

Government of West Bengal  
Labour Department, I. R. Branch  
N.S. Building, 12<sup>th</sup> Floor  
1, K.S. Roy Road, Kolkata – 70000

No. Labr/ / (LC-IR)/22015 (16) /39/2024

Date: /2024

ORDER

WHEREAS an industrial dispute existed between M/s. Saj Industries Pvt. Ltd., Uluberia Industrial Growth Centre, Birshibpur, Howrah and Sri Srikanta Maity, Vill & P.O. Kulgachia, Dist. – Howrah regarding the issue, being a matter specified in the Second schedule to the Industrial Dispute Act, 1947 (14 of 1947);

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

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

AND WHEREAS the First Labour Court has submitted to the State Government its Award dated 28.06.2024 in Case No. 02/2002 under section 10(1b) (d) of the I.D. Act, 1947 (14 of 1947) on the said Industrial Dispute vide Memo No. Dte/1<sup>st</sup>LC/057/2024 dated 07.08.2024.

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,

Sdt

Assistant Secretary  
to the Government of West Bengal

829  
No. Labr/ 1/(5)/(LC-IR) *encl*

Date: 27/8 /2024

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

1. M/s. Saj Industries Pvt. Ltd., Uluberia Industrial Growth Centre, Birshibpur, Howrah.
2. Sri Srikanta Maity, Vill & P.O. Kulgachia, Dist. – Howrah.
3. The Asstt. Labour Commissioner, W.B. In-Charge, Labour Gazette.
4. The O.S.D. & E.O. Labour Commissioner, W.B., New Secretariat Building, (11<sup>th</sup> Floor), 1, Kiran Sankar Roy Road, Kolkata – 700001.
- ✓ 5. The Deputy Secretary, IT Cell, Labour Department, with the request to cast the Award in the Department's website.

*[Signature]*

Assistant Secretary

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

Date: /2024

Copy forwarded for information to:-

1. The Judge, First Labour Court West Bengal, with respect to his Memo No. Dte/1<sup>st</sup> LC/057/2024 dated 07.08.2024.
2. The Joint Labour Commissioner (Statistics), West Bengal, 6, Church Lane, Kolkata – 700001.

Assistant Secretary

O.S.D. (IT)  
27/8/24

Sankar (IT)  
Sandip Dutta  
SSP  
28/8/24



In the matter of a Industrial Dispute between M/s. Saj Industries Pvt.Ltd. Uluberia Industrial Growth Centre, Birshibpur, Howrah and its workman Sri Srikanta Maity, Village & P.O.- Kulgachia, District – Howrah.

**Case No. 02 / 2002 / U/S 10(1B)(d)  
Of The Industrial Disputes Act 1947**

Before the Judge, First Labour Court, Calcutta, West Bengal

Present :

Madhusudan Pal

First Labour Court

A W A R D

Dated 28<sup>th</sup> June 2024



Asit Banerjee, Ld. Advocate

---- for Applicant

Saibal Mondal, Ld. Advocate

Dinabandhu Dan, Ld. Advocate

---- for O.P. / Management

Judgement

**Madhusudan Pal, Judge**

(J.O. Code :- WB 00925)

This purported Industrial Dispute existing between Sri Srikanta Maity and M/s. Saj Industries Pvt. Ltd. emanates out of an application dt. 02.01.2002 before this Court by applicant Srikanta Maity with certificate dt. 03.12.2001 issued by the Conciliation Officer, Labour Department, Govt. of West Bengal, specified for this purpose under Labour Department's Notification No.- 1085-IR/IR/12L-9/95 dt. 25.07.1997, on his application U/s 10(1B)(c) of the Industrial Disputes Act, 1947. There on this Court proceeded hearing and adjudication **U/S 10(1B)(d)** of The Industrial Disputes Act 1947.

