

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

No.Labr/...../1025/(LC-IR)/22015(16)/332/2019

Date : 29/12/19

ORDER

WHEREAS an industrial dispute existed between M/S Delta Ltd. Manickpur, Sakrail, Howrah and Shri Jagadindu Naskar, Uttarpur,, P.O. Sarenga, P.S. Sankrail, 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(2A) of the Industrial Dispute Act, 1947 (14 of 1947) to the Judge,. Second Industrial Tribunal, specified for this purpose under this Deptt.'s Notification No. 1085-IR/12L-9/95 dated 25.07.1997.

AND WHEREAS, the Judge of the said 2nd I.T. heard the parties under section 10(2A) of the I.D. Act, 1947 (14 of 1947) and framed the following issue dismissal of the workman as the "issue" of the dispute.

ISSUES

1. Whether the termination of services of Shri Jagadindu Naskar w.e.f. 17.10.2006 by the management of M/s. Delta Ltd. by way of refusal of employment is justified or not,
2. To what relief, if any, the workman entitled ?

AND WHEREAS the said Judge Second Industrial Tribunal has submitted to the State Government its Award under section 10(2A) of the I.D. Act, 1947 (14 of 1947) on the said Industrial Dispute.

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/-

Deputy Secretary
to the Government of West Bengal

: 2 :

No. Labor/1025/1(5)/(LC-IR)

Date 2/12/19

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

1. M/S Delta Ltd. Manickpur, Sakrail, Howrah
2. Shri Jagadindu Nakar, Uttarpara,, P.O. Sarenga, P.S. Sankrail,
3. The Asstt. Labour Commissioner, W.B. In-Charge, Labour Gazette.
4. The O.S.D. & E.O. Labour Commissioner, W.B., New Secretariat Buildings, (11th Floor), 1, Kiran Sankar Roy Road, Kolkata - 700001.
- ✓ 5. The O.S.D., IT Cell, Labour Department, with the request to cast the Award in the Department's website.

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Deputy Secretary

No. Labor/1025/2(2)/(LC-IR)

Date 2/12/19

Copy forwarded for information to :-

1. The Judge, Second Industrial Tribunal, West Bengal, with respect to his Memo No. 1483 dated 18.11.2019
2. The Joint Labour Commissioner (Statistics), West Bengal, 6, Church Lane, Kolkata - 700001.

Secretary

Deputy

In the matter of an industrial dispute between M/s. Delta Ltd., Manickpur, Sakrail, Howrah & Shri JagadinduNakar, Uttarpara, P.O. Sarenga, P.S. SAnkrail, Howrah.

(Case No.VIII-12/2011)

BEFORE THE SECOND INDUSTRIAL TRIBUNAL: WEST BENGAL.

PRESENT

SHRI SRIBAH CHANDRA DAS, JUDGE,

SECOND INDUSTRIAL TRIBUNAL, KOLKATA.

Date of passing award – 31.10.2019

A W A R D

This case arose by way of order of reference vide No. 209-I.R./IR/11L-51/10 dt. 17.02.2011 by order of the Governor signed by Deputy Secretary to the Government of West Bengal, Labour Department, I.R. Branch, Writers' Buildings, Kolkata – 1 mentioning that an industrial dispute exists between M/s. Delta Ltd., Manickpur, SAnkrail, Howrah and their workman Jagadindu Naskar, Uttarpara, P.O. – Sarenga, P.S. – Sankrail, Howrah relating to the issues as mentioned later being a matter / matters specified in the second schedule to the Industrial Disputes Act, 1947, adding further that it is expedient that the said dispute should be referred to an Industrial Tribunal constituted U/s, 7A of the Industrial Disputes Act, 1947, and then therefore in exercise of power conferred by Section 10 of the Industrial Disputes Act, 1947, the Governor is pleased by this order of reference to refer this dispute to this tribunal stated to be constituted under Notification No. 808-I.R./IR/3A-2/57 dt. 11.03.1957 for adjudication requiring this Tribunal to submit its award to the State Government within a period of three months from the receipt of this order by this Tribunal in terms of Section 2(A) of Section 10 of the Industrial Disputes Act, 1947 subject to other provision / provisions of the said Act, issues framed in the order of reference being:

- 1) Whether the termination of services of Shri Jagadindu Naskar w.e.f. 17.10.2006 by the management of M/s. Delta Ltd. by way of refusal of employment is justified or not,
- 2) To what relief, if any, the workman entitled to?

After the order of reference was received, cognigence was taken by this Tribunal and the proceeding was initiated by issuing summons to both parties and the case record shows that both parties then entered into appearance engaging Ld. Lawyer by each of them and then both sides



