

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/ 752 /(LC-IR)/22015(16)/47/2024

Date : 05-08-2024

ORDER

WHEREAS an industrial dispute existed between M/s. G. D. Pharmaceuticals Pvt. Ltd., Asha mahal, 94, Nalini Ranjan Avenue, New Alipore, Kolkata - 700053 and Shri Arnab Das, 3/26/2, Dr. Bidhan Ch. Roy Sarani, P.O. – Morepukur, Rishra, Hooghly – 712250 regarding the issues, being a matter specified in the second schedule to the Industrial Dispute Act, 1947 (14 of 1947) ;

AND WHEREAS the parties have filed an application under section 10(1B)(d) of the Industrial Dispute Act, 1947 (14 of 1947) to the Second Labour Court, Kolkata specified for this purpose under this Deptt.'s Notification No. 1085-IR/12L-9/95 dated 25.07.1997 ;

AND WHEREAS the said Second Labour Court, Kolkata has submitted to the State Government its Award dated 18.07.2024 in case No. - 05 of 2011 under section 10(1B)(d) of the I.D. Act, 1947 (14 of 1947) on the said Industrial Dispute vide Memo No. Dte/2<sup>nd</sup> L.C./060/2024 dated 26.07.2024 ;

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/ 752 /1(5)/(LC-IR)

Date : 05-08-2024

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

1. M/s G. D. Pharmaceuticals Pvt. Ltd., Asha mahal, 94, Nalini Ranjan Avenue, New Alipore, Kolkata - 700053.
2. Shri Arnab Das, 3/26/2, Dr. Bidhan Ch. Roy Sarani, P.O. – Morepukur, Rishra, Hooghly – 712250.
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.

*[Signature]*  
Assistant Secretary

No. Labr/ 752 /2(3)/(LC-IR)

Date : 05-08-2024

Copy forwarded for information to :-

1. The Judge, Seventh Industrial Tribunal, N. S. Building, 3rd Floor, 1, K.S. Roy Road, Kolkata - 700001 with respect to his Memo No. Dte/2<sup>nd</sup>L.C./060/2024 dated 06.06.2024.
2. The Joint Labour Commissioner (Statistics), West Bengal, 6, Church Lane, Kolkata - 700001.
3. Office Copy.

*[Signature]*  
Assistant Secretary

*Sandeep Datta*  
05/08/24



**THE SECOND LABOUR COURT, KOLKATA****IN THE MATTER OF**

Application No. 05/11 Under Section 10(1B)(d) Industrial Dispute Act, 1947

ON

**REFERENCE OF DISPUTE BY INDIVIDUAL WORKMAN**

SHRI ARNAB DAS

VERSUS

M/S. .G.D PHARMACEUTICALS LTD.

**Appearance**

MR/MRS HAMIDUL KADER , LD Advocate for the Applicant.

MR/MRS JAYANTA DASGUPTA , LD Advocate for the Opposite party

<b>REFERENCE</b>	Dispute raised by individual workman within the meaning of Section 10(1)(B) (d) as applicable to the State of West Bengal .
<b>POWER OF THIS COURT TO ENTERTAIN THE CAUSE IN HAND</b>	Section 7 of Industrial Dispute Act, 1947 Read with Entries under 2 <sup>nd</sup> Schedule to the Industrial Dispute Act  AND DEPT Notfno. 101-IR/12L-14/11 dated 2 <sup>nd</sup> February 2012 in Partial modification of Dept Notf no 1085- IR dated 25-07-1997
<b>PROCEDURE ADOPTED IN DEALING WITH THE CASE</b>	<b>Karnataka state Road Corporation Vs Smt Lakshidevamma and another (2001) 5 SCC 433</b>  <i>Locus cassisus</i> on the point that strict rules of evidence and procedure shall not govern the proceedings under the Industrial Dispute Act, 1947.
<b>BINDING NATURE OF AWARD</b>	Dispute being raised individually, shall only bind the parties herein( <b>Section 18 of the Industrial Dispute Act</b> )
<b>COMPLIANCES</b>	Copies of award be submitted to appropriate government for publication.( <b>Section 15 of the Industrial Dispute Act</b> ) .



CASE LAWS FURNISHED BY THE PARTIES.THE APPLICANT

CITATION	SETTLED POSITION INTENDED TO BE SHOWN BY THE APPLICANT
DEVANUR GRAM SEVA SAHAKARI SANGH LTD VS VERUPAKKIA AND OTHERS ILR2001 KAR 4839	Termination must be on valid scrutiny and payment of retrenchment compensation.
T .BOBY FRANCIS VS LUCY VARGHESE 2016 SCC ONLINE KER 2971	Compensation must be reasonable
SUDIN PRAVAT MULICK VS FIRST IT 2022 SCC ONLINE CAL 991	Termination and terms of termination must be valid
NOVARTIS INDIA LTD VS STATE OF WB (2009)3SCC 124	When employee fails to join the place to which he is transferred, it is misconduct.
DK YADAV VS JMA INDUSTRIES LTD (1993)3 SCC 259	The termination under standing orders must be in consonance with natural justice
D G SURWASE VS KRANTI JUNIOR ADHAYAPAK MAHAVIDYALAYA (2013)10 SCC324	Wrongful termination shall lead to reinstatement.

THE OPPOSITE PARTY

CITATION	SETTLED POSITION INTENDED TO BE SHOWN BY THE OP
SWAPNA ADHIKARI VS STATE OF WB 2014(4)CHN(CAL435	Legal effect of operation of section 10 (1B)(d) upon section 2A
KERELA SOLVENT EXTRACTIONS LTD VS UNNIKISHAN AND ANOTHER 1993 SCC 760	Undue liberalism and misplaced sympathy in interpreting the Industrial Dispute Act will introduce slackness and unpredictability of legal process
GEETA DEVI VS /S UPDATER SERVICE LTD DELHI 2015 ILR264	Claim u/s 2A not maintainable when the workman did not join at transferred place
RAM SINGH VS JK JUTE MILLS CO LTD ALL 2002(95) FLR 1058	Once employer admits that service is not terminated, labour court must stop there and answer the reference





PRESENT: MISS SREEJITA CHATTERJEE

JO CODE ; WB001252

DATE OF AWARD : 18.07.2024

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## 1) PROLOGUE

The earliest dawn of industrial revolution has left the world a witness to constant state intervention in settlement of industrial disputes, which quite satiated though not satisfied by subsequent judicial interpretations and legal evolution, has matured in the form of codified statutes. For all industrial disputes are essentially problems of harmony. They arise from the perception of an unsolved discord and the instinct of an undiscovered agreement or unity. To rest content with an unsolved discord is possible for the more primitive state but impossible for modern welfare state. This invites a redressal mechanism, which is attained, under the auspices of Industrial Dispute Act, in its organized entirety, by a revolutionary individual effort of dispute redressal or an evolutionary general progression of industrial dispute.