1. Applicant's contention

1.1. O.P./Management issued 2 appointment letters to the applicant. Both the letters were dated 08.10.2000. In one of the letters the probation period was fixed for six months while in the other it was fixed for one year. The termination is punitive and no misconduct has been alleged in that premises. A request was made on 12<sup>th</sup> January 2001 to seek an alternative employment as contained in the letter of termination, neither was in writing nor was the offer of payment made on 12<sup>th</sup> March 2001 was in writing. 12<sup>th</sup> March 2001 was a Monday, which was an off day for the workman. No misconduct can be imputed on applicant. The applicant was on casual leave on 13.03.2001 and 14.03.2001. On 15.03.2001 when applicant went to join his duty, the security

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(Darwan of the factory) prevented the applicant to join his duty on and from 15.03.2001 and thereafter.

1.2 This applicant vide letter dated 30.03.2001 and 31.03.2001 protested said action of the O.P./Management and requested the company to allow him to resume his normal duty but in vain. The applicant lastly through letter dated 17.04.2001 protested the illegal action of the company and requested the company to allow him to join his duties but management vide its letter dated 18.04.2001 terminated the service of the applicant violating clause 3 of its appointment letter dated 08.10.2000 and Provisions of Section 25F of The Industrial Disputes Act 1947.

1.3 The termination of service of the applicant was arbitrary, illegal, unjustified and violative to the principles of natural justice. No charge-sheet was issued. No domestic enquiry was initiated before his termination. Failure to give one month's prior notice render the termination bad. The appointment, although was made in the officer/managerial rank by the letters of appointment. The nature of works done by applicant were clerical.

1.4 The applicant made representation to the Assistant Labour Commissioner, Govt. of West Bengal, Kumari Bhawan, Uluberia, Howrah vide letter dated 04.06.2001, but due to non cooperation of the management conciliation failed. The applicant applied to Assistant Labour Commissioner in Form P4 for certificate under Section 10(1B) of The Industrial Disputes Act 1947 and Assistant Labour Commissioner issued certificate vide letter dated 03.12.2001.

## **2. O.P./Management contention**

2.1 The applicant was appointed on probation. The appointment letter with terms and conditions contained therein was accepted by the petitioner. For his non satisfactory performance the letter of termination dt. 18.04.2001 was issued. The said letter of termination was simplicitor without attaching any stigma and therefore no need for domestic enquiry and chargesheet.

2.2 The applicant was appointed as a Chemist in the rank of managerial and administrative capacity for a probation of one year vide letter dated 08.10.2000 by O.P./Management with effect from 10.10.2000. His performance was not up to the mark. He was not confirmed in service. He was absent from his duty on 13.03.2021 and 14.03.2021. O.P./Management never prevented him from entering into factory premises. He was terminated by the O.P./Management during probation.

2.3 After termination from O.P./Company he was gainfully employed elsewhere and lastly he was gainfully employed at M.C.K.B. Institute of Engineering till the date of his retirement.

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(3)

ISSUES

- 1) Is the application of the workman/petitioner in it's present form U/S 10(1B)(d) of The I.D. Act of 1947 maintainable according to Law ?
- 2) Whether termination order dt. 18.04.2001 and refusal of employment with effect from 15.03.2001 is illegal, unjustified, mala fide ?
- 3) Is the applicant/petitioner entitled to relieves as prayed for in the instant petition / case and to what other relief and relieves, if any, to which the applicant/petitioner is entitled thereto?

Decisions with reasons

Issue no. 1 - During arguments this issue was not pressed by either of the sides and accordingly the same stands decided in favour of the applicant.

Issue No. 2 and 3 - These two issues are inter-winded to each other. For the sake of convenience of discussions and to avoid needless repetitions I am opting the path of conjoint discussions of these two issues.

On careful perusal of entire pleadings of the applicant in this case I have gathered that he has challenged his termination order dt. 18.04.2001 repeatedly on the ground that it was mala fide, there has been unfair labour practices, it was violative of Section 25F of the Industrial Disputes Act, 1947 read with Section 2(oo) of the same.