also filed written statement. In the written statement filed by Ld. Lawyer for the workman Sri Jagadindu Naskar it has been stated that the workman Jagadindu Naskar was a permanent workman in the company M/s. Delta Ltd., he was first appointed by the management of the company as a casual workman with effect from 13.11.1972 in the post of Weaver in the weaving department of the company and then he was made permanent in 1980 as Chapman after considering his meritorious and skilful service with high precision, intelligent execution and untiring zeal and thus he earned unblemished record of service to the full satisfaction of the management of the company. It is also stated that the company M/s. Delta Ltd. is a highly prosperous concern having its main business of manufacturing of jute articles and thus the company earns huge profit but it did not share any portion of its profit with the workers who are stated to have remained exploited and the management of the company also indulges in unfair labour practices of higher and fire without caring to abide by the requirement of laws and principle of nature justice. It is next stated that the company illegally declared lock out in its Mill with effect from 01.05.2005 but it re-opened on 16.10.2006 and then the workman went to resume his duties on 17.10.2006 as usual like others but the departmental in-charge of the weaving department of the company Mr. Dandey and the Chief Personnel Officer of the Mill Mr. Abdul Hussain did not allow him to resume his duties and also did not show any reason for not allowing him in his duties. It is next stated that after that he made several requests to the management of the company as well as the departmental-in-charge to allow him to resume his duty but they did not do anything and then the management of the company without showing any reason and also in violation of the provisions of law and principles of natural justice terminated the service of the workman with effect from 17.10.2006 by way of refusal of employment. It is next stated that the workman then raised strong protest against such arbitrary and illegal action of termination of his service by way of refusal of employment by the management of the company and the company then also did not do anything. It is next stated that the workman made several calls to the office of the management of the company requesting for reinstating him in his service and also requesting for showing reason for his such termination in writing but nothing yielded. Thus all approaches and demands by the workman before the management of the company failed due to adamant attitude on the part of the management of the company and then the workman made a written demand to the company on 27.09.2007 and again on 20.11.2007 by registered post with A.D., and all these demands were received by the management of the company but did not care to make any reply and also did not allow the workman to resume his duties. Describing such activities on the part of the management of the company as indulging in unfair labour practices and administering discipline arbitrarily and vindictively, it has been further stated by the workman that again he made several calls to the office of the management of the company with demands for restoration of his service and also for due salaries but the management of the company did not do anything and as a result the workman became totally unemployed facing starvation with family members. It is next stated that the management of the company has not



issued any charge-sheet against the workman and also did not require him to make any show cause and also did not conduct any domestic enquiry against the workman before termination of his service by the management of the company and the management of the company also did not offer any opportunity of hearing before termination of his service and the service of the workman was terminated by the management of the company in violation of requirement of Section 25F of the Industrial Disputes Act, 1947. It is next stated that when all such persuasions, approaches and demands by the workman failed because of unfair and unjust attitude of the management of the company, the workman by its letter dt. 15.12.2007 raised an industrial dispute before the Labour Commissioner, Government of West Bengal for its intervention in the matter and the workman was also helped by Bengal Provincial Chatkal Majdoor Union which also requested the Labour Commissioner by a letter dt. 05.12.2017 to intervene into the matter. It is next stated that after that the Assistant Labour Commissioner convened a number of joint meetings but due to adamant attitude on the part of the management of the company, the dispute could not be settled and the conciliation officer being convinced about the reasonableness of the demands of the workman submitted a report accordingly to the appropriate government, which then issued the order of reference. It is next stated that the termination of service of the workman is ifso facto bad in law, unfair and mala fide. Mentioning that the last salary of the workman was Rs. 225/- per day, the workman has prayed for deciding the issues in his favour holding that the termination of his service with effect from 17.10.2006 by way of refusal of employment is totally illegal, unjust and mala fide and inoperative and also prayed for granting him relief ordering reinstatement of his service with full back wages including consequential benefits.

The management of the company M/s. Delta Ltd. in his written statement has raised some legal technicalities such as the reference is misconceived, erroneous and not maintainable, belated claim by the workman as a result of which it is liable to be rejected, the workman being ex-employee of the company has taken more than a year in approaching the conciliation authority from the date of cause of action has come into existence over the matter, the appropriate government has taken about four years of time in making the order of reference, during which the workman had already attained age of superannuation as his date of retirement is 01.01.2011, the workman was not a workman as per law under Section 2(s) of the Industrial Disputes Act, 1947 and accordingly the dispute in question cannot amount to industrial dispute, abandonment of employment by the workman himself and therefore non-application of mind by the appropriate government in making the order of reference, on the date of alleged refusal of employment i.e. 17.10.2006 the workman was very much in the employment under the company and also received wages and thus question of refusal of employment by the management of the company did not arise, refusal of employment is not termination but lock out within the meaning of Section 2(1) of the Industrial Disputes Act, 1947, and it cannot take the shape of industrial disputes without being sponsored by sufficient number of workmen, the concerned workman did not raise any demand with the management of the company and the matter cannot be treated as



an industrial dispute etc. to bar the proceeding of this case as mentioned in part 'A' of the written statement mentioning further that all these legal technicalities touched the jurisdiction of this Tribunal and therefore these are required to be disposed of as a preliminary issue. Here it is required to be mentioned that Ld. Lawyer for the management of the company never prayed for any preliminary issue to decide all these legal technicalities at any time during the proceeding of this case. In part 'B' of the written statement, management of the company has raised that the workman happened to be ex-employee of the company working in the jute mill as badly workman since 22.11.1976, he was very negligent in performing his duties and most often he would remain absent without any intimation to the management of the company, the jute mill of the company had been under suspension of work for more than a year with effect from 02.05.2005 and this suspension of work was lifted on 21.08.2006 but the workman never turned up to resume his duties till 17.10.2006, on which he worked for about 5 hours in 'A' shift but started becoming absent from the second half of duty in that shift on 17.10.2006 and then he became long absent and thus he abandoned his service by himself. In part 'C' of the written statement the management of the company, denying and disputing the contentions of para-1 and para-2 of the written statement filed by workman, it is stated that the workman joined in the service of the company on 22.11.1976 as badly worker and he had been working in that capacity of badly worker through out his carrier and he was never made permanent and question of giving him meritorious and skilful performance never arose, again denying and disputing contention of para-3 of the written statement filed by the workman the management of the company has denied that it resorts to unfair labour practice and thus exploited the workers and required the workman to prove the same strictly, again denying and disputing the contention of para-4 and para-5 of the written statement filed by the workman, the management of the company has raised that suspension of work was declared in the company on 02.05.2005 and it was never challenged before any Court and accordingly the allegation of its illegality does not arise, the suspension of work as was declared on 02.05.2005 by the management of the company was lifted on 21.08.2006 after execution of memorandum of settlement with the operating union but the workman failed to report for duty till 16.10.2006 and thus allegation of refusal of employment by Mr. Pandey the departmental in-charge of the Weaving Department of the company and by the chief personnel officer of the company did not arise mentioning further that at that time there was no chief personnel officer Mr. Abul Hasan by name. Further denying and disputing contentions of para-6 to para-9 of the written statement filed by the management of the company, the management of the company has asserted that it never received any communication either dt. 27.09.2007 or dt. 20.11.2007 from the workman and again denying and disputing contention of para-10 of the written statement filed by the workman, the management of the company has asserted that the workman has remained gainfully employed all along and the details of his employment would be disclosed during hearing. Against contention of para-11 of the written statement filed by the workman, it has raised that the workman had remained badly workman all