The present application seeks to redress such an individual effort u./S 10(1)(B)(D) of the ID Act (hereinafter to be referred as the Act), brought under the startling title of "refusal of employment" (as amended by West Bengal in Section 10 (1)(b)(d).

## 2) FACTS BY THE APPLICANT/WORKMAN IN DETAIL IN HIS WRITTEN STATEMENT

The application is founded upon the plea that the applicant was initially appointed on contractual basis as a trainee vide letter dated 18<sup>th</sup> November 2005, relating to the tenure between 1<sup>st</sup> November 2005 to 30<sup>th</sup> June 2006. On its expiration, company appointed him on 6<sup>th</sup> July 2006 as a regular worker for the period 1<sup>st</sup> July 2006 to 30<sup>th</sup> June 2007.

Subsequently, he was designated as an officer for one-year on 30/7/07, which post was confirmed by letter dated 11<sup>th</sup> July 2008 with effect from 1<sup>st</sup> July 2008. This letter was issued in terms of letter dated 30/7/07, which immediately preceded it. Hence the terms of the said confirmation are submitted to be in terms of letter dated 30/7/07 and the standing orders.

On 18 February 2010, while he presented himself for work at the factory, he was refused employment by Shri Soumen Bagchi and V K Narayan. Applicant approached the head office to meet the in charge of the factory. Instead, Sri Dilip Goswami, staff of the head office cajoled the applicant to resign, in the pretext that the in charge was not satisfied with his performance. Sri Alok Banerjee insisted him to submit a resignation letter or sign on the resignation letter typed by former, which the applicant refused. He was threatened by Mr. Bagchi and Mr. Narayan that the refusal would result in his transfer to Kerala. Applicant was prompted to send a written representation to the company vide letter dated 19<sup>th</sup> February 2010 and lodge a complaint with the nearest police station.

It is urged that to his utmost dismay, he received a letter from the company on 19<sup>th</sup> February 2010, directing him to join the Cochin branch, taking exception to his act of defying the transfer order dated 18<sup>th</sup> February 2010.

The applicant further resisted the transfer order on the count that he was invested with technical and clerical duties in his present posting but the transfer was at sales depot. Thus, he lodged a letter of protest dated 3/3/10, against such illegal refusal of employment. These letters by the applicant were unanswered though it is his submission that he replied to all the letters by the company.

It is his plea that he was constrained to seek intervention of Labour Commissioner by letter dated 28 March 2010, followed by addendum dated 4/5/10, curling out all the above facts. The said letter reflected the fact of refusal of employment since 18<sup>th</sup> February 2010 and the oblique motive which was shrouded by a coercive order of transfer. The letter dated 13 September 2010 by the applicant to the, Deputy Labour Commissioner Government of West Bengal,





attempted to direct the company to produce documents that sales depot of Kerala was owned by the company itself, but they failed. This in turn depicted that the transfer was sham.

The matter was referred for conciliation though in vain. The workmen filed an application before the conciliation officer **in Form P4**, on 19 October 2010, for issuance of certificate or **Failure report in Form S**, which was issued by the conciliation officer.

It is his plea that he couldn't file this application within 60 days, due to paucity of finances and his consequent failure to engage a lawyer. Hence, he prays for condonation.

**The applicant is therefore constrained to file this application on the following prayers;**

- i) **That the termination of the service in the shape of refusal of employment dated 18<sup>th</sup> February 2010 by the management, is unjust and illegal.**
- ii) **Consequential relief.**

### **3) FACTS BY OP/COMPANY IN DETAIL IN HIS WRITTEN STATEMENT**

The Opposite party denies and deprecates all the above.

*This case is termed to be a peculiar reference by the individual dispute, in the garb of industrial dispute, quite different from normal cases dealt with by Labour courts.*

It is his specific plea that's the instant case is not maintainable on the following grounds;

- i) 'Termination of service' and 'refusal of employment' are distinct terms and cannot be lumped together into a single whole. The terms denote a cession of relationship of the employer and employee. However, an order of transfer depicts continuance of service.
- ii) The appropriate government is not the government of West Bengal but the government of the place where the applicant was transferred.
- iii) There is no provision for condonation of delay in the Act.
- iv) The company also disputes the status of applicant as a workman within the meaning of Section 2(S) of the Industrial Dispute Act 1947.

The OP acceded to the contention that applicant was appointed as the trainee on contractual basis with effect from 1<sup>st</sup> November 2005 vide order dated 18<sup>th</sup> November 2005 and was subsequently appointed an Officer from 1<sup>st</sup> July 2007 dated 30<sup>th</sup> July 2007. The appointment letter itself stipulated that his services were liable to be transferred from one depot of the other anywhere in India. Appointment was accepted on the said terms.

It is urged that the transfer was solely on exigencies of work and order was issued by letter dated 18<sup>th</sup> February 2010 (with effect from 5 April 2010). The letter also contained a list of major/minor misdemeanor. Noncompliance of order of transfer is listed as a major misdemeanor and attracts the offence of dismissal.

**The OP company repudiated the claim** of wrongful restraint and it is averred that in order to avert the transfer, the applicant fabricated cock and bull story of harassment by the employees.

It is urged that this would be evident from his letter to the management dated 19<sup>th</sup> February 2010, where he alleged that he was not allowed to enter the factory on 18 February 2010 but attendance sheet depicted otherwise or that after 20 minutes of the incident, two employees were brought from the factory to the office which is impossible in view of the distance from Bishnupur South 24 parganas to Kolkata.





It is the plea of the OP that this is a glaring example of defiance of order of transfer issued by the company. The letter dated 3<sup>rd</sup> March 2010, requesting company to withdraw the transfer, is suggestive of applicant's dissatisfaction with transfer order of the company and has nothing to do with his termination of service.

Hence the application deserves dismissal.

#### **4) ISSUES OF REFERENCE**

*The subject matter of the litigation which has resulted in the present application is refusal of the applicant / workman herein, from resuming at this workplace, followed by his alleged punitive transfer to cochin from West Bengal branch.*

**The grounds which emerge for consideration from the above facts, may be formulated thus;**

**Firstly**, whether the cause is delayed and barred by stipulation in section 10 of the Industrial Dispute Act 1947.

**Secondly**, the applicant attempts to challenge a termination of service and refusal of employment though its true subject is his resistance to the transfer order. It invites this court to decide whether labour courts can enquire into the legality and validity of the order of transfer by any management.

**Thirdly**, the above query in turn pulls this court into a barren contradiction of the nature of dispute, this is whether it is a collective industrial dispute or an individual dispute and if an industrial dispute, its maintainability, when not espoused by the appropriate government.

