

I/24939/2018

Government of West Bengal
Labour Department
I.R. Branch
New Secretariat Buildings(12th Floor),
1, K.S. Roy Road, Kolkata-700 001

No. Labr./628/(LC-IR)
IR/11L-28/15

Dated, Kolkata, the 24th August, 2018

O R D E R

WHEREAS under the Government of West Bengal, Labour Department Order No. 925-IR/11L-192/98 dated 06/08/2004 corrected by corrigendum vide Order No. 1467-IR dated 16/12/2004 the Industrial Dispute between M/s. Hindusthan Engineering and Industries Ltd., B.P.E.U., N.H.-2, P.O.-Bamunari via Morepukur, Rishra, Dist.-Hooghly and their workman Shri Mritunjoy Dubey, 7/H, Tewari House (Mangal Niketan), B.C. Mukherjee Lane, N.S. Road, P.O.-Rishra, Dist.-Hooghly, PIN-712248 regarding the issue mentioned in the said order, being a matter specified in the Second Schedule to the Industrial Disputes Act, 1947 (14 of 1947), was referred for adjudication to the Judge, First Industrial Tribunal, Kolkata.

AND WHEREAS the Judge of the said First Industrial Tribunal, Kolkata, has submitted to the State Government its Award on the said Industrial Dispute.

NOW, THEREFORE, in pursuance of the provisions of Section 17 of the Industrial Disputes 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/-

Deputy Secretary
to the Govt. of West Bengal

Contd.....P/2


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No. Labr./628/1(5)/(LC-IR)

Dated, Kolkata, the 24th August, 2018

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

1. M/s. Hindusthan Engineering and Industries Ltd., B.P.E.U., N.H.-2, P.O.-Bamunari via Morepukur, Rishra, Dist.-Hooghly, PIN-712248.
2. Shri Mritunjoy Dubey, 7/H, Tewari House (Mangal Niketan), B.C. Mukherjee Lane, N.S. Road, P.O.-Rishra, Dist.-Hooghly, PIN-712248.
3. The Assistant Labour Commissioner, W.B. In-Charge, Labour Gazette; N.S. Buildings, 1, Kiran Shankar Roy Road, Kolkata-700001.
4. The Labour Commissioner, West Bengal, N.S. Buildings(11th Floor), 1, Kiran Shankar Roy Road, Kolkata-700001.
- ✓ 5. The O.S.D., I.T. Cell, Labour Department, with the request to cast the Award in the Department's website.


Deputy Secretary
to the Govt. of West Bengal

No. Labr./628/2(2)/(LC-IR)

Dated, Kolkata, the 24th August, 2018

Copy forwarded for information to :

1. The Judge, First Industrial Tribunal, Kolkata with reference to his Memo. No. 1401-L.T. dated 09/07/2018.
2. The Joint Labour Commissioner (Statistics), West Bengal, 6, Church Lane, Kolkata-700001.

Deputy Secretary
to the Govt. of West Bengal

In the matter of an industrial dispute between M/s Hindusthan Engineering and Industries Ltd., B.P.E.U., N.H.-2, P.O. Bamunari via Morepukur, Rishra, Dist.-Hooghly and their workman Shri Mritunjoy Dubey,, 7/H, Tewari house (Mangal Niketan), B.C. Mukherjee Lane, N.S. Road, P.O. Rishra, Dist.-Hooghly, Pin-712248.

(Case No. VIII-79/2004)

BEFORE THE FIRST INDUSTRIAL TRIBUNAL: WEST BENGAL

PRESENT

SHRI TANMOY GUPTA, JUDGE,
FIRST INDUSTRIAL TRIBUNAL, KOLKATA

A W A R D

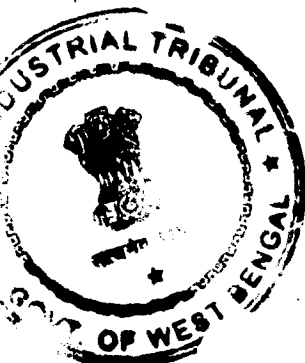
The instant case arose out of an order of reference vide G.O. No. 925-IR/192/98, dated 06.08.2004/17.08.2004 corrected by corrigendum vide Order No. 1467-IR/111L-192/98, dated 16.12.2004/21.12.2004 by which an industrial dispute between M/s Hindusthan Engineering and Industries Ltd., B.P.E.U., N.H.-2, P.O. Bamunari via Morepukur, Rishra, Dist.-Hooghly and their workman Shri Mritunjoy Dubey,, 7/H, Tewari house (Mangal Niketan), B.C. Mukherjee Lane, N.S. Road, P.O. Rishra, Dist.-Hooghly, Pin-712248 has been referred to this Tribunal for adjudication.

The issues specified in the order of reference for adjudication are as follows:

I S S U E (S)

1. Whether termination from service of Shri Mritunjoy Dubey with effect from 02.05.03 by the management of M/s. Hindusthan Engineer & Industries Ltd. is justified?
2. To what relief, if any is he entitled?

