Hon’ble Apex Court can also be relied upon to deal with the dispute of this case in accordance with the provisions of Industrial Disputes Act, treating the terms and condition of employment and the activities of the parties in consonance with their ‘Memorandum of Settlement’, claimed to have been settled being guided by the rules and regulations of Industrial Disputes Act, 1947.

It was held by the Hon’ble Apex Court that what is ‘Industry’ to satisfy the triple test to become the ‘Industry’ - the triple tests are: (i) Systematic activity; (ii) Co-operation between Employer and Employee; (iii) Production and / or distribution of goods and services calculated to satisfy human wants and wishes - if these test are satisfied prima facie there is an ‘Industry’.

With regard to test following observations of the points below were considered as follows:

Profit-motive - Held that absence of profit making is irrelevant wherever the undertaking is whether public, joint, private or other sectors.

Decisive test is functional - nature of activity - special emphasize on Employer Employee relationship.

Trade or business - Whether philanthropy will take it outside the ambit of ‘Industry’, answered in negative.

‘Industry’ takes into its fold undertaking, calling and service adventure, analogous to the carrying on of trade or business.

‘Industry’ overflows trade or business. Capital, ordinarily assume to be a component of an industry is an un-expandable item so far as statutory ‘Industry’ is concerned. Absence of capital does not negative ‘Industry’. Even charitable services do not necessarily cease to be ‘Industries’ definitionally although popularly charity is not industry.

Whatever may be the discussions made in the aforesaid judgement to arrive at a decision on the meaning of ‘Industry’ under the ambit of section 2(j) of Industrial Disputes Act, 1947, several characteristics and activities and the relation between Employer and Employee were taken into consideration, which sometimes goes in favour of the Employer and sometimes goes in favour of the workman of this case but keeping in mind some discussion of the said judgement the nature of the activity and relation between the Employer and Workman of this case and their dispute whether industrial or not can be considered from the above discussed two documents i.e. Exhibit-1 (Exhibit-A) Appointment Letter and Exhibit-2 ‘Memorandum of Settlement’. These two documents not only contained the evidence of relationship between the parties as Employer and Workman but also kept the conditions of appointment as ‘perquisites/benefits’ obligations and other conditions of services, which may be determined from time to time by subsequent bipartite settlement. It also goes to show that the appointment letter was issued to the Workman keeping the provision of Section 25F of Industrial Disputes Act, 1947 in mind as a condition in case of termination of service of Workman by the Employer or resignation from service by the Workman. Thereafter, to resolve the ‘Charter of Demands’ of the existing Union of Workmen a bipartite settlement was arrived at and a ‘Memorandum of Settlement’ was executed by and between the Employer and the Union of workmen w.e.f. 1st January, 2016 and in consonance with the conditions of the said appointment letter i.e., (Exhibit-1) kept the provisions for jointly forwarding of the copies of the said ‘Memorandum

of Settlement' to the Secretary, Labour Department, Govt. of West Bengal, Writers' Buildings, Kolkata, Labour Commissioner, Govt., of West Bengal, Kolkata and to the Conciliation Officer, Central, Labour Department, Govt. of West Bengal, New Secretariat Building, 11th floor, Kolkata as per Rules and Regulations of the Industrial Disputes Act, 1947.

In this regard, Ld. Counsel for the OP/Employer although relied upon the decision of the Hon'ble Supreme Court of India as reported in LLJ Vol 3 page 364, in which the District Rural Development Agency was not considered by the Hon'ble Apex Court as an 'Industry' though it was held by the Hon'ble High Court that the termination of services of Employee by that agency was invalid as it has not complied with Section 25F of Industrial Disputes Act. But in this case the Employer itself kept the condition in the appointment letter of the Employee for compliance of Section 25F of I.D. Act in case of termination of service or resignation from service.

So, having considered the above discussed facts and circumstances coupled with the evidence on record, I find it is very convincing argument before me that had there been no relation by and between the parties as Employer and Workman and had there been no existence of any registered/affiliated trade union then certainly the aforesaid bipartite settlement ought not arrived at in between the Employer and the Trade Union by way of said 'Memorandum of Settlement' containing the conditions of service in consonance with the practice and procedure as well as the rules and regulations of Industrial Disputes Act, particularly in keeping the clause of forwarding copies of the 'Memorandum of Settlement' to those authorities of Labour Department of West Bengal in terms of the Rules and Regulations of Industrial Disputes Act, 1947. May be the nature of the activity of the OP/Employer was charity and has no profit motive having no trading or business but the fact remain that the concerned workman used to work there because of he was paid wages for his service but not because of his

passion of voluntary service for charity. So, in presence of such direct evidence of nature, activity and relation between the parties and also maintaining expressed conditions of service in those documents i.e., Exhibit-1 (Exhibit-A) & Exhibit-2 in consonance with the rules and regulation of relevant Industrial Dispute Act, 1947, I am of the considered view that without critical analysis of the above referred decisions as relied upon by the Ld. Counsel of the OP/Employer undoubtedly it can be held that this case is maintainable treating the disputes between the parties as Industrial Disputes to be dealt with the provision of Industrial Disputes Act.