**Fourthly**, a clamorous finding on the relationship of employer and employee between the contesting parties herein.

*All of the above are squarely addressed in the issues of this case ;*

1. *Is the written statement filed by the applicant under section 10(1B) (d) of the Industrial Disputes Act 1947 (Bengal Amendment) maintainable in-law?*
2. *Whether the termination of service of the applicant w.e.f 18.02.2010 tantamount to refusal of employment and is it justified and proper?*
3. *Whether there is jural relationship between the applicant and the OP as employee and employer?*
4. *Is the applicant entitled to get relief as prayed?*





**5) EVIDENCE****APPLICANTS WITNESS**

Serial No.	Name	Description of witness
PW1	ARNAB DAS	Applicant
PW2	KRISHNA DASGUPTA	Erstwhile secretary of union of op and its workman

**OPPOSITE PARTY'S WITNESS**

Serial No.	Name	Description of witness
OPW1	SUMAN BAGCHI	Worker of OP company
OPW2	HIMANSHU RAKHIT	Manufacturing chemist of OP company
OPW3	DIPANKAR CHATTERJEE	Officer, personnel administration
OPW4	TUSHAR KAR	Employee at OP company dealing with logistic affair

**LIST OF EXHIBITS FOR APPLICANT**

Sl. No.	EXHIBIT.	DESCRIPTION
01.	EXHIBIT 1.	APPOINTMENT LETTER DT. 18.11.2005
02	EXHIBIT 2	SECOND CONTRACTUAL APPOINTMENT LETTER 06.07.2006
03	EXHIBIT 3	PROBATIONARY APPOINTMENT LETTER 30.7.2007
04	EXHIBIT 4	CONFORMATION LETTER 11 <sup>TH</sup> JULY 2008
05	EXHIBIT 5	'REPRESENTATION LETTER DT. 19.02.2010 TO Co..
06	EXHIBIT 6	LETTER TO APPLICANT BY CO. DT. 19.2.10
07	EXHIBIT 7	LETTER TO APPLICANT BY CO. 18.02.2010
08	EXHIBIT 8	LETTER DT. 24.02.2010 to COMPANY BY APPLICANT
09	EXHIBIT 9	LETTER DT. 03.02.2010 to COMPANY BY APPLICANT
10	EXHIBIT 10	LETTER DT. 28.03.2010 TO LABOUR COMMISSIONER BY APPLICANT
11	EXHIBIT 11	LETTER DT. 4.5.10 TO DEPUTY LABOUR COMMISSIONER BY P.W.1
12	EXHIBIT 12	PENDENCY CERTIFICATE P -4 PRESCRIBED FORM -S 19.10.2010
13	EXHIBIT 13	LETTER DT. 30.6.10 TO DEPUTY LABOUR COMMISSIONER. KOLKATA
14	EXHIBIT 14	LETTER DT. 13.9.10 TO DEPUTY LABOUR COMMISSIONER. KOLKATA.



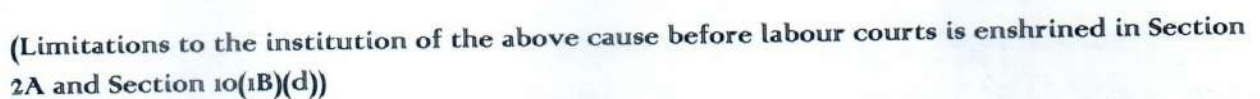


**LIST OF EXHIBITS FOR THE OPW-1**

Sl. No.	EXHIBIT	DESCRIPTION
1	EXHIBIT A	LETTER OF WORKMAN DT.18.02.2010 BY COMPANY
2	EXHIBIT B	PROVISIONAL TRANSFER LETTER DT. 30.7.2007
3	EXHIBIT C	CONFIRMATION LETTER DT. 11.07.2008
4	EXHIBIT D & D/1	LETTER DT. 21.01.08 TO CO. BY WORKMAN ALONG WITH DOCTORS CERTIFICATE.
5	EXHIBIT E	LETTER DT. 28.01.08 TO A. DAS BY CO.
6	EXHIBIT F	LETTER DT 19.12.08 FROM CO. TO WORKMAN.
7	EXHIBIT G (SERIES)	THREE LETTERS ALONG WITH M.C.TO CO. BY WORKMAN. LETTER DT. 22.12.2008
8	EXHIBIT H	REPLY OF ABOVE LETTERS BY COMPANY. LETTER DT. 14.1.2009
9	EXHIBIT I	LETTER DT. 19.02.10 TO WORKMAN BY CO.
10	EXHIBIT J (SERIES)	DUTY CHART (COLLECTIVELY) NAME OF EMPLOYEE AND TIME PERIOD.
11	EXHIBIT K	LETTER DT. 25.02.10 (COLLECTIVELY)
12	EXHIBIT L	LETTER DT. 9.3.10 TO WORKMAN(COLLECTIVELY)
13	EXHIBIT M	LETTER DT. 11.3.10 TO THE WORKMAN (COLLECTIVELY)
14	EXHIBIT N	LETTER DT. 22.3.10 TO THE WORKMAN (COLLECTIVELY)
15	EXHIBIT O	LETTER DT. 19.4.10.TO THE WORKMAN
16	EXHIBIT P	LETTER DT. 13.5.10 TO THE WORKMAN
17	EXHIBIT Q	LETTER DT. 28.9.10 TO THE WORKMAN
18	EXHIBIT R	PAY SLIP FOR THE YEAR 2010
19	EXHIBIT S	LEAVE APPLICATION OF THE WORKMAN (COLLECTIVELY)
20	EXHIBIT T	AUTHORISATION LETTER EXTRACT OF THE MINUTES OF THE MEETING OF THE BOARD OF DIRECTORS. DT. 13.02.14
21	EXHIBIT U	COMPUTERISED ATTENDANCE RECORDS DT. 1.2.2010
22	EXHIBIT V	ATTENDANCE SHEET OF KRISHNA DASGUPTA (EMPLOYEES CODE NO.283)
23	EXHIBIT W (SERIES)	RECORDS IN PROCESS CONTROLS DT. 8.1.10
24	EXHIBIT X (SERIES)	LIFE INSURANCE CORPORATION OF INDIA LETTER DT. 8.5.14
25	EXHIBIT Y	LIC ANNUAL RENEWAL LETTER DT. 14.4.14
26	EXHIBIT Z	RETURN OF CONTRIBUTION PERIOD FROM 01.10.2009 TO 31.03.2010
27	EXHIBIT AA Collectively	Form 3A(R) of 240 employees and Form 6 for the Accounting year 2009-10 with forwarding letter dated 26.03.2010.
28	EXHIBIT BB Collectively	Form 3A(R) of 240 employees and Form 6 for the Accounting year 2010-11 with forwarding letter dated 29.03.2011.
29	EXHIBIT CC Collectively	Form 3A(R) of 240 employees and Form 6 for the Accounting year 2011-12 with forwarding letter dated 09.04.2012.
30	EXHIBIT DD Collectively	Employees Deposit Link Insurance under the LIC.
31	EXHIBIT EE Collectively	Papers of EDLI for the year 2015-2016, 2014-15, 2013-14, 2011-12 & 2012-13. (ten pages)
32	EXHIBIT FF Collectively	Electronic Challan-cum-Return(ECR) in respect of EPFO. (total 27 pages).
33	EXHIBIT GG Collectively	Documents relates to Employees' Group & Gratuity Scheme under LIC. (total 19 pages)
34	EXHIBIT HH	Letter of authorization of Sri Tushar Kar.
35	EXHIBIT II	Minutes of the meeting of the Board of directors of M/s G. D. Pharmaceuticals held on 29.06.2009
36	EXHIBIT JJ	Minutes of the meeting of the Board of directors of M/s G. D. Pharmaceuticals held on 20.06.206
37	EXHIBIT KK	Photocopy of agreement in between M/s G. D. Pharmaceuticals and M/s Astrolab Sales Corp.
38	EXHIBIT LL	Photocopy of Power of Attorney.