The case made out by the workman in the written statement filed by him is that the office of the company is situated at B.P.E.U, NH-2, P.O. Bamunari via Morepukur, Dist. Hooghly having its head office situated at Modi Buildings, 27, R.N. Mukherjee Road, Kolkata-700 001. A number of employees are employed in the company but the management of the company unfortunately do not follow the laws of the land particularly relating to the labour matters. It used to indulge in unfair labour practice and as such, general workers employed therein are subject to untold sufferings and hardship for a long period. At the material point of time appointment of the present workman the name of the company was M/s Hindusthan Development Corporation Ltd. which was subsequently changed to M/s Hindusthan Engineering & Industries Ltd. having same address of the head office and both the said two companies are same and one having no separate legal entity. The concerned workman was appointed in the company on 24.10.1986 on permanent basis with the designation of Supervisor and till



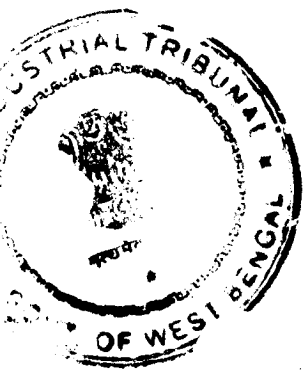
the date of termination on 02.05.2003 the designation of the concerned workman was never changed. The workman used to work in moulding shop in the Bamunari plant of the company at the time of termination of his service. Before appointed on permanent basis he was taken into employment on casual basis on 11.05.1986. After rendering satisfactory performance, he was made permanent. The regular job of the concerned workman was to operate Jolter moulding machine and he also used to work as Operator in mould cooling line and knockout machine. Apart from that the concerned workman used to take hardness moulds and record them in a register kept for the said purpose. He had no subordinate staff of the company. Neither he had any power to appoint/terminate anyone in the company nor he had any power to initiate any disciplinary action against any employee of the company. The workman has no power to sanction leave and/or overtime in favour of the employee and even he had no power to recommend any such thing. The workman had no power to take any decision whatsoever independently in his area of work. At no point of time, the concerned workman was allowed to perform his duties in supervisor capacity because no such power and responsibilities was given by the Foreman and Superintendent of moulding shop. The workman had no power to judge performance of any worker of the company. Suddenly, the service of the concerned workman was unlawfully terminated w.e.f. 02.05.2003 by invoking Cl.No.7 of the appointment letter dated 14.10.1986 and along with the termination letter one cheque of Rs. 4822/- was sent being one month's salary. No retrenchment compensation as per Sec. 25F of the Industrial Disputes Act was paid to the workman at the time of termination of service. After such order of termination, the workman time and again approached to the management for withdrawal of such illegal termination order and to allow him to join in service as usual. But the management did not pay any heed to the same. Finding no other alternative the workman sent representation in writing on 16.05.2003 making the same request to the company, but the management did not give any reply thereto. Then the workman was forced to seek intervention of D.L.C., Serampore, Govt. of West Bengal in writing on 27.05.2003. The said D.L.C. held conciliation meetings in accordance with law, but ultimately failed due to uncompromising attitude taken by the management of the company in the conciliation proceeding. The workman along with Ashok Kr. Pandey, Bijoy Kr. Mohanti and S.K. Mishra and other made strong protest in writing against the management for wrongful termination of their co-employee in the month of February, 2003 and as such, the company became furious and sacked them from service as a measure of punishment. Due to financial hardship the workman acknowledged the cheque amounting to Rs.4822/- but he has not withdrawn the amount towards P.F. and gratuity from the company. The workman could not secure any other alternative employment and facing



tremendous financial stringency and passing his days along with the member of his family in great hardship.

On that score, the workman has prayed for an award holding the order of termination is unjust and illegal and for his reinstatement with full back wages and other consequential benefits.

The company has contested the case by filing written statement contending, inter alia, that the instant reference is misconceived, erroneous and not maintainable in fact and/or in law. The concerned employee, Mritunjoy Dubey is not a workman within the meaning of Sec. 2(s) of the Industrial Disputes Act, 1947; the said employee had been working as Supervisor and drawn the salary of more than Rs. 1600/- per month and as such, he is not covered by the Industrial Disputes Act, 1947 and as such the appropriate Government had made the instant reference erroneously. It is contended that the said Shri Mritunjoy Dubey vide his application dt. 17.05.86 applied to the company for the post of moulding supervisor mentioning his bio data stating therein inter alia that he had been working as supervisor with M/s. Roshan Battery. After proper interview the employer vide a letter dt. 14.10.86 offered him appointment to the post of supervisor in the Engineering unit at Bamunari plant against a consolidated salary of Rs. 1000/- per month stating therein other terms and conditions of the offer. The said ex-employee agreed and accepted the offer letter and he joined the company accordingly. The nature of duty of the concerned ex-employee was to allot and supervise the job of the workmen, to supervise and check performance of work used to be done by the workmen under him and report to the management about daily production through his production report. The concerned ex-employee was also responsible to guide and help the performance of the workers working on machine, to determine and select a number of workers who would continue the production and thereafter, he had to oversee the process of production and ensure its quality and to report to the management of the company relating to the quality condition and quantum of production. He was linked between the management and the workers. The initial salary offered to the ex-employee was Rs. 1000/- per month. He was entitled to get LTA for himself and his family as per rules which was not provided any workman of the company. The service of the concerned ex-employee was also transferable unlike other workman and the concerned employee had been drawing other benefits enjoyed by the administrative and supervisory staff of the company. The workman of the company are paid on the basis of 'no work no pay' (no wage for weekly off days) whereas the concerned ex-employee had been paid salary in full month including weekly off days. Since he was a supervisor and working in the supervisory capacity his salary was deposited in the bank account like other officers, supervisor and managerial staff. Whereas workers salary is being paid directly to them from office.