through and he was not entitled to get any relief as a matter of right and question of issuing any charge-sheet against him was not required and against contention of para-1 to para-15 of the written statement filed by the workman, the company has raised that the management of the company has no knowledge about any conciliation proceeding having taken place in connection with the present matter of dispute and the management of the company never received any notice from the conciliation officer, denying that last drawn salary of the workman was Rs/ 225/- per day, and against the contention of para-16 of the written statement filed by workman the company has raised that the workman should not be allowed to modify his written statement and describing the prayer of the workman as vexatious the management of the company has prayed for rejection of all the prayers made by workman.

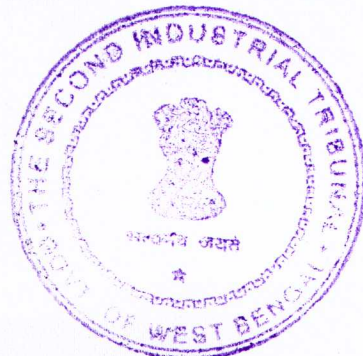
Case record shows that the exchange of documents took place on 17.07.2012 and after that after hearing both sides the case was fixed for hearing on merit of order dt. 28.08.2012 and the case record further shows that Ld. Lawyer for the management of the company never raised before the Tribunal for framing of any preliminary issue for disposal of the preliminary points as raised in the part 'A' of the written statement filed by the management of the company.

During hearing of the case on workman Sri Jagadindu Naskar examined himself as P.W.-1 with another Sri Dudh Kr. Roy as P.W.-2 and also adduced documentary evidences which are,

- 1) Copy of letter dt. 27.09.2007 addressed to personnel manager, Delta Ltd. by the workman Jagabandhu Naskar (Ext. 1),
- 2) Postal acknowledgement of Ext. 1 (Ext. 1/1),
- 3) One letter addressed to general manager M/s. Delta Ltd. by workman Jagadindu Naskar dt. 20.11.2007 (Ext. 2),
- 4) Postal acknowledgement of Ext. 2 (Ext. 2/1),
- 5) Copy of letter dt. 20.11.2007 addressed to general manager along with signature of Dudh Kr. Roy (Ext. 3/1), M/s. Delta Ltd. by secretary of B.P.C.M.U. (U.T.U.C.) Delta unit, (Ext. 3),
- 6) One letter addressed to the Deputy Labour Commissioner, Government of West Bengal, Howrah dt. 05.12.2007 by workman Jagadindu Naskar (Ext. 4),
- 7) One letter addressed to Deputy Labour Commissioner, Government of West Bengal, Howrah by secretary MR. Dudh Kr. Roy of B.P.C.M.U. (U.T.U.C.) Delta unit (Ext. 5), and signature of Mr. Dudh Kr. Roy thereon (Ext. 5/1),
- 8) Copy of pay slip (Ext. 6).

The management of the company M/s. Delta Ltd. examined its factory manager Mr. G.C. Pandey as O.P.W.-1 and also the director of the company M/s. Delta Ltd. Mr. Abul Hussain as O.P.W.-2 and also adduced documentary evidences which are,

- 1) Copy of settlement (Ext. A),

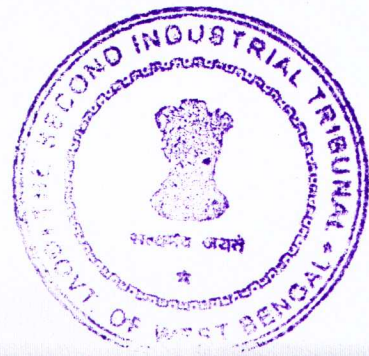


2) A copy of service book of the workman Jagadindu Naskar (Ext. B),

But from order no. 45 dt. 29.05.2014 it is found that on that day Ld. Lawyer for the management of the company filed an application for expunging the evidence of O.P.W.-1 and after hearing both sides that application was allowed and accordingly the evidence of O.P.W.-1 was ordered to be expunged.

Ld. Lawyers of both sides orally argued the case and case record shows that Ld. Lawyer for the workman also filed notes of written argument on behalf of the workman and after that opportunity was given to Ld. Lawyer for the company to file written notes of argument but at this stage the management of the company started becoming absent and Ld. Lawyer for the management of the company also did not file any written argument.