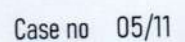






7) **LIMITATION.** The plea of limitation is taken up at the outset.

Section 10 of the Act lays down that if no settlement is arrived in between the parties within 60 days from date of raising dispute, the party may apply to conciliation officer for issuance of report in *Form S*. Conciliation officer shall, within 7 days of receipt of the application, issue *Form S*. The applicant 'will' thereafter, within 60 days from receipt of such certificate and if no such certificate is issued, within 60 days commencing from date immediately after expiry of 7 days as aforesaid, file application to the Labour court.





It appears from the application that the issue in hand was reported to the Labour commissioner on 28/03/2010, which was followed by addendum dated 4<sup>th</sup> May 2010. The applicant applied before the Conciliation officer for issuance of "FAILURE REPORT" ON 19/10/10. Form S signed by conciliation officer Smt S Khatua was received on October 2010.

In the instant case, as the certificate was issued by the conciliation officer on 30<sup>th</sup> October 2010, the applicant was under a legal obligation to file the application within 60 days from that date. The present application was filed on 16/03/2011. Hence there was a delay of about 2 and a half months, which is sought to be explained by the financial constraints of the applicant. The OP on the other hand, vehemently resists the claim of applicant on the count of limitation.

In this regard, this court is of the opinion that the plea of limitation cannot prevail, in view of the decision of this Court **MHS ANSARI VS PO**, 1<sup>ST</sup> LC 2002 SC 98. That case is an authority on the proposition that the jurisdiction of labour court is not ousted merely because the time frames as prescribed under Section 10 have not been adhered to by the workman. It is because the present legislation is beneficial legislation. **Noncompliance of such periods as stipulated would only make it an irregularity and not an illegality.**

**8) DISCUSSION ON TERMINATION AND REFUSAL OF EMPLOYMENT.** Next, it is turn to address the issue of nature of dispute, that is individual or collective, derived from the decision on the point whether there was "termination" or "refusal of employment."

**The applicant proceeded the instant case on the plea that company resisted him from resuming at his workplace for reasons best known to them and this, in essence falls within the species of refusal of employment, included within the meaning of section 10 (1)(B)(D) of the Act read with Section 2A of the Act and is an "individual dispute".**

Hence it is his plea that the cause could be raised by the applicant without being espoused by the appropriate government, as it is an individual dispute.

In the given premise, the alleged refusal of employment or termination of service becomes subject of consideration, which demands discussion in the backdrop of definition of individual dispute and industrial dispute, as enshrined in labour laws.

**Upon the consideration of various authorities on this point and the evidences tendered in this case, this court is unable to hold the view suggested by the applicant that dispute of the applicant is an individual dispute. ,.**

**The reasons are manifold and illustrated hereunder.**

**At the outset, some definitions are reproduced for effective analysis of the legal positions.**

Section 2(K) of the Act defines Industrial dispute. Act reads as follows:-

"Industrial Dispute" means any dispute or difference between employers and employees, or between employers and workmen, or between workmen or workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person."





### Section 2A expiates;

"Dismissal, etc., of an individual workman to be deemed to be an Industrial dispute ---

(1) Where any employer discharges, dismisses, retrenches or otherwise terminates the services of an individual workman, any dispute or difference between that workman and his employer connected with, or arising out of such discharge, dismissal, retrenchment or termination shall be deemed to be an industrial dispute notwithstanding that no other workmen nor any union of workmen is a party to the dispute.

(2) Notwithstanding anything contained in section 10 any such workman as is specified in sub-section (1) may, make an application direct to the Labour Court or Tribunal for adjudication of the dispute referred to therein after the expiry of forty- five days from the date has made the application to the conciliation officer of the appropriate Government for conciliation of the dispute, and on receipt of such application the Labour court or Tribunal shall have powers and jurisdiction to adjudicate upon the dispute, as it were a dispute referred to it by the appropriate Government in accordance with the provisions of this Act and all the provisions of this Act shall apply in relation to such adjudication as they apply in relation to an industrial dispute referred to it by the appropriate Government.

3) The application referred to in sub-section (2) shall be made to the Labour Court or Tribunal before the expiry of three years from the date of discharge, dismissal, retrenchment or otherwise termination of service as specified in sub-section (1)."

### Section 10 adumbrates;

"Reference of disputes to; boards, courts or Tribunals: -

1) Where the appropriate Government is of opinion that any industrial dispute exists or is apprehended, it may at any time) by order is writing—

- a) refer the dispute to a Board for promoting a settlement thereof, or
- b) refer any matter appearing to be connected with or relevant to the dispute to a Court for inquiry or
- c) refer the dispute or any matter appearing to be connected with, or relevant to, the dispute, if it relates; to any matter specified in the Second Schedule to a labour court for adjudication; or
- (d) refer the dispute or any matter appearing to be connected with, or relevant to, the dispute, whether it relates to any matter specified in the Second Schedule or a Tribunal Schedule for adjudication.....

### STATE AMENDMENT

#### WEST BENGAL. -

In its application to the State of West Bengal, after section (1A) , insert the following sub-section :

"(1B) (a) Notwithstanding anything contained elsewhere in this Act, where in a conciliation proceeding of an industrial dispute relating to an individual workman, no settlement is arrived at within a period of sixty days from the date of raising of the dispute , the party raising the dispute may apply to the conciliation officer in such manner and in such form as may be prescribed, for a certificate about the pendency of the conciliation proceedings.....

....(c) The party, may, within a period of sixty days from the receipt of such certificate or, where such certificate has not been issued within seven days as aforesaid, within a period of sixty days commencing from the day immediately after the expiry of seven days as aforesaid file an application to such Labour Court or Tribunal as may be specified by the appropriate Government by notification. Different Labour Courts or Tribunals may be specified for different areas or different classes of industries.

(d) The labour court or Tribunal specified under clause shall within a period of thirty days from the date of receipt of an application under clause (c) give a hearing to the parties and frame the specific issues in dispute, and shall thereafter proceed to adjudicate on the issues so framed as if it were an Industrial Dispute referred to in sub-section (1)" -vide West Bengal Act 33 of 1989 s. 4 w.e.f.8.12.1989. "





**INDUSTRIAL DISPUTE;** The definition of Industrial Dispute in Section 2k of the Act shows that industrial dispute means any dispute or difference between the employer and employers or between employers and workmen or workmen which is connected with employment or non-employment or the terms of employment or the conditions of labour of any person.