Because of financial constrained and acute financial crunch, the company/employer as a measure of austerity decided to reduce the staff and consequently, terminated the service of the concerned employee in terms of Clause-7 of letter of appointment w.e.f. 02.05.2003 and remitted one month's salary to him as per terms of the aforesaid Clause-7 of the letter of appointment. At the time of termination of the concerned ex-employee he had been drawn salary of Rs. 4822/- per month. That unlike other workmen the concerned employee had been enjoying 21 days Earned Leave, 7 days Casual Leave in a year. All such matter was brought to the notice of the conciliation officer but he in a biased mind ignored all those points and submitted an erroneous failure report to the appropriate Government based upon which the instant reference has been made.

In Part-C of the written statement all the averments made by the said Mritunjoy Dubey in his written statement have been denied by the company. It is stated that the workman working in the department were subordinate staff of the ex-employee. He had the power to and authority to recommend leave as well as over time in favour of the employees and he has full authority to take decision independently in his area of work. He had full authority to judge the performance of the workmen of the company. Since he was not a workman within the meaning of Sec. 2(s) of the Industrial Disputes Act, the question of compliance of Sec. 25F of the Industrial Disputes Act, 1947 does not arise.

On that score, the company has prayed for passing an award holding that the reference is bad and not maintainable and/or the employee is not a workman within the meaning of Sec. 2(s) of the Industrial Disputes Act, 1947 and as such, he is not entitled to any relief.

Decision with reasons

In support of his case the workman Mritunjoy Dubey examined himself as WW1 and one Bijoy Bahadur Sing as WW2 and they have duly been cross examined by the other side. The company, on the other hand, examined two witnesses, namely, Dindayal Yadav (CW1) and Anup Kr. Dey (CW2). Those witnesses were also cross examined by the other side. The parties led documentary evidence besides the oral evidence. The documents produced by the workman has been marked as exhibit-1 to exhibit-5 and the documents produced by the company has been marked as exhibit-A to exhibit-G series.

The core issue as mentioned in the order of reference is whether the termination of service of Mritunjoy Dubey w.e.f. 02.05.2003 by the management of M/s. Hindusthan and Engineering Ltd. is justified.



As it appears from the trend of evidence both oral and documentary it appears that the parties have mostly confined themselves on the point as to whether said Mr. Dubey was a 'workman' or not within the meaning of section 2 (s) of the Industrial Disputes Act, 1947. The Ld. counsel of the respective parties have also during course of hearing of argument confined themselves on that point. In this situation it would be appropriate to decide first as to whether said Mr. Pandey was a workman or not. In my considered opinion until and unless it is established that Mr. Pandey is a 'workman' within the meaning of Section 2 (s) of the Industrial Dispute Act, 1947, the relevant issue involve in the order of reference cannot be adjudicate properly.

Let us now decide on the basis of evidences and materials on record whether said Mr. Mritunjoy ^{Dubey} ~~Dubey~~ was a 'workman' in the company within the meaning of Section 2 (s) of Industrial Dispute Act, 1947 at the time when he was terminated from service.

The applicant while examining himself as WW1 has stated in his evidence in chief that he joined the service of the company on 11.05.1986 as casual and he got the letter of appointment dated 14.10.1986. He produced his letter of appointment (exhibit-1). In the written statement in paragraph no. 2 filed by him it has been stated by the applicant that he was appointed in the company on 24.10.1986 on permanent basis by an appointment order dated 14.10.1986 with designation of "Supervisor" and upto the date of termination such designation was not changed. The company has produced the application for employment submitted by Mr. Dubey for the post of Moulding Supervisor. So it has become an admitted fact that Mr. Dubey was appointed in the opposite party company as Supervisor.

Now, to determine and decide whether Mr. Dubey was a 'workman' or not in the company it would be relevant to look into the provisions of Section 2 (s) of Industrial Dispute Act, 1947 which runs as follows: -

"Sec 2(s):- 'Workman' means any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical and supervisory work for hired and reward, whether the terms of employment by express as implied, and for the purpose of any proceeding under the 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 as retrenchment has led to that dispute, but does not include any such person-----

Who is subject to the Air Force Act, 1950 (45 of 1950), or the Army Act, 1950 (46 of 1950), or Navy Act, 1957 (62 of 1957); or

(ii) Who is employed in Police service as an officer or other employee of a Prison, as



- (iii) Who is employed mainly in a managerial or administrative capacity;
- (iv) Who being employed in supervisory capacity, draws wages exceeding ten thousand per mensem or exercises, either by nature of the duties attached to the office or by reason of the power vested in him, functions mainly of a managerial nature."