Applicant - Sri Srikanta Maity examined himself as **P.W.-1**. Copy of Appointment Letter of Srikanta Maity dated 08.10.2000 handed on 11.10.2000 to Srikanta Maity was marked as **Exhibit-1(04 pages)**, copy of First page of original Appointment Letter is changed dated 03.11.2000 was marked **Exhibit-2**, copies of Payslips for the month of November.2000 and February,2001 were marked as **Exhibit-3**, copy of Letter to the Director, M/s. Saj Industries Pvt. Ltd. Dated 30.03.2001 was marked as **Exhibit-4**, copy of Letter to the Director, M/s. Saj Industries Pvt. Ltd. Dated 31.03.2001 was marked as **Exhibit-5**, copy of Letter to the Managing Director, M/s. Saj Industries Pvt. Ltd., dated 17.04.2001 was marked as **Exhibit-6**, copy of a Letter from the Chairman, M/s. Saj Industries Pvt. Ltd. to Srikanta Maity, dated 18.04.2001, was marked as **Exhibit-7(03 pages)**, copy of Letter to the Chairman, M/s. Saj Industries Pvt. Ltd. from Srikanta Maity, dated 01.05.2001 was marked as **Exhibit-8(04 pages)**, copy of Letter to the Assistant Labour Commissioner, Uluberia, Howrah from Srikanta Maity, dated 04.06.2001 was marked as **Exhibit-9**, copy of Letter to the Assistant Labour Commissioner, Uluberia, Howrah, dated 14.08.2001 was marked as **Exhibit-10**, copy of Form No.P4 by the Assistant Labour Commissioner, Uluberia, Howrah issued on 26.11.2001 was marked as **Exhibit-11**, copy of Letter from the Assistant Labour Commissioner, Uluberia, Howrah to Srikanta Maity, dated 03.12.2001 was marked as **Exhibit-12(02 pages)**. He was duly cross

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On the other hand O.P./Management produced Debasish Bhattacharya as **O.P.W.-1**. Copy of Minutes of the meeting of the Board of Directors of Saj Food Products Pvt. Ltd. authorising him to sign and affirm affidavit and/or verify on behalf of the company and to represent before any Court of Law was marked as **Exhibit-A**. He was duly cross examined.

From the cross examination of O.P.W.-1 Debasish Bhattacharya dated 01.11.2023 by applicant it is found that prior to termination of service of the applicant neither disciplinary proceedings nor any chargesheet was issued. Rather termination letter dated 04.01.2001 was simply issued.

During cross examinations dt. 11.08.2023 P.W.-1 Srikanta Maity admitted that he was appointed as a Chemist in the company for probation of one year. During probation period his services was terminated. He was employed at M.C.K.B. Institute of Engineering as Laborator Instructor for certain period.

In 1992 LAB IC 657 (Bombay High Court), wherein Hon'ble Court observed that the Chemist In Charge was performing work essentially of technical in nature without having any power to grant leave or to take disciplinary action, he was a workman within the meaning of the Industrial Disputes Act 1947 U/S 2(S). In this present case also there is nothing on record to prove that applicant Srikanta Maity had any administrative / managerial power to exercise control in any form to other staffs there.

In 1985 LLJ Volume I Page 181 Chandulal VS The Management of Pan American World Airways Inc., wherein the termination of service was on the ground of loss of confidence, Hon'ble Court observed here that it is difficult to accept that when service terminated on the basis of loss of confidence the Order of termination does not amount to one with stigma and does not warrant a proceedings contemplated by Law preceding termination. Want of confidence in an employee point out to an adverse facet in the character of the employee as the true meaning of the allegation is that employee has failed to behave up to the expected standard of conduct which has given rise to a situation involving loss of confidence. It amounts to a dereliction on the part of the workman. If the termination is grounded upon conduct attaching stigma on the employee, disciplinary proceedings were necessary as a condition precedent to infliction of termination as a measure of punishment. Hon'ble Court also observed that when one Order of termination is set aside, a declaration has to follow that the workman continues to be in employment and is therefore entitled to be reinstated in service with full back-wages.