In the argument made Ld. Lawyer for the workman it has been raised that the workman was appointed by the management of the company with effect from 13.11.1972 in the post of weaver in the weaving department of the company and after that the workman was made permanent in 1980 as a chapman. It is also raised in the argument by Ld. Lawyer for the workman that the management of the company illegally declared lock out in the mill of the company with effect from 01.05.2005 but it was reopened on 16.10.2006 after lifting the lock out and on 17.10.2006 the workman went to the company to resume his duty as usual as other workman in the company but at that time the departmental in-charge of the company Mr. Pandey of weaving department and also the chief personnel officer of the company Mr. Abul Hussain did not allow the workman to resume his duty and also did not assign any reason for disallowing him in joining his duty. Ld. Lawyer has also raised in his argument that after that the workman made several request to the management of the company and also to the departmental in-charge to allow him to resume his duty but the management of the company did not bother to do anything and then the management of the company without showing any reason and also in violation of the provisions of law and also in violation of principles of natural justice terminated the service of the workman with effect from 17.10.2006 by way of refusal of employment. Ld. Lawyer for the workman has also raised in his argument that after that the workman raised strong protest against such arbitrary and illegal action of the management of the company that amounted to summery termination of his service and the workman also made several calls to the office of the management of the company requesting it for his reinstatement in his service and also requested the management of the company to convey to him the reason for such termination in writing but in vain and when all such approaches and demands by the workman fell flat due to adamant attitude of the management of the company, the workman made one written representation to the company on 27.09.2007 and again on 20.11.2007 by registered post with A. D. and even though the management of the company duly received the same, yet it did not care to give any reply to the same, neither did it allow the workman to resume his duty.



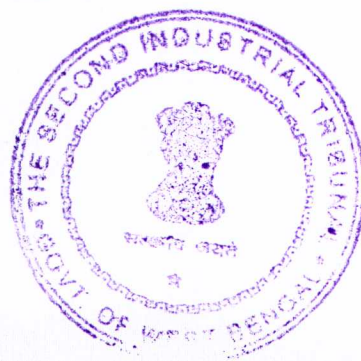
Ld. Lawyer for the workman also raised in the argument that the management of the company did not issue any charge-sheet against the workman nor did it require the workman to make any show cause and the management of the company also did not resort to make any domestic enquiry against the workman before he was not terminated from service and thus the management of the company did not offer any opportunity of hearing before termination of his service and he was terminated from service in violation of compulsory requirement of law under Section 25F of the Industrial Disputes Act, 1947, and then the workman by a letter dt. 05.12.2007 raised industrial dispute over the matter before Labour Commissioner, Government of West Bengal praying before him to intervene into the matter and at the same time the Bengal Provincial Chatkal Majdoor Union also requested the Labour Commissioner, Government of West Bengal to intervene in that matter by letter dt. 05.12.2007. But the management of the company did not attend the conciliation proceeding. Ld. Lawyer for the workman has also raised in the argument that at that time just before his termination of service the workman would get Rs. 225/- per day as salary and also mentioned that the workman retired from service with effect from 01.01.2011. over the matter of legal technicalities as have been raised by Ld. Lawyer for the company in its written statement such as non-maintainability of the proceeding, abandonment of service, non-existence of proper and sufficient materials to make the order of reference etc., Ld. Lawyer for the workman in his argument has raised that there was no laches on the part of the workman in referring the matter before the government as there is no limitation for reference of the dispute for adjudication and the workman never abandoned his service but he was refused employment and Ld. Lawyer explained that over this matter the law is very clear in the way that if workman had absented himself from attaining his duty then it was necessary on the part of the management to issue notice upon him requiring him to join the service but in this case there is no evidence by the management of the company to show that any such notice on the workman was at all not issued. Ld. Lawyer has emphasised that the management of the company did not issue any show cause notice to the workman and also did not file any charge-sheet against him and he was also not given any opportunity of hearing before he was terminated from service by way of refusal of employment, and to support his such argument Ld. Lawyer for the workman has cited one ruling in 2007(1) CLR 244 (Bomb H.C.) mentioning that in that case Hon'ble Court was pleased to hold that in case of abandonment of service, the employer must give notice calling upon the workman to resume his duty and also must hold enquiry before terminating his service but in the present case the management of the company did nothing, citing another case law in 1998 (II) LLJ 632 i.e. B.G. Sarasat case of Delhi High Court Ld. Lawyer for the workman has raised in the argument that in that case Hon'ble Delhi High Court was very much pleased to hold that termination on the ground of abandonment of service which is held to constitute a misconduct and such termination was effected without giving any opportunity to show cause and hence it was held to be unsustainable, citing another case law in 2003 (97) FLR 262 of Hon'ble Jharkhand High Court Ld. Lawyer for the workman has further raised that in that case also