In the instant proceeding before us Mr. Dubey as per his own admission made in the written statement he has appointed in the company on 24.10.1986 on permanent basis by appointment order no. F-51/EU-BP/MLL dated 14.10.1986 with the designation of "Supervisor" and such designation was never changed.

It is clear from the provision of Clause-iv of Section 2(s) of the aforesaid section of the Industrial Disputes Act 1947 that a person who employed in a supervisory capacity and draws wages exceeding Rs. 1600/- per month (after amendment w.e.f. 15.09.2010 Rs. 10,000/-) is not a workman. Admittedly, in the instant case Mr. ^{Dubey} ~~Dubey~~ used to get salary more than the aforesaid ceiling limit. Mr. Dubey while examining himself as WW1 has admitted during cross examination that at the time of termination of service, his monthly salary was Rs. 4,822/- only. So, it is clear from the materials that on the date of termination of service the monthly salary of the workman was above the ceiling limit. It has specifically been provided in Clause-IV of Section 2(s) of the Industrial Disputes Act, 1947 that any person who works in a supervisory capacity and draws wages exceeding 1600/- per month is not a "workman".

It is argued by the Ld. Advocate for the workman that it is not the nomenclature of the post but the nature of duties is the criteria to determine whether the person employed was/is the 'workman' or not. In this connection Ld. Advocate for the workman has placed reliance on some case laws as reported in 1969 (18) FLR 186 (Ananda Bazar Patrika (P) Ltd. vs the workman, 1985 (ii) LLJ 401 (Ark—Govind Raj Rao vs Ciba Geigy of India Ltd. Bombay); 2005 (107) FLR 345; 2000 LLR 895 (Kulwant Sing vs M/s Reliance Petrochemicals Ltd. and another) and 2010 LLR-926 (Chandra Sekhar Chintamani Vidya vs National Organic Chemical Ltd.

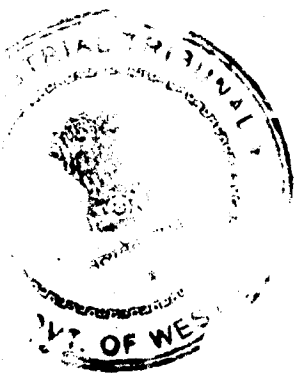
It is argued by the Ld. Advocate appearing for the company is that Mr. Pandey, the applicant cannot be considered as a 'workman' in view of the Provisions of Clause-iv of Sec 2 of Industrial Disputes Act, 1947 since he was appointed and posted as supervisor and drawing monthly salary more than the ceiling limit when he was terminated. It is argued further besides such aspect it would be evident from the evidences and material on record that said Sri ^{Dubey} ~~Pandey~~ used to perform the work in supervisory capacity for which he was appointed. Accordingly, it is argued that considering the post which Sri ^{Dubey} ~~Pandey~~ used to hold and also the nature of job which he used to perform it can safely be concluded that he was not a workman. In support of his contention the Ld. Counsel for the company has placed reliance on the case laws as

reported in A.I.R 1966, SC 305 (All India Reserve Bank Employees Association and Another vs Reserve Bank of India and another); 2000 (85) FLR 417 (Harish Ghularam Zode vs Md./ Vacuum Plant and Industries; AIR 1971 S.C. 922 (Burmah Shell oil storage and distributing company of India, Ltd and other vs the Burmah Shell Management Staff Association and others; 1992 (ii) LLJ 387 (Srikant Vishnu Pal..... vs Presiding officer, First Labour Court and another.

In view of such arguments as placed by the Ld. Advocate of the respective parties and the principles of law set forth in those reported cases, it would be appropriate to consider and evaluate the evidence as adduced by parties.

The applicant Sri Mritunjoy Dubey examined himself as WW1 and his cross examination was completed on 28.12.2005 and date was fixed for recording evidence of company's witness. The company examined one Din Dayal Yadav and his evidence-in-chief commenced on 26.09.2007 and his cross examination was completed on 04.09.2008. On perusal of the record it appears that after examination and cross examination of WW1 is over, the evidence of company witness, namely, CW1 and CW2 was recorded and the cross examination of CW2 was completed on 10.09.2010 and a date was fixed for hearing of argument. At that juncture an application was filed for the applicant Sri Dubey for allowing him to adduce further evidence which was granted by this tribunal and thereafter examination of WW2 was done and his cross examination was completed on 07.12.2012. Besides such oral evidence the parties have also relied on some documentary evidence. For the applicant Shri Dubey, five documents were marked as exhibit 1 to 5 namely, Appointment letter dated 14.10.1986, Termination letter dated 02.05.2003, Letter issued by Sri Dubey to the company dated 18.05.2003, Letter of Sri Dubey address to the Deputy Labour Commissioner dated 10.07.2003 respectively. From the side of the company some documents are marked as exhibit. Amongst those documents exhibit-A is the application for employment submitted by said Sri Dubey dated 18.07.1986. Exhibit-B is the closing production report of the company dated 05.10.2002. Exhibit-C series are the extra time work requisition maintain by the company for different dates. Exhibit-D is the tripartite engineering wage settlement dated 10.02.97 in respect of private sector unions. Exhibit-E series are the wage slips of the workman working under the company. Exhibit-F is the document showing deployment of the workmen dated 29.11.2002 and exhibit-G series are the production report of Jolta section in the company.