Ld. Lawyer for the O.P./Management has cited Rulings in :-

2005 (105) FLR Page 66 S.C. (Municipal Committee, Sirsha Vs Munshi Ram),



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Judge  
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1997 (77) FLR Page 214 All. H.C. (Md. / Zahoor Vs Committee of Mgt., Madrasa Hanafahli Sunnat Baharul – Uloom, Mau.

2005 (105) FLR Page 1 S.C. (Mat. Of Sonepet Cooperativ Sugar Mills Ltd. Vs Ajit Singh.

2002 (92) FLR Page 349 S.C. (Pavanendra Narayan Verma Vs Sanjay Gandhi P.G.I. of Medical Science.

1994 (II) LLN, Page 1994 De. H.C. (Mahavir Sign Vs Delhi Transport Corporation).

2023 (XLV) LLR Page – 1127 Del. H.C. (Ramesh Kumar Bawalia Vs Uttar Pradesh Samaj Society & Anr.

2022 (XLIV) LLR, Page 986 Del. H.C. (Prince Mourya Vs M/s. Cadila Healthcare Ltd.

2022 (XLV) LLR Page-144 (Guj, H.C. (Barad Vejesing Rambhai Vs Gujrat Heavy Chemicals Ltd.

In (2005) 5 Supreme Court Cases 100 The Manager Reserve bank of India Bangalore VS S Mani and Ors. Hon'ble Apex Court observed here that Ticca Mazdoor are not regarded as regular workman and their status is not higher than that of a temporary workman or a probationer. Their services not in permanent in nature can be dispensed with subject to compliance of statutory or contractual requirements.

In [2005 (105) FLR 66] Hon'ble Apex Court In Municipal Committee, Sirsha Vs Munshi Ram observed that in case of termination of services inference by Labour Court as to probationer is well settled. If the order of termination indicates that it was a termination simplicitor and does not cast any stigma on the employee by the Order, the mere fact that there was an enquiry into his conduct earlier would not by itself render the termination is invalid.

Therefore an order of discharge simplicitor during probation period is not punitive even if there was a misconduct and no enquiry was held. Hon'ble Apex Court also observe that discharge of service during probation period on the ground that his service are unsuitable does not cast any stigma on the employee nor it is punitive. There is no need for formal inquiry nor principle of natural justice applied.

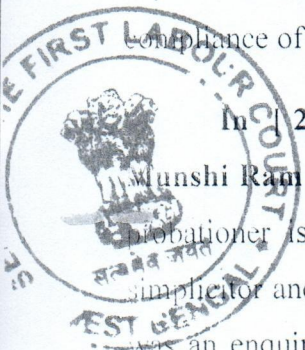
Termination of service in absence of three facts can be held to be bad.

It is seen that in absence of three facts as mentioned therein namely

- a full scale formal enquiry
- into allegation involving moral turpitude or misconduct which
- culminated in a finding of guilt the, termination can be held to be bad.

I am of exclusive opinion that facts and circumstances as discussed in -2022 (XLIV) LLR, Page 986 Del. H.C. (Prince Mourya Vs M/s. Cadila Healthcare Ltd.

2022 (XLV) LLR Page-144 (Guj, H.C. (Barad Vejesing Rambhai Vs Gujrat Heavy Chemicals Ltd. are different from the facts and circumstances of the application in our hand.



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Regarding Rulings in 1997 (77) FLR Page 214 All. H.C. (Md. / Zahoor Vs Committee of Mgt., Madrasa Hanafahli Sunnat Baharul – Uloom, Mau. 2005 (105) FLR Page 1 S.C. (Mat. Of Sonepet Cooperativ Sugar Mills Ltd. Vs Ajit Singh. 2002 (92) FLR Page 349 S.C. (Pavanendra Narayan Verma Vs Sanjay Gandhi P.G.I. of Medical Science. 1994 (II) LLN, Page 1994 De. H.C. (Mahavir Sign Vs Delhi Transport Corporation). 2023 (XLV) LLR Page – 1127 Del. H.C. (Ramesh Kumar Bawalia Vs Uttar Pradesh Samaj Society & Anr.

this Court is of exclusive opinion that in these Rulings Hon'ble Court discussed if service was terminated on the ground of mere unsuitability or inefficiency or bad performances ground, the same is not bad but a simplicitor one.