The definition has been subject to several decisions of Hon,ble Courts as well settled.

It was held that for the purpose of section 2( k), it must be shown that ***the dispute is connected with the employment or nonemployment of the workmen***. The locus classicus of the decision in the **Workmen of Dharmapal Premchand VS Dharmapal Premchand (Saughnathi) 1965SCR(3)394** is an authority on the point.

**INDIVIDUAL DISPUTE;** It is apparent from the definition that the Act refers to collective dispute only as an industrial dispute, which is referred under Section 10 .The Act was amended in 1965 and **Section 2A** was added making an, individual dispute of a workmen as an industrial dispute, if the dispute related to dismissal, discharge, retrenchment or termination of individual workmen. Such disputes are individual disputes. **This section carved out an exception to the definition of industrial dispute is given in section 2(K).**

**REFERENCES TO LABOUR COURT;** Labour courts were constituted under **Section 7** of the Act and reference to labour courts are made in following terms :-

*"The appropriate government may, by notification in the official gazette, constitute one or more labour courts for the adjudication of industrial dispute relating to matters specified in **Second schedule** and for performing other functions as may be assigned to them under the Act."*

**THE SECOND SCHEDULE** consists of the following entries;

1. The propriety or legality of any order passed by the employer under the standing orders
2. The application and interpretation of standing orders.
3. Discharge and dismissal of workman including reinstatement, or grant of relief to, workman wrongfully dismissed.
4. Withdrawal of any customary concession or privilege.
5. Illegality or otherwise of strike or lockout.
6. All matters other than those specified in the **THIRD SCHEDULE**.

The above discussions are suggestive of the fact that the labour court can thus interfere only in respect of industrial dispute which relate to any of the matters covered in the **Second Schedule**. Therefore, the existence of industrial dispute is condition precedent to the conferment of right of entertainment of dispute upon the Labour court. Section 10 of the Industrial Dispute **Act authorizes the appropriate government to refer** to the industrial dispute to Labour court. The appropriate government can make reference u/S 10 of the Act, to the Labour court only in respect of matters referred to in Second Schedule. Even if government makes any reference of individual dispute by treating it as industrial dispute, the Labour court does not get jurisdiction to adjudicate this dispute.





If there is no industrial dispute, the same cannot be referred. As per labour jurisprudence, the dispute between individual and management cannot be an industrial dispute unless it is covered under section 2 A of the Act. **The only exception is in relation to matters covered within Section 2A. This observation is backed by judicial pronouncement titled J H JADHAV VS FORBES GOKAK LTD (2005)3 SCC 202.**

Again, any dispute of an individual workman in relation to matters enumerated in the second schedule can become industrial dispute only is espoused by trade union or collection of workmen.

**PRE AMENDMENT POSITION OF REFERENCE BY APPROPRIATE GOVT;** The only relevant consideration in making reference under section 10 before the amendment was whether an industrial dispute exists or is apprehended. Prior to the amendment, there was no prescription of time for making a reference and it was open for the court to dismiss an application under Section 10, if a stale dispute was approached belatedly. This also appears to be the procedure. **(Rule 12 A of the West Bengal Industrial Disputes Rules 1958 by notification No. 1806 IR dated 12/11/1993.)**

The object and purpose of enacting the said section 2 A was to confer a right to an individual workman to seek relief against discharge, dismissal or otherwise termination of his service, independently whether the said dispute was not sponsored by the other workmen or espoused by the union of workmen. Prior to coming into effect of section 2A, the dispute arising out of dismissal of any individual workmen was not considered as an industrial dispute unless it was sponsored by union or group of workmen of the industry which he represented. In order to remove the difficulties caused to a single worker, the Parliament enacted section 2A in the Act by way of amendment vide Industrial Dispute Amendment act of 1965 (Act 35 of 1965). The said Amendment Act came into effect on 1<sup>st</sup> December 1965. The said Act was further amended by Industrial Dispute Amendment act of 2010 (Act 20 of 2010).

It is important to note here that a similar provisions was introduced much earlier by amendment to Section 10, by the State of WB. **This exception was within Section 10(1B)(d) of the Act.**

**POST AMENDMENT POSITION OF REFERENCE;** The effect of amendment is that any workmen who has been, dismissed, retrenched or terminated as specified in subsection 1 of section 2A, may make an application directly to the labour court for adjudication of his individual dispute upon expiry of 45 days from the date the workmen had made an application to the conciliation officer of the appropriate government for consideration of dispute. Whereas Section 10(1B)(d) continues to operate in the State of WB, with an added clause of "refusal of employment", Section 2A is a Central legislation of wider connotation. Subsection (3) lists the time-limit for making such application before a court. It provides that such application to the labour court for adjudication of dispute shall be made before the expiry of three years from the date of discharge, dismissal, retrenchment or otherwise termination of service are specified in subsection.

#### **HARMONIOUS CONSTRUCTION OF SECTION 10 AND SECTION 2A;**

The two sections demand a harmonious construction on limitation and otherwise.

In terms of limitation, His Lordships in **Smt Sapna Adhikari vs State of west Bengal and Ors (2014)4CHN 435** was pleased to consider both the Sections thus :-

"... in respect of all cases are specified in section 2A, the period stands a bridge now that even in proceedings under section 10 of the industrial **dispute and by reason of amendment to section 2 A and the said period of limitation would apply in proprio vigore** ...." (Emphasis of this court)



Similar construction can be pressed into service to address the other aspects of the Section, apart from limitation.

Section 2A lays down a mechanism for seeking relief where any employer "discharge, dismisses, retrenchments or otherwise terminates the services of individual workmen" within a period prescribed. **Section 10 (1)(B)(d)**, which is a precursor to this piece of legislation also adds another species of redressal in the form of "refusal of employment".

The harmonious reading of the above provisions suggest that in the State of West Bengal, a dispute qualifies the definition of individual dispute if it is covered in the categories mentioned in Section 2A, coupled with a 'refusal of employment', which is construed *ejusdem generis* to the former and included in the State amendment to Section 10. This, in essence, denotes that such disputes principally refer to disputes where there is an apparent severance of contract of service on the count of termination, refusal, dismissal, retrenchment or like. It is also seen that considering the species enshrined, the Sections can never be interpreted to mean and include any dispute raised during the continuance of such contract between the employer and employee though, it is a different question and settled proposition of law presently, that such employees are deemed employees despite such severance, in order to bring them within the meaning of "employees" in "Industrial dispute", as defined in the Act.

**NOW TO THE FACTS.** The present case in hand seeks to redress termination in the form of refusal of employment. In the given premise, it is for the applicant to plead and prove the same by his evidences, oral and documentary.