WW1 has stated that he joined the service of the company on 11.05.1986 as casual and he got the letter of appointment dated 14.10.1986. He has further stated that at that time the name of the company was Hindusthan Development Corporation Ltd.. Admittedly such name was subsequently changed as M/s. Hindusthan Engineering &



Industries Ltd.. There is no dispute on that point. The letter of appointment has been marked as exhibit-1. WW1 has stated further that his designation was Supervisor and he was attached to the moulding shop. During his further evidence-in-chief WW1 has made some statement to establish that he did not perform in supervisory capacity. The witness was thoroughly cross examined by the other side. During cross examination, WW1 has admitted that he submitted an application to the company on 11.05.1986 seeking job and the prescribed form of "application for employment" was filled in by him. Said application from has been marked as exhibit-A. My attention was drawn by the Ld. Advocate for the company with the statement made by WW1 wherein WW1 has stated that before acceptance of job in Hindusthan Engineering & Industries Ltd., he was employed in M/s. Rosan Battery and there he was Store Keeper. It is submitted by the Ld. Advocate for the company that such statement as made by the workman is incorrect which would be evident from the exhibit-A i.e. the application for employment submitted by Sri Mritunjoy Dubey to the company. It appears that in column no.-C of the said application under the head "Job experience and ability" it is stated by Sri Dubey that he used to work in Rosan Battery company as supervisor. So, it is clear that such statement made by WW1 in his evidence-in-chief that he was working as store keeper in M/s. Roshan Battery company is absolutely untrue and it seems to me that to justify his case he made such statement. From said exhibit-A, application for employment submitted by Sri Dubey wherein it has categorically been mentioned that he applied for the post of moulding supervisor. From the letter of appointment (exhibit-1) it appears that he was appointed as supervisor in the Engineering unit at Bamunari Plant of the company. In fact, said exhibit-1 is an offer letter given to Sri Dubey which has issued by the President of Engineering unit of the company. There is no denial to the fact that said Sri Dubey accepted such offer given to him and joined to the company as supervisor. Furthermore, it appears from exhibit-A that on considering all aspect of the matters the President of the company recommended for appointment of Mr. Dubey in the company.

It is then contended by the Ld. Advocate for the company that in exhibit-1 i.e. offer letter for appointing Sri Dubey certain terms and conditions have been incorporated therein. In Clause-3 of said offer letter it has been categorically mentioned that Sri Dubey will be governed by the rules and practices of the company as are applicable to other staff of his rank. In order to justify the stand taken by the company that Sri Dubey was actually working in supervisory capacity, reliance is placed on clause no.-4 of exhibit-1 where it has been mentioned that Sri Dubey will have to observe secrecy of all affairs of the company as may come to his knowledge while discharging his duties. It further appears from Clause No -8 of exhibit-1 as mentioned therein that the service of Sri Dubey is liable to transfer at the discretion of the management to any



of the personal branch and/or establishment of the company or which may be ^{opened} upon subsequently during the tenure of service of Sri Dubey. It is argued by the Ld. Advocate for the company that all those clauses which are found place in exhibit-1 clearly suggest that Sri Dubey was not a workman as in the case of appointment to any person in the post of workman all such terms and conditions are not incorporated. On careful perusal of the said exhibit-1, I find that Sri Dubey agreed to accept the job of supervisor on such terms and conditions by putting his signature over the said exhibit-1. During his cross examination he has categorically admitted that he accepted the terms and conditions in Clause-7 of exhibit-1. He has also admitted that his service was a transferable one. While answering the question during cross examination Sri Dubey (WW1) has stated that the service of workman in the company too was transferable. However, he stated that he has no document in support of his said contention. During his further cross examination WW1 has stated that all the workman working in the Bamunari Plant of the company are the members of the Union to justify his claim that he was a workman. He stated during further cross examination that he is also a member of the union. But he can not remember the name of union. From those statements came out during cross examination of WW1, it is clear that he made futile attempt to make out a case to establish that he was a workman. When a person is claiming that he was a member of a union, it is expected that he will be able to tell the name of the union. In one part of his cross examination the WW1 has stated that he came to know about the vacancy in the company from the Personnel Manager and he applied for the post of Store Keeper. Such statement clearly contradicted the contents of exhibit-A i.e. the application for employment submitted by Sri Dubey to the company wherein he has categorically mentioned that he applied for the post of "Moulding Supervisor". There is no denial to the fact that Sri Dubey himself filled in the relevant columns of the said application. Then it appears from the statement of WW1 which has come out during his cross examination wherein he has stated that he used to get his monthly salary through bank and the officers, members of the staffs used to get their salary through bank. He has admitted further that the workman used to get their wages not through bank. During cross examination CW2 has stated that upto lower division clerk level, salary payment is made by cash. Such statement which has come out from the mouth of WW1 and cross examination of CW2 practically support the contention of the company that Sri Dubey was not a workman. Had he been a workman certainly, he would not have been paid his salary through bank.