Following the golden threads of principles of Law laid down by Hon'ble Apex Court in 2002 (92) FLR 349 Supreme Court in Pavanendra Narayan Verma and Sanjay Gandhi P.G.I. of Medical Sciences it can be safely held that when it is a matter of termination of a probationer, the Court's first task is to apply the taste of "stigma" or the "form" taste – the languages used in the Order, whether stigmatic. Thereafter if the order survives this examination, then "substance" of termination will have to be find out.

According to the argument of Ld. Lawyer for applicant this termination order dated 08-04-2001 was punitive and caste "stigma" on the applicant and could not be sustained without full scale enquiry.

Since the decision **In Parshottam Lal Dhingra Vs Union of India AIR 1958 Supreme Court 36**, Courts have to perform a balancing act between denying a probationer any right to continue in service while at the same time granting him the right to challenge the termination of his service when the termination is by way of punishment.

In fact Court to consider whether termination order was a punishment or not, whether it jeopardise the applicant's career prospect or not. Punishment inter alia means deprivation of a right which the employee otherwise has. If he is on probation or on a temporary appointment he has a right to seek new employment if his appointment on probation is terminated. In present case from evidences on record there is no room for doubt that applicant was terminated in probation period. It is also the case of O.P./Management that he was terminated during probation period. So anything which jeopardises such rights of probationer must be nothing but punishment. If "punishment" was restricted to "evil consequences", the Court's task in deciding the nature of an order of termination would becomes easier. Courts only have to scan the termination order to see whether it ex-facie contains the stigma or refers to a something which stigmatises the probationer concerned, in which case the termination order is to be set aside on the ground that it is **punitive**.

Although strictly speaking, the stigma is implicit in the termination, a simple termination is not stigmatic. A termination order which explicitly states what is implicit in every order of termination of a probationer's appointment is also not stigmatic. In order to amount to a stigma.

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the order must be in a language which imputes something over and above mere unsuitability for the job.

Returning to the facts in present case from the language used in the order of termination letter dt. 18.04.2001 ( **Exhibit-7**) by O.P./Management it is found that in the **Para 6** O.P./Management stated that **mental attitude of the applicant was totally bad and against all norms and principles of employment** and in **Para 8** of O.P./Management concluded that "we would like to state that your inefficiency in service, your **improper mental make up coupled with your misconduct** ... matters/issues of great concern and dissatisfaction to us. As such, we terminate your service forthwith ....."

If a person on probation or on a temporary appointment, he has right to seek new employment. If his appointment or probation is terminated, anything which jeopardizes such right must be considered as punishment. In the present case also scanning the termination order dt. 18.04.2001 (**Exhibit-7**) this Court find it ex-facie to contain such **stigma**. The words used therein refers to mental attitude of applicant as bad against all norms and Principles of employment which stigmatizes the applicant and hence the termination order dated 18.04.2001 by the O.P./Management must be **punitive** and passed without any charge sheet, departmental

enquiry. It amounts to "**evil consequence**" the imputing blemish on the employee's reputation so as to render him unfit for service elsewhere in relation to the post merely occupied by him during probation/temporarily occupied by him.

Even to the best of imaginations such kind of termination order (**Exhibit-7**) cannot be called a simplicitor termination but must be concluded as a termination with stigma on the applicant which ought to have been justified by the O.P./Management by initiating proper lawful proceedings against him before issuing direct termination on 18.04.2001 and without given the applicant any opportunity to defend himself. The termination order issued from the languages issued ex-facie imputed something **over and above mere unsuitability** for job. Rather imputed stigma of bad mental set up, misconduct etc. on the applicant and **this Court holds termination of his service from M/s. Saj Industries Pvt. Ltd. by letter dt. 18.04.2001 as illegal, mala fide and unjustified**. Even one month notice pay was also not sent to the applicant in the same transaction of issuing termination letter dt. 18.04.2001 (**Exhibit-7**) to the applicant.