**Relevant extracts of the evidences of witnesses are reproduced hereunder; -**

**Examination in chief of Pw1 (applicant) dated 23.12.11 suggests; -**

*"I was in the manufacturing unit of the company and used to examine the products and note them down in the register.*

*I wanted to know the reasons for terminating me from the service which they did not mention. After waiting a considerable period at the reception of the head office one Dilip Goswami abused me in filthy languages. Thereafter, after some time one Alok Banerjee came with the computerized resignation letter and asked me to sign on the resignation letter. Thereafter on the same day I returned back to the factory at Bishnupur.... But I was not allowed to enter into the factory premises by the darwan and their attendant. Thereafter I launched a GD at Bishnupur PS. On 19 February 2010 I tried to join but I was not allowed to join the duty and driven out. Thereafter I noted a representation later at the address of the management"*

**His Cross examination dated 27.04.2012 and 04.09.12 suggests :-**

*"I worked in the company on and from 1 November 2005 to 17<sup>th</sup> Feb 2010 continuously. **I was not issued any letter of termination by the company. the company did not give me any termination letter.***

*In the provisional appointment letter, there is a clause of transfer. On 18<sup>th</sup> February 2010 I went to the company to join I was not permitted to enter the company to join my duties. My electronic attendance card was taken away by the company. I lodged a GD in local ps. I cannot find the document to that effect. **After consulting the documents submitted could not find the relevant document at the moment***





I lodged complaint with the police station to that effect when the company snatched my electronic attendance card. I filed a document to that effect. **After searching the exhibit a document, I cannot find it at this moment.**

Not a fact that I did not lodge GD and did not file any document to that effect.

Page 3 of Exhibit-k is tendered to the witness. I did not join the cochin though I sent several letters. I never visited cochin. I received letter dated 9 March 2010 marked Exhibit L collectively. I receive the letter dated 11<sup>th</sup> March 20 10 marked Exhibit M collectively. I received letter dated 22 March 2010 marked Exhibit N collectively.

I cannot remember at this moment as to whether I specifically denied the allegation raised by the opposite party that company inquired to unauthorized absence or that I was not entitled to any salary since 19<sup>th</sup> February 2010.

I received a letter dated 19 April 2010 marked as Exhibit O. I did not go to cochin in compliance to the letter dated 19 April 2010 but I sent the letter reply to it.

Exhibit 9 is tender to the witness. In the Exhibit 9, I requested the management to withdraw my transfer order. As there is no office at present at Kochi, there is no question of joining at Kochi. Not a fact that the company did not terminate me and absented me unauthorizedly."

**Examination of PW2 dated 07.08.2013 reveals; -**

"On 18<sup>th</sup> when we came to our office to punch cards at the time the applicant was in queue for punching own card but staffs PK Narayan and Suman Bagchi restrained the applicant from punching card. They told him that his service has been terminated and they asked him to go to the head office. They told in such matter when we inquired them regarding their behavior restraining the applicant, they told us that it is as per the direction of head office and then asked to join the head office. We the then employs gave direction to the applicant to go to the head office and prior to that we advised him to lodge GD in the local Bishnupur PS. Then he handed over the copy of the GD entry and for keeping the same in the office. '

**Cross examination of this witness dated 19.11.2013 indicates; -**

"I did not receive summons from the court to depose in this case I came here at the request of the applicant. I became the secretary of the union of GD pharmaceutical employees and workers union in the year 1990. I gave resignation voluntary from service. At time of giving resignation, **I was secretary of the union.** Arnab das was not a member of union. The union did not give any letter to the management as regards the dispute of termination of service of Arnab das".

**Examination in chief of OPW1 17.02.2014 indicates;**

"These are computerized attendance records of a factory on daily basis for the month of February marked as Exhibit U collectively. My name has been entered in this attendance register. On 18/02/10 the attendance of the applicant was recorded. He did not work in the whole day on that date on that date Mr. V k Narayan after recording the attendance asked applicant to report to the head office. There he left the office for reporting to the head office. Thereafter he did not return back. From 19/2/10 in the applicant did not attend the factory. We received one transfer letter in which it is mentioned that the applicant was transferred to Kochi and he was asked to report to the head office in the meantime.

I know Krishna Dasgupta. He was worker of our Chakbari factory.





On 19<sup>th</sup> February 2010 said Krishna Das Gupta was not present in the factory. This is the extract of the attendance sheet of Krishna others cooker, marked as Exhibit 5 marked as Exhibit 5. From Exhibit 5 appears that Krishna was absent in the factory on 19 February 2010."

**OPW3 was examined as follows**

"It is true that applicant was paid salary by the management up to 18<sup>th</sup> February 2010. Still now applicant is in employment roll of the company."

**Cross examination of OPW3 dated 16.02.18 suggests;**

"I do not know whether any disciplinary proceedings has been initiated against the applicant or not. I look after the statutory matter and the payrolls."

**Cross examination of OPW4 denotes;**

"I am now posted at head office. The applicant was posted at Chakbagi. Prior to 18<sup>th</sup> the applicant was not designed with logistic affairs. The applicant has been working at the Cochin as per transfer order. It is not getting salary from the cochin. He is not getting salary as he's not attending his duties."

The above evidence that is cross examination of the applicant, is suggestive of admission on the part of that neither the company had ever issued any letter of termination to the applicant nor any such termination was duly communicated to him otherwise. Facts admitted don't demand a further proof. This admission operates as an estoppel and the applicant is prevented from shifting his stance, unless contrary is proved. This draws the court to the inference that apart from his bare statement and averment, there is nothing on record to show that his services were terminated. **If his services are not terminated, then his plea of "termination of service" within the meaning of an individual dispute u/S 2A, fall short of proof.**

Conversely, the applicant has portrayed an incident of wrongful restraint by the management in order to suggest refusal of employment. Oral witnesses were tendered to that effect. Unfortunately, neither the GD was ever produced before this court nor the witnesses appear credible. The witnesses who purported to support him on this count were themselves absent on the date of the alleged incident and this is the inference suggested by the documents and in particular Exhibit J, to which all the evidences have referred substantially. **Hence, there is nothing else on record either, to suggest a refusal of employment.**

**Unhappily, all the case references by the applicant pertain to illegality of termination and do not align to the facts of the present case.**

**Hence the case of the applicant falls short of "termination or refusal of employment". In absence of the above, the dispute can never be termed as Individual dispute.**





**9) ESPOUSAL OF DISPUTE.** This draws the court to the next question whether an industrial dispute, can be maintained in a Labour court without an espousal.

**The dispute between single workmen and his employer must be sponsored or espoused by the union of workmen or by a number of workmen.** This is the consistent view of Hon'ble Courts.