Apart from all above discussed factual aspects, it is argued by the Ld. Advocate for the company that the workman gets over time whereas Sri Dubey never claimed any over time and also has failed to prove that he ever enjoyed overtime. Accordingly, it is



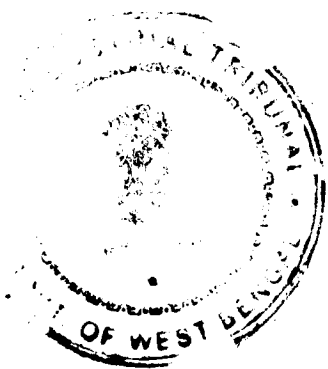
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argued that this aspect makes it clear that Mr. Dubey ^{did not claim} ~~claimed~~ any over time during his service tenure as he was working in the supervisory capacity.

Then from the evidence of CW2 we find that he has stated that both the supervisors and workman are getting L.T.A. and the workman are getting Rs.100/- per year as LTA as per engineering wage Board settlement and the officer and supervisors are getting one-month salary as LTA. During his cross examination on 11.11.2009 he has stated that in terms of appointment letter, supervisors are getting their LTA for one-month salary. The WW1 himself in his evidence has not raise any dispute on that point.

Now, admittedly Sri Dubey joined the service of the company on permanent basis on 14.10.1986 (Vide Ext.-1) with a designation of Supervisor and his service was terminated w.e.f. 02.05.2003 by a letter of termination vide (ext.-2). Sri Dubey though claimed himself to be a workman, he has admitted in his evidence-in-chief that he encashed the cheque sent to him by management along with the letter of termination (ext.-2). The WW1 has stated that as he was under extreme financial stringencies he encashed the said cheque. It appears from exhibit-3 that shortly after his termination from service, Sri Dubey submitted a representation to the Assistant Vice President (P) of the company praying for withdrawal of termination letter and claiming his salary in full. Sri Dubey also on 27.05.2003 submitted a representation (ext.-4) to the Deputy Labour Commissioner, Govt. of West Bengal, Sreerampore, Hooghly, requesting him to intervene in the matter. A copy of the letter (ext.-3) which he wrote to the Assistant Vice President of the company was enclosed with said exhibit-4. Curiously, I find that while submitting such letter to the Assistant Vice President of company and the Deputy Labour Commissioner, Sri Dubey did not claim himself to be the workman. Therein not a single word has been put in by Sri Dubey in that regard. Now for the first time before this tribunal by way of filing written statement, Sri Dubey has claimed himself to the workman. In my view Sri Dubey knowing fully about his appointment as supervisor and his doing job in the company in Supervisory capacity, purposely made an attempt to describe himself as workman and thereby to make out an industrial dispute.

The company witness No. 1 Dindayal Yadav has stated hat Sri Dubey used to perform the duty to shift in-charge and he used to perform the supervision of Jolter machine. He stated further that during that time seven permanent employees were engaged in the Jolter machine under the supervision of Mr. Dubey. He has further stated that Sri Dubey used to look after the quality aspect Jolter products and also used to deploy the workman at the jolter machine in his shift. The witness stated further that during that time production target was 50 moulds per shift and Mr. Dubey used to look after the target achieved by the workman in the jolter machine. Exhibit-B is the closing production report of the company with reference to the said document. CW1 has stated.



then the workman. He has further stated that in case of break down, the requirements of raw materials, the shift supervisor is responsible and Sri Dubey used to perform all these types of jobs as shift supervisor. The witness relying upon the exhibit-G series has stated that these are the production reports dated 31.12.2002, 23.03.2003, 29.11.2002 and 01.01.2003 in respect of Jolter section and knockout section which bears the signature of Sri Dubey as shift supervisor. Authenticity and genuinity of those documents have not been challenged specifically during the cross examination. It is true that the said CW2 joined the service in the company in the month of December 2004 i.e. sometime after the termination of Mr. Dubey from service on 02.05.2003. But for that reason, his testimony cannot be ignored. The said witness has stated that he joined the service of the company as Senior Manager (Personnel) and he is responsible for personnel, administration and operational aspect of the company and aware of the job performed by each and every employee. During his cross examination he has stated that what he has stated before this tribunal he has stated so on the basis of record. That being so, he is very much competent person to make such statement which has come out in his evidence-in-chief since he has adduced evidence on the basis of papers and documents lying with the company.

On careful consideration of the testimony of CW1 and CW2 which has discussed earlier, I find that statement is consistent and no vital contradiction could be taken out by way of cross examination of those two witnesses. The statement of those two witnesses coupled with documentary evidences it is abundantly established that Sri Dubey used to perform his job in the company in Supervisory capacity being appointed as supervisor.