It is true that there is no whisper within the four corners of evidence of Shri Maity that he took efforts to get a job since after termination but failed. Now the question is whether for want of such pleading and evidence the relief of back-wages would be straight way denied or not. Here, I wish to refer kind observations of Hon'ble Apex Court in i) three judges bench decision of the Hon'ble Supreme Court in the case of **Surendra Kr. Verma Vs C.G.I. Tribunal Tribunal AIR 1981 SC 422**; ii) **Hindusthan Tin Works Pvt. Ltd. Vs The Employees of State Government – 1978 LAB IC 1667**; iii) the latest ruling in the case of **Dipali Gundu Surwase Vs Krantin Junior Adhyapak** reported in **2013 (139 FLR 541 SC)** Hon'ble Supreme Court has very clearly said speaking realistically where termination of service

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is questioned as invalid or illegal and workman has to go through gamut of litigation his capacity to sustain himself throughout the protracted litigation is itself such an awesome factor that he may not survive to see the day when relief is granted.

**Para 33 of the judgement of Dipali Gundu** wherein the Hon'ble Apex Court laid down the proposition that in case of wrongful termination of service, reinstatement with continuity of service and back-wages is the normal rule and ordinarily the employee or workman whose services are terminated and who is desirous of getting back-wages is required to either plead or make a statement before the adjudicating authority or the Court of first instance that he/she was not gainfully employed or was employed on lesser wages. It was further held that if the employee wants to avoid payment of full back-wages then it has to plead and also lead cogent evidence to prove that the workman was gainfully employed and was getting wages equal to the wages he was drawing prior to the termination of service. Once the employee shows that he was not gainfully employed the onus lies on the employer to specially plead and prove that the employee was gainfully employed.

**Para 18 of the judgement of Dipali Gundu's** case wherein it has ruled that when termination of service was held neither proper nor justified, it would not show that the workmen were always willing to serve but if they rendered services they would legitimately be entitled to the wages for the same. It was further held that if the workmen always ready to work but they were kept away therefrom on account of invalid act of employer, there is no justification for not awarding them full back-wages which were legitimately due to them.

Thus viewed from all angles this Court is of considered opinion that as Srikanta Maity was terminated during probation period prior to his confirmation at the O.P./Management which this Court has held illegal, mala-fide, unjustified and as the applicant Srikanta Maity subsequently joined M.C.K.B. Institute of Engineering from where he superannuated, he is entitled to all the back-wages from the date of his termination 18.04.2001 from O.P./Management of M/s. Saj Industries Pvt. Ltd. till the date of his joining at M.C.K.B. Institute of Engineering from where he was superannuated.

The management of O.P./Company is directed to make payment as per Order of this Court to Sri Srikanta Maity within 60 days from the date of publication of this Award after adjustments of the payments to him in terms of interim relief, if any made to him by the management failing which the payment amount will also carry **interest of 8% per annum** from the date of publication of Award till the date of recovery.

Thus these issues are also decided in favour of the applicant.

In result this application U/S 10(1B)(d) of The Industrial Disputes Act, 1947 **succeeds**

on contest.

**This is my Award.**

28-6-24

Judge

1st Labour Court  
Kolkata, W.B.



Let a certified copy of this order U/S 17AA of the Industrial Disputes Act 1947 be given free of cost to the parties and also a copy of the same be sent to Department concerned of Government of West Bengal for necessary action.

Announced in open court on 28.06.2024.

Dictated and Corrected.

(Madhusudan Pal)  
Judge

First Labour Court, Kolkata  
28.06.2024

**Judge**  
**First Labour Court**  
**Kolkata, W.B.**



(Madhusudan Pal)  
Judge

First Labour Court, Kolkata  
28.06.2024

**Judge**  
**First Labour Court**  
**Kolkata, W.B.**