So, the preliminary issue is accordingly decided in favour of the Applicant/Workman Shri Bijoy Biswas by holding that the instant case can be proceeded with by taking into consideration that 'Armenian Holy Church of Nazareth', Opposite Party, herein is an 'Industry' within the purview of Industrial Disputes Act, so far as the relation of the parties as Employer and Employee and employment of the concerned workman was dealt with keeping the conditions of service in consonance with the rules and regulations of Industrial Disputes Act, 1947.

It was argued by the Ld. Counsel of the OP/Employer that the concerned Union of workmen had got no locus-standi to espouse the alleged grievance of the concerned workman Shri Bijoy Biswas and the concerned workman also has got no locus-standi to conduct this case when the said Union who submitted Written Statements became inactive.

Having heard the argument of the Ld. Counsel and on perusal of the record, admittedly it appears that the Union of workmen i.e., 'Armenian Church and Sir Cathik Paul Chater Home Workers Union' espoused the alleged grievance of the concerned workman Shri Bijoy Biswas and represented the dispute of Shri Bijoy Biswas and also filed Written Statement on behalf of the Union as well as the concerned workman. It was stated in the said Written Statement that the said Union of workmen under reference is a registered trade Union under the Trade

Union Act, 1926 having its registration No. 22870 and is espousing the cause of concerned workman as he is a member of the Union and as the Union is a bargaining agent of the workman of employer. To discard this contention of the representing Union nothing adverse could be established from the end of the OP/Employer, rather execution of 'Memorandum of Settlement' with the said Union i.e., 'Armenian Church and Sir Cathik Paul Chater Home Workers Union' to resolve a 'Charter of Demand' Dated 16.05.2016, in which having several meetings the parties came to a settlement on different terms and conditions established the fact of existence of the said Trade Union in the affairs of OP/Employer in dealing with its employees and workers to perform its regular activities. Had there been no existence of any registered Trade Union, the concerned employer ought to have no need to execute the aforesaid 'Memorandum of Settlement' (Exhibit-2) with the concerned Trade Union by settling the demand made in the 'Charter of Demand' of the Union Dated 16.05.2016. There is no pleading from the end of the OP/Employer denying the execution of the said 'Memorandum of Settlement' with concerned Trade Union and in view of the argument of the Ld. Counsel of the Applicant/Workman nothing could be proved that the said 'Memorandum of Settlement' was declared as null and void by any Court of Law at any point of time. From the documents as exhibited from the end of the applicant / workman it also appears that the Exhibit-3 is a letter as well as a representation in respect of salary, increment and other financial benefit of the employee Shri Bijay Biswas submitted to the Warden, Armenian Holy Church of Nazareth by one Leena Chatterjee being the Secretary of W.B. Committee , All India Trade Union Congress and President, Armenian Church and Sir Cathik Paul Chater Home Workers Union, a copy of which was forwarded to the Labour Commissioner, West Bengal Labour Directorate. Exhibit-6 also goes to show that it was also issued by the said Leena Chatterjee being the Secretary of W.B. Committee , All India Trade Union Congress and President, Armenian Church and Sir Cathik Paul Chater Home Workers Union issued the same to the Additional