It appears that the cross examination of said CW2 was completed on 10.09.2010. Long thereafter, the applicant Mr. Dubey examined one Bijay Bahadur Sing as WW2 on 27.02.2012 on taking leave from this tribunal. The said witness has stated that he was attached with the company on and from 2nd January 1988 and till 17th February 2003 and he was functioning as Head of the Department of Moulding and his designation was Superintendent. During his examination-in-Chief he could not say what was the designation of Sri Dubey. During evidence-in-chief the witness has stated that the workers whose named find place in exhibit-B were not under Mr. Dubey and said exhibit bear the signature of Dindayal Yadav as Departmental head. He has then stated that in exhibit-C & C/3 his signature appears as departmental head. He then stated that the workers whose names find place in exhibit-F were not working under Mr. Dubey but under Dindayal Yadav who signed the same. He has stated that the workers whose names appeared in those exhibited documents for the company used to work under Dindayal Yadav and not under Mr. Dubey. On careful consideration of



that from the said closing production report dated 05.10.2002 it transpires the 13 workmen were deployed under Mr. Dubey. The witness has stated further that the said documents bears the signature of Mr. Dubey as supervisor and he (witness) himself as departmental in-charge. He has further stated that said exhibit-B belongs to the hand writing of Mr. Dubey. He has further stated that in exhibit-B columns no. 1,2& 3 are relating to quality of moulds and cores. Exhibit- C is the extra time requisition slip. The witness CW1 has stated that the supervisor used to prepare the production report. Pointing out to exhibit-C series of different dates in respect of extra time work requisition slip said witness has stated that those slips were prepared by supervisor and the supervisor will decide the number of workman required for extra time work and for how many hours. He has then stated that those extra time work requisition slip were written by Mr. Dubey and approved by Department-in-Charge by putting his signature. The said CW1 has stated further that from exhibit-C/3 it would appear that Mr. Dubey took decision for allotting over time to R.N.Chowdhury in place of Ajay Santra. From the statement of CW1 which has come out during his cross examination on 05.08.2008 it appears that he stated that from the production book dated 29.11.2002, it appears that Mr. Dubey has allotted these two workmen namely, Suren Shaw and Sk. Abdul Rauf to operate knockout machine and Mr. M. Dubey signed the same as supervisor and he himself as Departmental-in-charge. The witness has stated further during cross examination that it was the practice that Mr. Dubey wrote the names of two workmen and he engaged the same and thereafter he signed ^{as} supervisor in the knockout details. Relying on exhibit-F the witness has stated that Mr. Dubey deployed the workman under him. So, it is clear that authenticity and genuinity of those documents of which the company relied have not been challenged by the Mr. Dubey. In view of such un-challenged documentary evidences coupled with the oral and testimony of CW1, it is clear that Sri Dubey used to perform the supervisory work in the company in which he was appointed.

CW2 Anup Kr. Dey has stated that Mr. Dubey was a supervisor in the company in moulding Department and used to work as shift supervisor and also used to perform ^{his} work in Jolter section, knockout section. The witness said further that the main job of Mr. Dubey was to engage man power working under him in that particular area to gainfully use other in the machine to ensure optimum utilisation of the man power and machine, intending materials from the store whenever required, keeping a workman on over time whenever felt necessary from production point of view, recommending leave to the workman recording production at the end of the shift, ensure quality, in case of less production to ascertain the reasons thereof, and to maintain discipline of the section etc. The witness has stated further that the administrative set up of Moulding Department are as follows: - Head of the Department as Superintendent, thereafter, Supervisor and



The company has also placed reliance on some case laws reference of which has been quoted earlier. In the case as reported in AIR 1971 SC 922 (Burmah Shell Oil Storage and Distributing Company of India Ltd. & others Vs the Burmah Shell Management Staff Association & others) in paragraph no.-6, it has been observed by the Hon'ble Court that –“Frequently, however, an employee is required to do more than one kind of work. He may be doing manual work as well as supervisory work or he may be doing clerical work as well as supervisory work, ~~or~~ He may be doing technical work as well as clerical work. He may be doing technical work as well as supervisory work. In such cases, it would be necessary to determine under which classification he will fall for the purpose of finding out whether he does or does not go out of the definition of ‘workman’ under the exceptions. The principle is now well settled that, for this purpose, a workman must be held to be employed to do that work which is the main work he is required to do, even though he may be incidentally doing other type of work”.

In the said reported cases the Hon'ble Apex Court has been pleased to quote the principles of law as laid down in an earlier judgement passed by the Hon'ble Apex Court in the case of Ananda Bazar Patrika Pvt. Ltd.- Vs – its workman, as reported in (1969) II Lab LJ 670 (SC). The Ld. Advocate for the applicant while placing his argument relied upon in the said case laws is relevant portion of which have been quoted earlier.