**The phrase "union" merely indicates** the union to which employer belongs even though it may be union of minority of workmen. If the establishment has no union on its own and some of them join the union of another establishment belonging to the same industry, in such a case it would be open to that union to take up the cause of the workmen if it is sufficiently representative of those workmen, despite the fact that such union was not exclusively of the workmen working in the establishment concerned. This was the gist of the observation in judicial pronouncement titled **Indian Express Newspaper Private Limited vs Management of Indian Express Newspaper Private Limited AIR 1970 SC737.**

**"Espousal" means that dispute of an individual workmen is adapted by union as its own dispute or large number of workmen give support to the cause of individual workmen.** The Hon'ble Supreme Court observed that unless an individual dispute was taken by union of employees of the employer by appreciable number of employees of the union, it remains an individual dispute and does not become an industrial dispute. This was the rule laid down in **Prakash and Ors VSSuperintendent Engineering and others 2001(89) FLR458.**

Thus, in order to get an appropriate government to refer the dispute and to the Labour court to adjudicate the dispute, it is essential for the workmen to show that his case falls within the category of industrial dispute. In absence of espousal, no industrial dispute can be decided by Labour court.

**ESPOUSAL AND EVIDENCE ON RECORD** In the instant case there is no evidence on record of espousal of dispute of the petitioner. There was no evidence that either the workmen had approached the union and asked the union to take up his cause or that union, at any point in time, or any appreciable number of employees had taken up the cause of the workmen with the management. If the union had passed a resolution or appreciable number of workmen had approached the union and raised the demand in respect of the workmen, it could be said that there was espousal of the cause of the workmen.

**The secretary of the union, who appeared as a witness and PW 2, did not utter a single word that the union or appreciable number of workmen had espoused the cause of the workmen's.** Under the circumstances, it can be held that an industrial dispute, even if it existed between the employer and the workmen, to enable the appropriate government to make an reference under Section 10 of the Industrial Dispute Act, 1947 for referring it for adjudication to the labour court, was not so espoused.

**EFFECT OF NON ESPOUSAL OF INDUSTRIAL DISPUTE.** As already reiterated, a dispute can be industrial dispute only if it is espoused by the union of workmen or by substantial number of workmen in the industry.





Though transfer is not one of the specifically enumerated matters in the Second Schedule, it can be safely suggested that vide Part 1 of Schedule II (as reproduced above), transfer is governed by Standing Orders or Part 6 of the said Schedule as it relates to residuary matters. Thus it can be said that transfer is one of the matters which can be referred to the Labour court. But such reference cannot be made without espousal as it doesn't qualify the exception that is Section 2A. Hence it is not an individual dispute but an industrial dispute, which demands a collective bargain in terms of the Act.

This court hastens to add here that jurisdiction to adjudicate an industrial dispute on non-espousal of cause is not a mere technicality. In the entire jurisprudence of industrial dispute law, espousal of collective dispute of the workmen is the key. It is not a mere technicality. It is an irregularity which goes to the root of the cause. This was affirmed in the case titled Management of Hotel Samrat VS GOVT OF NCT, Delhi (,2007 )2LLJ950 DEL .

**10) INFERENCE OF DISCUSSION.** It is plain that the effect of the plea of the applicant of refusal of his employment has transferred a simple cause of question of validity of transfer order, into that complex question of individual dispute.

This course is consistently condemned in the above decisions.

To guard against the possible misapprehension, it must be stated here that it cannot be inferred as a broad proposition of law that the question of punitive transfer order cannot be investigated by the labour court. **This question came up for consideration before the Hon'ble apex court and it is evolved that the contract of service is subject to scrutiny, provided it is validly espoused and referred.**

**11) SCOPE OF INTERPRETING CONTRACT OF SERVICE.** It is a settled proposition from various case decisions presently that transfer is an incidence of service and cannot be interfered with, unless malafides are shown and the same is prohibited by rule or on account of incompetency of authority. An employee has no right to be posted at any particular place and cannot challenge the transfer on the ground of validity. This is fortified by case titled **Yorendra Singh Chouhan vs Intas Pharmaceutical LTD MP 2021.**

The wide scope of jurisdiction of industrial courts to interpret contract of service, piercing through the veil of malafides, is now well established. It was observed as early as 1949 that the argument based upon the sanctity and validity of contracts between the employer and the employees 'overlooks the fact that when a dispute arises about employment of a person, at the instance of the trade union or trade unions objects to employment of certain person, the definition of industrial dispute would cover both the cases.' In each of those cases although the employer may be unwilling to do so, there will be a jurisdiction in the industrial court to direct the employment on non-employment of person by the employer.

The court can direct in the case of dismissal that the employer-employee shall have relation of employment with other party although one of them is unwilling to have such relation. In other words, the jurisdiction of court to direct reinstatement of a discharged dismissed employer or investigate into contract of employment is no longer in doubt. **This is furthered by authority in The Federal Court in Western India Automobile Association VS Industrial Tribunal, Bombay (1949)51BOMLR 894.**

When the termination is challenged in industrial adjudication, it would be competent for the industrial court to enquire whether the impugned discharge has been affected in bona fides





exercise of powers conferred by the contract. If the discharge has been ordered by the employee in bonafide exercise of his power, then the industrial courts may not interfere with it though the words used in the order of discharge form the basis of such expression, which may be taken into account to decide whether the discharge is a discharge simpliciter or not. Similarly, courts can investigate into the contract of employment to see whether any transfer of employee was a bonafide or out of vengeance.

**In this connection, it is important to remember that just as the employer's right to exercise his option in case of terms of contract has to be recognized so is the employee's right to expect security of tenure to be taken into account.** These principles have been consistently followed by the industrial courts and tribunals and recognized in catena of cases including **Buckingham and Carnatic Company Ltd VS Workers of the Company AIR 1953 SC 47.**

Thus, it appears from the above discussions that if the bonafides of said exercise of power are successfully challenged in court, it is entitled to interfere with the question whether or not orders of the employer were valid going by the terms of the contract and this would always depend upon the facts and circumstances of each case and the standing orders form the substance of interpretation.

**In the present case, Exhibit B,** point no 4 and 8 are relevant for the purpose, which are reproduced hereunder;

*"4. Your services are liable to transfer from one department to another or from one job to another or from one unit to any other unit of the company, anywhere in India, including any new unit, which may be stated by the company in future .*

*8. All other service conditions including disciplinary matters, you shall be governed by the Standing orders and /or Rules and Regulations as applicable to the establishment where you are posted."*

The above clauses suggest that the appointment of applicant was in the above terms, which contained the stipulation of transfer. Caviling of the applicant relating to his transfer and posting at Sales department, is covered by the above clauses as his appointment seems to be subject to transfer and that too in any department. Hence his allegations doesn't hold water in the court.

This brings the court to the inference that had the cause been espoused validity, this court would be indubitably within its competence to investigate into the minutest details of the contract and any malafides and wrongful exercise could be rent in shreds. It would further be within the competence of this court to decide it as a preliminary issues as the management /OP has admitted continuance of service. This is backed by the judgment furnished by the OP titled **RAM SINGH VS JK JUTE MILLS CO LTD ALL 2002(95) FLR 1058.**

However, as the above legal discussions are clearly suggestive of lack of valid espousal, this court cannot venture into further details of validity of contract of employment and transfer of the applicant.