Labour Commissioner, Govt. of West Bengal in representing the concerned workman Shri Bijoy Biswas by raising disputes with regard to the refusal of employment and related issues in respect of the concerned workman Shri Bijoy Biswas. Exhibit-7 is a letter dated 10.03.17 which was also issued by the said Leena Chatterjee to the Warden Armenian Holy Church of Nazareth in respect of the dispute arose out of unjust and arbitrary termination of service of Shri Bijay Biswas by the management of the concerned employer. So, from the above discussed conduct and activities of the OP/Employer in dealing with the conditions of service of its employees/workmen, including the applicant workman Shri Bijoy Biswas and from the aforesaid documentary evidence of bipartite settlement of dispute with regard to 'Charter of Demands' of the Trade Union by way of aforesaid 'Memorandum of Settlement' i.e., Exhibit-2, and necessary correspondence by the concerned trade union with the management of the employer and the appropriate authority of the Labour Department under Industrial Disputes Act, 1947 in representing the concerned workman Shri Bijay Biswas undoubtedly it is established that being a Trade Union the concerned Trade Union i.e., 'Armenian Church and Sir Cathik Paul Chater Home Workers Union' was not only entertained by the concerned employer but also entertained by the concerned Conciliation Officer of the Labour Department of West Bengal, when the dispute raised before the said authority i.e., Conciliation Officer of the Labour Department, Government of West Bengal in terms of the provisions of Industrial Disputes Act, 1947. As such I find nothing convincing to hold that the said Union has got no locus-standi to espouse the grievance of the concerned workman or that it had no authority to represent the concerned workman in espousing his dispute before the concerned Employer, Conciliation Officer and also before this Industrial Tribunal. Admittedly, the said trade union who in representing the concerned industrial dispute of the workman Shri Bijay Biswas made such representation before such authority of the employer and the Government of West Bengal and also submitted written statement in

connection with this case before this industrial tribunal subsequently became inactive but that does not mean the concerned workman whose right and dispute is subject matter in this case is not entitled to proceed with this case in personal capacity in absence of the said representative trade union.

Now, we have to discuss and decide the main issue under reference i.e., “Whether the termination of service of Shri Bijoy Biswas, the workman, by way of refusal of employment w.e.f. 03.03.2017 by the OP/Employer Armenian Holy Church of Nazareth is justified?”

From the above discussion the relationship between the applicant Shri Bijoy Biswas and the OP/Armenian Holy Church of Nazareth is already established as Shri Bijoy Biswas was appointed as a caretaker with some other duties of the church and home by an appointment letter Dated 31.07.2003 issued by the OP/Employer ‘Armenian Holy Church of Nazareth’. The Industrial Disputes raised by the concerned Trade Union espousing the cause of the concerned workman Shri Bijoy Biswas that the said services of the workman Shri Bijoy Biswas was illegally terminated by the OP/Employer by way of refusal of employment w.e.f. March 3, 2017, was raised before the OP/Employer on March 6, 2017. In this regard, it was also alleged by the concerned workman that on March 3, 2017 he was not allowed to join his duty and was verbally informed by the management of the OP/Employer that his service had been terminated with immediate effect from March 3, 2017 without issuing him any show-cause notice, charge-sheet or termination letter. On the other hand, it was alleged by the OP/Employer that Shri Biswas was in habit of committing all sorts of irregularities and violated the discipline, rules and regulations of the Church and he was not rectified even after getting reasonable opportunities and caution before effecting his termination.

To establish the order of termination a letter of termination dated 03.03.2017 had been exhibited from the end of the OP/Employer as Exhibit-B. Besides, this document no other document could be produced

by the OP/Employer to show that before effecting such termination through the aforesaid purported letter of termination any notice was issued upon the concerned workman informing the cause of intended termination or giving an opportunity to reply by showing cause, if any. Admittedly, there is no whisper from the end of the OP/Employer that before taking such harsh measure of termination any Domestic Enquiry was conducted against the alleged erring workman. The OP/Employer also has no case that the Applicant/Workman was charge-sheeted for his alleged misconduct before affecting such termination w.e.f. 03.03.2017.

It was contended by the concerned workman that no such letter of termination Dated 03.03.2017(Exhibit-B) was at all served upon him at any point of time when his service was illegally terminated by way of refusal of employment without maintaining any legal formality. In this regard, having heard the argument of the Ld. Counsel of Applicant/Workman and on perusal of the concerned document i.e., Exhibit-B admittedly, it appears that it does not bear any sign or signature of the concerned workman to show that it was at all served upon the concerned workman. During cross-examination of the witness of OP/Employer i.e., Mr. Ujjal Rakshit as OPW-1, he deposed that “apparently the body of ‘Exhibit-B’ does not show that it was served upon the Applicant/Workman”. It was also admitted by him that “his affidavit-in-chief also does not contain anything that the termination letter was at all served upon the Applicant/Workman”. He further deposed that in Para-19 of Written Statement of OP/Employer it was mentioned that, “termination letter was issued upon the Applicant/Workman Shri Bijoy Biswas but it was not mentioned how it was served upon him”. He also deposed that “it has not been mentioned in ‘Exhibit-8’ and ‘Exhibit-C’ (two letters issued by the management of the OP/Employer to the Conciliation Officer) about the said termination letter dated 03.03.2017 which were submitted before the Labour Commissioner at the time of conciliation process”.