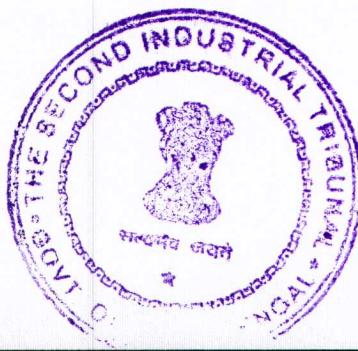
Hon'ble Court was pleased to observe that termination of service due to abandonment of work would be retrenchment and Section 25F applies and it was also observed / held that a dispute raised even after 12 years regarding termination in violation of Section 25F of the Industrial Disputes Act, 1947 would not be stale, further citing one ruling in 1991 (93) FLR 679 of Hon'ble Bombay High Court Ld. Lawyer for the workman has raised in his argument that in that case it was observed by Hon'ble High Court that even if the workman abandons the workman voluntarily, it is incumbent on the employer to hold enquiry, and Ld. Lawyer for the for the workman further raised that the position in this case is similar as are in the cited cases and the rulings / case laws as cited above are applicable in this case. Further Ld. Lawyer for the workman has also raised in his argument that in the written statement filed by the Ld. Lawyer for the company it has been raised that the workman was not terminated but lock out was declared and accordingly an individual workman cannot raise an industrial dispute, but, Ld. Lawyer submitted, this is not the correct position of law and explained that after the amendment, Section 2A of the Industrial Disputes Act, 1947 came into operation, this Section 2A says that – 'Whether an employer discharges, dismisses, retrenches or otherwise terminate the services of an individual workman etc. it shall be deemed to be an industrial dispute notwithstanding that no other workman nor any union or workman is a part with the dispute and in that West Bengal amendment refusal of employment also came into picture and by applying this law the present dispute is fully and industrial dispute and added that the contention of lock out under Section 2(1) is not correct and the management of the company never communicated with the workman that he was not terminated from service by the company. Ld. Lawyer for the workman has also raised in his argument that in the written statement filed by the management of the company it has been raised by the company that the workman did not make any demand before the management of the company and Ld. Lawyer stated that it is not correct and explained that the workman raised a dispute before the management of the company by sending a written letter dt. 27.09.2007 (Ext. 1 / Ext. 2) and also stated that Ext. 3 and Ext. 4 are also demands by the workman before the management of the company and though the management of the company received all these letters but the company did not allow him to join his duty and also did not think to give any reply to the workman after receiving those letters and in this regard Ld. Lawyer for the workman referred the evidences of the workman Jagadindu Naskar (P.W.-1) as having deposed that after re-opening the mill and withdrawal of lock out, he went to the company on 17.10.2006 for discharging his duties, he was not allowed to join, and referring the deposition of witness of the company (O.P.W.-2) Ld. Lawyer for the workman also argued that O.P.W.-2 has stated in cross-examination that the workman did not send the protest letters and Ld. Lawyer has further argued that Ext. 1/1 and Ext. 2/1 which is the registered postal slip clearly established that the protest letters as were sent to the management of the company by the workman through Postal Department of the Government was received by the management of the company as those letters were sent to the recorded address of the company and the O.P.W.-2 did not deny all these



in his deposition, O.P.W.-2 also did not deny the recorded address of the company and Ld. Lawyer explained that under such circumstances the position of law is that as the address of the company is correct then the evidence specially Ext. 1/1, Ext. 2/1 along with the deposition of P.W.-1 it is to be held that the letters in question i.e. protest letters were duly delivered to the addressee. Ld. Lawyer for the workman has also argued that the witness of the company has admitted that no charge-sheet was issued to the workman and no domestic enquiry against the workman was also conducted by the management of the company. Explaining that retrenchment as per law means termination by the employer of the service of the workman for any reason whatsoever, otherwise then as punishment inflicted by way of disciplinary action and argued that the management of the company terminated the service of the workman in violation of mandatory requirement of law under Section 25F of the Industrial Disputes Act, 1947 that no workman employed in any industry etc. shall be retrenched by the employer until the workman has been given one month's notice in writing including the reasons for retrenchment etc. and the retrenchment compensation but in the present case this fundamental requirement of law has not been complied with by the management of the company as deposed by the workman as P.W.-1 and thus the management of the company did not care to give any opportunity of hearing to the workman before awarding capital punishment to him, Ld. Lawyer added that the principles of natural justice is an integral part of guarantee of equality as mandated by Article 14 of the Constitution of India and accordingly any act or action taken by the employer must be here, just and reasonable and as per Article 21 of the Constitution of India the right to livelihood is fundamental guarantee, thus the termination from service of the workman visits with civil consequences of jeopardising not only on his livelihood but also on his carrier and the livelihood of his dependants, therefore before taking any action put an end to the tenure of the employee fair play was a matter of fundamental requirement but the management of the company did not care for the same, and to support his such argument Ld. Lawyer referred a case law in 1993 (67) FLR 111 of Hon'ble Supreme Court of India, and Ld. Lawyer for the workman has further raised that the requirement of law under Section 25F of the Industrial Disputes Act, 1947 is mandatory, this law postulates three conditions to be fulfilled by the employer for effecting a very retrenchment, these are one month's notice in writing mentioning the reasons for retrenchment or wages in lieu of such notice, payment of compensation equivalent to fifteen days average pay for every completed year of continuous service or part thereof in case of six months and notice to the appropriate government in the prescribed manner and Ld. Lawyer basing on such position of law has argued that considering the negative labguage used in Section 25F of the Industrial Disputes Act, 1947, the mandatory duty on the part of the employer is a matter of condition precedent to retrenchment of a workman and thus any contravention of the mandatory requirement of this law invalidates the retrenchment and renders it void ab initio and thus the management of the company committed gross illegality in terminating the service of the workman effecting from 17.10.2006.



Against all these Ld. Lawyer for the management of the company has argued that the claim of the workman is highly belated and on that ground it is liable to be rejected as the appropriate government has taken about four years in making the order of reference, on the date of the order of reference the workman was not working under the management of the company as he attained the age of superannuation which is 01.01.2011 and accordingly the workman is no longer a workman as per law under Section 2(s) of the Industrial Disputes Act, 1947 and the dispute in question accordingly cannot be described as an industrial dispute. Ld. Lawyer has added in his argument that it is not a case of termination of service by way of refusal of employment but the workman himself abandoned his service and thus the appropriate government made the order of reference without application of any mind. Ld. Lawyer has also argued that the refusal of employment was not the termination but lock out under Section 2(1) of the Industrial Disputes Act, 1947 and the case of the workman was not sponsored by sufficient number of workers of the establishment. Ld. Lawyer has also argued that the industrial dispute comes into existence only if a demand is raised before the management of the company and that demand remained unresolved but in the present case the workman never raised any demand. Admitting that the workman had been working in the company, Ld. Lawyer for the company argued that the workman had been working in the company as badly worker on and from 22.11.1976, yet he was very much negligent in performing his duty and he would remain absent most often without giving any information to the management of the company. Ld. Lawyer has further argued that the mill of the company was under suspension of work for more than one year starting from 02.05.2005 and it was lifted on 21.08.2006 and on that day the workman reported for duties, thus it was at all not a case of terminated from service by way of refusal of employment. The Ld. Lawyer has further argued that though the workman joined as a workman in the company on 22.11.1976 as badly worker, his status as badly worker remained through out his carrier and he was never made permanent as he did not work diligently and honestly. Ld. Lawyer for the company has also argued that the suspension of work by the management of the company was never challenged before a Court of law and therefore the workman was not in a position to describe the same as illegal, the suspension of work was lifted by the management of the company on 21.08.2006 after execution of a memorandum of settlement with the operating unions but the workman did not report for duty till 16.10.2006 and thus the workman abandoned the service by himself. Ld. Lawyer for the company has also argued that the workman is gainfully employed all along elsewhere and he cannot get anything from this present proceeding by way of relief and as he was a badly worker all through his carrier starting from his joining in 1976, he is not entitled to get any relief as a matter of right. Ld. Lawyer for the company in his argument has also raised that the management of the company did not have any knowledge of any conciliation proceeding by the conciliation officer and Ld. Lawyer concluded his argument by mentioning that the relief claimed by the workman is vexatious and it is liable to be rejected.