**12) RELATIONSHIP OF EMPLOYER AND EMPLOYEE.** The above discussions clearly point out the non espousal and therefore detailed discussions on this point is not warranted . Thus this court shall not venture into the details of such issues though a prima facie evidence suggests the existence of such relationship.





Definition of workman , in the Act , is reproduced hereunder;-

"Workman "any person (included an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person-

- (i) Who is subject to the Air Force Act, 1950 (45 of 1950) or the Army Act, 1950 (46 of 1950), or the Navy Act, 1957 (62 of 1957); or
- (ii) Who is employed in the police service or as an officer or other employee of a prison; or
- (iii) Who is employed mainly in a managerial or administrative capacity; or
- (iv) Who being employed in a supervisory capacity, draws wages exceeding (ten thousand rupees) per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him functions mainly of a managerial nature) "

The relationship of employer and employee is satiated by feeding the basic ingredients of workman in Section 2(S) of the Act , into the factual relationship, as suggested by evidences. The definition is intended to exclude the managerial staffs.

In the given factual premise, whether the applicant is workman or not, is required to be unearthed from the evidences on record, the relevant extracts of which are quoted hereunder ;-

#### **Relevant extracts of evidence demand consideration for determination of this point.**

##### **Cross examination of PW1 suggests**

"Examination in chief tended to the witness. I did not receive the workers mentioned in the duty card completely. I used to sign the duty card as per the direction of Mr Rakhit. I cannot recollect at the moment as to whether I mentioned the fact that I did not perform certain functions as per the duty chart, yet I signed performance report as per the instructions of Mr Rakhit or not. "

##### **Examination of OPNO1 indicates**

"I know the applicant from 2005 when he joined in the company.

He used to check the volume of tubes and whether printing of the cartoons sleeper bag has been properly printed or not. He also used to keep the data entry as regards the duties of the purpose in the computer. Applicant did not to perform any manual work except the work which was supervisory in nature there is a daily job sheet in the company.

All the supervisors of the company was to maintain the sheet as regard to perform by him during the period of his service .This is the job sheet (EXH J) "

##### **His cross examination suggests ;-**

"Exhibit J/9 is tendered to the witness. There is no mention of any particular name of any worker whose work was supervised by the applicant on that day.

Exhibit J is tendered to the witness .There is mention of supervision of workers but there is no specification of the name of any workers there is mention that the different workers were allotted to works but there is the names of the workers to whom specific jobs were allotted.

There is no mention of the designation of supervisor in exhibit J. At this moment it is not possible for me to say whether the company produced any document to show the designation of





other employees like Amit Roy and other supervisors as mentioned in the evidence dated 18<sup>th</sup> March thousand 14 on not."

### Examination of OPNO2

"I know the applicant. He gave material requisitions for online checking including zipper bag checking batch printing checking etc. The applicant used to maintain production -related data in the computer. As a supervisor the applicant did not perform any work personally. In order to control the performance of supervisor's job sheet is being maintained. These are the chargesheets (Exh J) .The job sheet has been maintained by each employee giving details of the daily performance and thereafter has to put his signature in the document."

### His cross examination suggests;

"There is no written paper regarding my jobs responsibilities as manufacturing chemist of the company. The job of manufacturing chemist is to measure the ingredients of manufacturing process and supervision of all manufacturing process. I have filed exhibit G in order to show that I used to the production supervision in the company. Exhibit J shows that the designations are not mentioned because of which there is no column of mentioning the designation. **I have not filed any document in order to show that any letter was issued to the workmen designating him as a supervisor.** I have not filed any document in order to show that Arnab das used to supervisory work up in any workmen who was engaged for cleaning and oiling machine."

The above evidences are plain on the point that the evidences have not clearly zeroed in on the status of the applicant and it cannot be drawn from the version of oral evidences that he was a manager and not "workman" as they tend to agree on the point that the job responsibilities are not curled out in the evidences. Hence this makes space for the documentary evidence. The Exhibit 1, which is his letter of appointment, shows him to be an officer without indicating his managerial status. Exhibit J to which all the witnesses have made reference, neither suggests anything of the order. Hence there is nothing on record to suggest an inference that the OP was working in managerial capacity, so as to be out of the definition of workman in the Act. Hence the relation of employer and employee remains unchallenged.

### 13) ON IMPOSITION OF COST

**Section 11(7)** of the Act allows the court to impose costs and determine the subject out of which the same isto be paid .

The OP has prayed for rejection of this application and submitted for passing necessary order which may be in the form of imposition of the cost. The applicant submits that his case is genuine.

On the consideration of the evidences and material on record, it is found that this case suffers from an infirmity which goes to the root of the cause. As already reiterated, had the initial condition precedent of reference by the appropriate government been satisfied, the cause would have been subject of this court's decision.

This is a beneficial legislation found for protection for their collective, which otherwise would have been subject to a difficult individual bargain by a workman.

In the given premise, the case doesn't invite the imposition of cost.





14) Gauged in the above factual and legal, the issues are decided hereunder;-

SL NO	ISSUE OF REFERENCE	DECISION
1.	<i>Written Statement filed by the applicant under section 10(1B)(d) of the Industrial Disputes Act 1947 (Bengal Amendment) maintainable in-law</i>	<b>Not validly espoused and thus not maintainable.</b>
2.	<i>The termination of service of the applicant w.e.f 18.02.2010 tantamounts to refusal of employment and is it justified and proper</i>	<b>Nothing appeared in the evidence in favour of termination and refusal of employment. Hence it is not individual dispute and demands espousal .</b>
3.	<i>Whether there is jural relationship between the applicant and the OP as employee and employer</i>	<b>YES</b>
4.	<i>Is the applicant entitled to get relief as prayed</i>	<b>On the above discussions, no relief can be accorded</b>

### 15 ) EPILOGUE

It can be safely arrived from the above discussions that while the first value of redressal of industrial dispute lies in the outcry of a workmen's right and entitlement, its soundness is not complete unless it has been validly shaped through a espousal and collective bargaining. This is the true sense of redressal expressed through the intention of the legislature and guarded by the Hon'ble Courts, through various judicial pronouncements.

This case therefore fails on the above count and on the lack of valid espousal.





**IT IS ORDERED**

The application under Section 10(1 B)(d) of the Industrial Dispute Act 1947 be and the same  
Is hereby

**DISMISSED ON CONTEST WITHOUT ANY ORDERS AS TO COST.**

Let necessary compliances be made in terms of service of the copies to concerned Government authorities.

The case is hereby disposed off.

Note in the relevant register.

TYPED BY

Sd/-

(SREEJITA CHATTERJEE)  
JUDGE

*Judge*  
Second Labour Court W.B.

Sd/-

(SREEJITA CHATTERJEE)  
JUDGE  
SECOND LABOUR COURT,  
KOLKATA  
18.07.2024

*Judge*  
Second Labour Court W.B.