So, from the above discussions about the pleadings of the parties and the relevant evidences on record, I find nothing convincing to belief that any letter of termination dated 03.03.2017 was at all served upon the Applicant/Workman.

So, in absence of any cogent evidence of service of purported letter of termination there is no other option but to hold in consonance with the pleadings and evidence of Applicant/Workman Shri Bijoy Biswas that his service was terminated by way of refusal of employment dated 03.03.2017.

Now, we have to decide whether such termination by way of refusal of employment was justified or not?

From the above discussion about the pleadings of the parties and from the relevant evidences on record, admittedly it appears that there is no iota of evidence from the end of the OP/Employer that Shri Bijoy Biswas was in the habit of committing all sorts of irregularities and violated the discipline, rules and regulations of the Church or that adequate and reasonable opportunities were afforded to him before effecting his termination. No relevant evidence could be adduced by the OP/Employer to show that any investigation was conducted for misdemeanor and misconduct of Shri Bijoy Biswas or that he was cautioned but there was complete ignorance of instructions and cautions from his end. Admittedly, no notice to show cause or charge-sheet was issued to the concerned workman and no Domestic Enquiry was conducted against him before effecting sudden termination of service of said Workman by way of refusal of employment on 03.03.2017. So, there was an utter violation of the principles of natural justice and law operating in the field, i.e., The Industrial Disputes Act, 1947 in effecting termination of service by way of refusal of employment w.e.f. March 03, 2017. No compensation was ever paid to the concerned workman Shri Bijoy Biswas in lieu of his untimed termination from service without reasonable cause. Accordingly, it is decided that “the refusal of employment of Shri Bijoy Biswas w.e.f. 03.03.2017 was not justified”.

So, from the above discussed facts and circumstances and keeping in view the aforesaid decisions of the Hon'ble Courts it can reasonably be held that not only the preliminary issue on maintainability point as to whether the 'Armenian Holy Church of Nazareth' OP/Employer herein, is an industry or not within the meaning of the Industrial Disputes Act." is determined in favour of the Applicant/Workman but the other issues are also decided in favour of the Applicant/Workman Shri Bijoy Biswas.

During cross-examination of PW-1 i.e., concerned workman Shri Bijoy Biswas an attempt was made by the Ld. Counsel of the OP/Employer that the age of retirement was 58 years but from the terms and conditions as contained in the document issued by them i.e., Exhibit-1 and Exhibit-A itself made clear that concerned workman Shri Bijoy Biswas will retire on attaining the age of 60 years. So, far the evidence on record is concerned, including the evidence gathered during cross-examination of PW-1 concerned workman Shri Bijoy Biswas his date of birth is 20.04.1967. The onus is lying upon the employer to establish their pleadings that the workman concerned gainfully worked during the period of his termination from service but to prove the same no such evidence could be adduced from the end of the concerned OP/Employer.

As a result of which, I have no other alternative but to hold that the concerned workman Shri Bijoy Biswas is entitled to reinstate in his employment with full back wages as stood at the time of his said illegal termination of service w.e.f 03.03.2017. In this regard, it is pertinent to mention here that Exhibit-9 that is pay slip to Shri Bijoy Biswas issued by the employer Armenian Holy Church of Nazareth goes to show that the gross salary payable to Mr. Biswas for the month of February, 2017 was Rs. 7,281/-.

Hence, it is

ORDERED

that not only the preliminary issue on maintainability point “as to whether the ‘Armenian Holy Church of Nazareth’ OP/Employer herein, is an industry or not within the meaning of the Industrial Disputes Act.” is determined in favour of the Applicant/Workman but the other issues are also decided in favour of the Applicant/Workman Shri Bijoy Biswas by deciding that “the termination of service of Sri Bijoy Biswas, the workman, by way of refusal of employment w.e.f. 03.03.2017 was not justified” and accordingly he is entitled to reinstate in his employment with full back wages.

The OP/Employer ‘Armenian Holy Church of Nazareth’ is accordingly directed to reinstate Shri Bijoy Biswas, the Applicant/Workman, herein and to pay the aforesaid outstanding back wages for the period with effect from 03.03.2017 till the date of his reinstatement within 60 days from this day.

This is my award.

Let a copy of this order be sent on line in PDF form to the Secretary, Labour Department, Government of West Bengal, N.S. Buildings through the dedicated e-mail for information and doing subsequent action as per provision of law.

Dictated & Corrected by me

Judge

Judge
Fourth Industrial Tribunal
Kolkata.
11.06.2025