I have already mentioned the issues, the first issue is whether the termination of services of Sri Jagadindu Naskar with effect from 17.10.2006 by way of refusal to join is justified or not. As already seen in the written statement filed on behalf of the workman it has been stated that the workman Jagadindu Naskar joined the company as a casual workman on 13.11.1972 in the post of weaver in the weaving department of the company and he was made permanent in 1980 with the post as chapman, the company declared lock out in its mill with effect from 0.05.2005 and it was reopened on 16.10.2006 after the lock out was lifted and on 17.10.2006 the workman reported for duty but the management of the company through its officer Mr. Pandey who is the departmental in-charge and MR. Abul Hasan who is the chief personnel officer did not allow him to resume his duty without assigning any reason and then the workman made repeated requests to the management of the company to allow him to resume his duties but the management of the company did not do anything and then the workman raised protest against his such termination from service by way of refusal of employment with effect from 17.10.2006 and then the workman made written demand to the management of the company on 27.09.2007 and again on 20.11.2007 by registered post with acknowledgement due and all these letters of demands on the part of the workman were duly received by the company yet the management of the company did not do anything, the workman also made several calls to the management of the company requesting for his reinstatement in service and also claiming wages but to no effect. It is also mentioned that the workman was terminated from service without giving any show cause notice to him, without conducting any domestic enquiry and also in violation of mandatory requirement law as specially under Section 25F of the Industrial Disputes Act, 1947 and also in violation of principles of natural justice and then last of all by a letter dt. 15.12.2007 the workman raised an industrial dispute before the Labour Commissioner, Government of West Bengal praying for his intervention in the matter and then Assistant Labour Commissioner convened a number of joint meetings on several dates but the management of the company remained adamant and the dispute could not be settled. The workman Jagadindu Naskar has as P.W.-1 deposed that he joined the company on 13.11.1972 in the post of weaver in the weaving department of the company as casual employee and in 1980 he was made permanent and the management of the company gave him the post of chapman. The workman as P.W.-1 also deposed that on 01.05.2005 the mill of the company was locked out but it was reopened on 16.10.2006 and then on 17.10.2006 he went to the company for doing his duty but he was not allowed to join by Mr. Pandey who is the departmental in-charge in the company and also by MR. Abul Hasan who is the chief personnel officer of the company. The P.W.-1 also deposed that the company did not give him any explanation for not allowing him in doing his duty and then he verbally requested Mr. Pandey so that he could join his duty and then he, P.W.-1 further deposed, also applied to the company in writing for resuming his duty and then, P.W.-1 further deposed, sent letters to the company by registered post with A.D., P.W.-1 proved the letter dt. 27.09.2007 which was written by him addressing the personnel manager of the company, it was marked Ext. 1 and the postal receipt of



that letter (Ext. 1) was marked Ext. 1/1. From the deposition of P.W.-1 I find that the document i.e. Ext. 1, Ext. 1/1 were marked and admitted into evidences without any objection from the side of Ld. Lawyer for the company. P.W.-1 also proved a letter dt. 20.11.2007 deposing that it was written by him to the company, and then it was marked Ext. 2 and the postal receipt there with was marked Ext. 2/1 and I find that during this time also Ld. Lawyer for the company did not raise any objection. P.W.-1 further deposed that the company received these two letters but the company did not allow him to join the duty and also did not give him any reply arising out of his letters Ext. 1, Ext. 2. P.W.-1 also deposed that the union also wrote a letter dt. 20.11.2007 to the management of the company, it was marked Ext. 'T' without any objection from the side of management of the company. P.W.-1 also proved a letter dt. 05.12.2010 deposing that he sent that letter dt. 05.12.2010 to the Labour Department after writing it by him and it was marked Ext. 4 without any objection from the Ld. Lawyer for the company and by this letter dt. 05.12.2007 (Ext. 4) P.W.-1 further deposed, raised dispute before the Labour Commissioner, he also proved a copy of letter dt.05.12.2007 written by union, it was marked Ext. 4, P.W.-1 also deposed that by this letter (Ext. 4) he raised dispute before the Labour Commissioner. P.W.-1 also proved a letter dt. 05.12.2007 written by union to the management of the company, it was marked Ext. 5 without any objection by Ld. Lawyer for the company. P.W.-1 also proved a copy of pay slip, it was marked Ext. 6 without any objection from Ld. Lawyer for the company. As P.W.-1, the workman denied that he left the service voluntarily and also denied a further contention that on 17.10.2006 he performed his duty in the company and also denied that he joined in his work after withdrawal of suspension of work on 21.08.2006, P.W.-1 also deposed that on 21.08.2006 and also thereafter he went to the company to join his work but he was not allowed to join by the management of the company. P.W.-1 admitted that he retired from service with effect from 01.0.2011 and also admitted that he got the letter regarding his retirement by the company. Thus, I find that the workman as P.W.-1 deposed all as per his contention in his written statement.