In paragraph no. 12 of the judgement in the case of Burmah Shell Oil Storage and Distributing Company of India Ltd. & others -Vs - the Burmah Shell Management Staff Association & others, it has further been observed by the Hon'ble Court that –“

.....On the face of it, the major part of his duties, thus, consists of supervisory work rather than his own personal technical work which is only incidental to the main work of repair, servicing, maintenance and fabrication inasmuch as, in his supervisory capacity, he diagnoses the defects and later on inspects the work done, makes his personal test and certifies that it has been properly carried out”. From subsequent paragraph no. 13 of the said judgement it is revealed that the company in the said case took the plea that claimant is not a ‘workman’ u/s 2(s) but the tribunal rejected the said plea on the ground that the Transport Engineer was employed because of his technical knowledge and even in supervising the work of other workmen, he was required to make use of his technical knowledge. The Hon'ble Court observed that the tribunal misdirected itself the Hon'ble Court has been pleased to observe that – “Despite these facts, the Tribunal held the Transport Engineer to be a workman on the ground that he was employed because of his technical knowledge and even in supervising the work of the workman, he is required to make use of his technical knowledge, and



the documents, I find that in exhibit-C series, some one else signed for Mr. Dubey. In exhibit-F, I find there is signature of Mr. Dubey as shift supervisor. In exhibit-G series also I find that there appears the signature of Mr. Dubey as shift supervisor. During cross examination he (WW2) has stated that he still attached to the service of the company as his service matters is subjudice. He has admitted that he is not functioning as head of the department of Moulding and he is not connected with any working matter of the company. He then admitted that till 16.02.2003 he was allowed to work as head of the Department of Moulding and after that he was not allowed to work in the Industry. He then stated that he has not produced any document to show that he had rendered service as Superintendent in the company and also as head of the Department of Moulding. As already stated that the applicant Mr. Dubey examined said WW2 on 27.02.2012 i.e. long after the cross examination of CW2 is over on 10.09.2010. On careful consideration of the matter I have every reason to believe that Mr. Dubey decided to examine said WW2 Sri Bijay Bahadur Singh at a belated stage only to nullify the testimony of CW1 and CW2. The statement which has come out from the mouth of said WW2 appears to be inconsistent with the material on record. On due consideration, I find no earthly reason to place any reliance on such testimony of WW2.

As stated earlier that both parties have relied on some case laws and reference of those case laws have already been mentioned in the earlier part of this award. From the observations as made by the Hon'ble Court in those reported cases mentioned earlier as relied upon by the Ld. Advocate for the applicant it appears that the Hon'ble Court has been pleased to observe that mere nomenclature of the post is not of much consequences and what is to be seen is the nature of the duties performed by the employee concern. In the case as reported in 1969 (18) FLR 186, it has been observed that the Hon'ble Court that –“the question, whether a person is employed in a supervisory capacity or on clerical work, in our opinion, depends upon whether the main and principle duties carried out by him are those of a supervisory character. or of a nature carried out by the clerk. If a person is mainly doing supervisory work, but, incidentally or for a fraction of the time, also does some clerical work, it would have to be held that he is employed in supervisory capacity, and, conversely, if the main work done is of clerical nature, the mere fact that some supervisory duties are also carried out incidentally or as a small fraction of the work done by him will not convert his employment as a clerk into one in supervisory capacity”. Same views have been taken by the Hon'ble Courts in other reported cases relied upon by the Ld. Advocate of the applicant, the reference of which has been quoted earlier.



consequently, rejected the plea of the company that the Transport Engineer can not be said to be employed to do supervisory work. It appears to us that, in giving this decision, the Tribunal misdirected ~~himself~~ ^{itself}. Even if the Transport Engineer uses his technical knowledge, it is used primarily for the purpose of supervising the work done by the skilled manual labourers who carry out the actual repairs, do the servicing or maintenance or complete the fabrication. The other supervisory duties, mentioned above, have been ignored by the Tribunal.....".

In the instant case before us Sri Dubey applied for the post of Moulding Supervisor and he was appointed in the post of supervisor in the engineering unit (Bamunari Plant) of the company. From the evidences which have discussed earlier it ^{has} abundantly established that Sri Dubey used to perform the duty of shift-in-charge and also the job of supervision of Jolter machine. It has also come out from the evidences on record – both oral and documentary that number of employees used to work in the Jolter machine under the supervision of Mr. Dubey. The other duties which he used to perform clearly suggest that Mr. Dubey was engaged in supervisory work in the company for which he was appointed.

Therefore, considering all aspects of the evidences and materials on record and the reasons stated thereon, I am constraint to hold that Sri Dubey was appointed as supervisor and he actually performed the job in supervisory capacity in the company and as such he can not be considered to be a workman, within a meaning of Section 2(s) of the Industrial Dispute Act and as such he can not raise any industrial dispute. Consequently, I hold that the instant reference is not maintainable in law and this tribunal can not exercise its jurisdiction to adjudicate the issues framed in the order of reference.

This is my A W A R D.

Dictated & corrected by me.

Salt T. Gupta

Judge.

Salt T. Gupta

Judge,
First Industrial Tribunal
Kolkata.
26.06.2018

JUDGE
FIRST INDUSTRIAL TRIBUNAL
WEST BENGAL