The workman as P.W.-1 has also adduced documentary evidences, Ext. 1 is a letter addressed to the personnel manager of the company by workman Jagadindu Naskar, it contains that in this letter (Ext. 1) he has informed the personnel management of the company that he happened to be the permanent workman of the company having record No. 11722, token No. 00556, it is also further mentioned by the workman with a sorrowful mind that on 17.10.2006 without any reason he was not given any work by the company, mentioning further that he had been reporting for duty as per his allotted shift duty requesting for allowing him to resume his duty but he was not allowed to do his duty and he was illegally terminated, it is also mentioned that by this letter (Ext. 1) the workman requested the personnel manager of the company to reinstate him in his service and also requested him to give him entire due salary, expressing further that he would appear before the personnel manager of the company with his family members in case he would not be allowed to resume his duty, this contention of the document (Ext. 1) is in line with the deposition of the workman as P.W.-1 as I mentioned earlier and it is



further found that this Ext. 1 was sent to the management of the company by registered post with acknowledgement due and the workman has also proved that acknowledgement of the postal department (Ext. 1/1). Ext. 2 is another letter addressed to the general manager of the company by workman Jagadindu Naskar, in this letter the workman has mentioned that he had been working in the company in the capacity of a permanent workman of the company having record No. 11722, token No. 00556, it is also mentioned in this letter (Ext. 2) that the departmental-in-charge had refused him from joining his duty from 17.10.2006 without any reason and he has requested the authority concern of the company several times to allow him to resume his duty but the authority did not pay any heed, he has also mentioned that the refusal of his employment in the factory of the company by the management of the company is illegal, unjustified and not tenable by the law of the land and with all these he requested the general manager of the company to allow him to resume his duty with full back-wages for the period of post unemployment, this letter is dt. 20.11.2007, and I find that this document (Ext. 2) has also corroborated the version of the P.W.-1, this Ext. 2 is accompanied with postal acknowledgement and P.W.-1 has also proved the same, it was marked Ext. 2/1. Ext. 3 is a letter addressed to the general manager of the company by the secretary of B.P.C.M.U. (U.T.U.C.) Delta unit which union is stated to be operating in the company, it contains that secretary of the union has informed the general manager of the company that the workman Jagadindu Naskar had been working in the factory of the company for long, his record No. is 11722 and token No. is 00556, it further contains that the department-in-charge has not allowed him to join his duty, in this connection it is to say that in this letter (Ext. 3), the secretary of the union mentioned about the workman Jagadindu Naskar and then the rest language in the letter (Ext. T) is not about the workman Jagadindu Naskar but dramatically this has come to mention about the secretary of the union, I thus find that this document (Ext. 3) is totally irrelevant. In his deposition workman as P.W.-1 deposed that he wrote a letter on 20.11.2007 to the general manager of the company and on the same day the secretary of the union one Mr. Roy also wrote about him to the general manager of the company raising protest about termination of the workman, comparing Ext. 2 with Ext. 3 I find that both Ext. 2 and Ext. 3 are self-same, Ext. 3 is found to be the copy of Ext. 2 and the secretary of the union Mr. Roy pen-threw the name of workman Jagadindu Naskar and then it was signed by secretary of the union but corresponding changes in the person of the letters (Ext. 3) were not made and thus Ext. 3 has become irrelevant, but I also find that this Ext. 3 was admitted into evidence without any objection from Ld. Lawyer for the, but it was signed by the secretary of the union and it was proved by P.W.-2, it was marked Ext. 3/1. Ext. 4 is a letter addressed to the Deputy Labour Commissioner, Government of West Bengal by workman Jagadindu Naskar, its date 05.12.2007, it is added with the subject about refusal of employment of the workman Jagadindu Naskar by management of the company M/s. Delta Ltd., it further contains that by this letter the workman informed Deputy Labour Commissioner that the management of the company did not allow him to join his duty from 17.10.2006 without any



valid reason and describing the same as illegal, unjustified, the workman requested the Deputy Labour Commissioner to intervene into the matter, it further contains that it was received by the office of Deputy Labour Commissioner, I find that this document (Ext. 4) is corroborating the version of the workman as P.W.-1 that after his refusal of employment by the management of the company he requested the company several times to reinstate him in his service and also requested by sending a letter for this purpose but no result yielded and then he raised a dispute over the matter before the Deputy Labour Commissioner, Government of West Bengal. Ext. 5 is a letter addressed to the Deputy Labour Commissioner, Government of West Bengal by Mr. Dudh Kr. Roy, Secretary, B.P.C.M.U. (U.T.U.C.) Delta unit, it contains the subject mentioning in the way that seeking intervene into the matter of refusal of employment of Sri Jagadindu Naskaretct. The copy of the letter contains that the secretary of the union Mr. Roy informed the Deputy Labour Commissioner that the management of the company did not allow the workman Jagadindu Naskar to join his duty from 17.10.2006 without any valid reason and such refusal of employment is illegal, unjustified etc. and by this letter (Ext. 5) the secretary of the union Mr. Roy requested the Deputy Labour Commissioner, Government of West Bengal to intervene into the matter and also to do the needful, thus this document (Ext. 5) has been corroborating the version of P.W.-1 i.e. workman that on his behalf Mr. Roy the secretary of the union also wrote to the Deputy Labour Commissioner, Government of West Bengal informing refusal of employment of the workman by the management of the company, the signature of the secretary Mr. Dudh Kr. Roy on this letter (Ext. 5) is also found to have been proved, it was then marked Ext. 5/1. Ext. 6 is found to be a pay slip, it contains the name of the workman mentioning token No. as 00556, P.F. No. -11722, ESI No. 4641900, it shows the designation of the workman as CAMBMAN, it was marked Ext. 6 without any objection from the side of Ld. Lawyer for the company and scrutinizing this document I find that this document has been corroborating the version of P.W.-1 that initially the workman was appointed in the company in casual capacity and the he had been performing his duty sincerely, honestly and then he was made permanent and he was given the post of CAMBMAN and thus this document (Ext. 6) has been corroborating the version of P.W.-1 as mentioned above, this Ext. 6 is accompanied with a copy of letter written by Assistant Labour Commissioner, Government of West Bengal, Howrah Mr. Santanu Sen, it is addressed to the general manager of the company with a copy to the workman, the subject of the letter is refusal of employment of Sri Jagadindu Naskar, it also contains that the dispute arising out of matter of workman Jagadindu Naskar with the management of the company was taken up for investigation and settlement by the office of Assistant Labour Commissioner, Howrah and then for this purpose the Assistant Labour Commissioner, Howrah issued this to the general manager of the company as notice further mentioning that the company neither attended the matter of conciliation on 22.02.2008 and also on 11.04.2008 nor did the company filed its comment, by this notice, as I find, Assistant Labour Commissioner, Howrah Mr. Sen requested the general manager of the company to attend a joint conference in the office

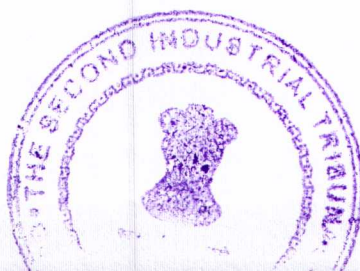


of Assistant Labour Commissioner. Thus the documentary evidences as discussed above have been corroborating the version of P.W.-1 that the workman was appointed by the company initially a casual workman on 13.11.1972 in the post of weaver in the weaving department of company and considering his efficiency in the work, honesty and sincerity, he was made permanent by the management of the company and then he was given the post of CAMBMAN in 1980 and on 01.05.2005 the management of the company declared lock out in the mill of the company but the company/ mill was re-opened on 16.10.2006 after lifting that lock out on 17.10.2006 the workman reported for duty but the departmental-in-charge Mr. Pandey and chief personnel officer Abul Hussain did not allow him to resume his duty and then he raised protest before the management of the company and also requested the management of the company to re-instate him in his service and also to give him his due salary but the management of the company did not do anything and then he wrote letters (Ext. 1, Ext. 1/1, Ext. 2, Ext. 3) requesting the company to re-instate him in his duty and also to give him his due salaries but the management of the company did not make any reply and then he raised the matter before the Deputy Labour Commissioner, Government of West Bengal requesting his intervention which then issued notice to the management of the company requiring it to submit comment and also to participate discussion towards amicable settlement, this document besides being a public document is found to have pertained with the salary slip (Ext. 6). The P.W.-1 was cross-examined by Ld. Lawyer for the company at length, Ld. Lawyer for the company suggested to the P.W.-1 that he left the service under company voluntarily and P.W.-1 denied the same, P.W.-1 also denied a further suggestion to him that he did not join the company in 1972 but P.W.-1 asserted that he has filed document to prove that management of the company made him permanent in the company in 1980 and asserted that the department-in-charge of the company Mr. Pandey refused him to resume his duty on 17.10.2006 when he reported for duty in the 'A' shift that starts from morning 6 a.m. and also deposed that on that day he reported for duty at 6 a.m., P.W.-1 denied further suggestion to him by Ld. Lawyer for the company that Mr. Abul Hussain was not the chief personnel officer of the company and on 17.10.2006 Mr. Pandey was the department-in-charge and also denied a suggestion that Mr. Abul Hussain of the company never refused by the workman from joining his duty, he also denied a further suggestion that he was not absent from duty from 21.08.2006 to 16.10.2006, and also denied a further suggestion that he was not a permanent workman of the company. P.W.-1 i.e. workman also denied suggestion to him by Ld. Lawyer for the company that he worked as badli worker all along from 22.11.1976 and also denied that he had been working elsewhere and has been working accordingly till date and also denied that he was deposing falsely. Basing such cross-examination of the P.W.-1 by Ld. Lawyer for the company Ld. Lawyer for the workman as I have already mentioned earlier as argue that the workman has filed documents which are Ext. 1 along with postal A.D. (Ext. 1/1) and a further postal A.D. (Ext. 2/1) to show that the letters were written by the workman raising dispute before the management of the company and also making demands



for allowing him to resume his duty and to get back his due salaries and the management of the company has not filed any document to show that those letters were not received by the company, Ld. Lawyer for the workman explained that with the acknowledgement due i.e. Ext. 1/1, Ext. 2/1, it is to be presumed that the postal department delivered the letters to the management of the company but the management of the company did not call for any witness from the postal department in rebuttal of such evidences. I find that the Ext. 1/1, Ext. 2/1 are the postal acknowledgement and these were returned back to the workman showing that the letters written accompanied with those postal acknowledgement were received in due course by the management of the company and therefore legal presumption automatically comes into existence accordingly. Ld. Lawyer for the company already argued that the workman never wrote any letter making any demands but admittedly the management of the company did not make any attempt to bring any evidences from the postal department to show otherwise, and therefore there is no escape on the part of the Court but to presume that the letters as were accompanied with the acknowledgement i.e. Ex. 1/1, Ext. 2/1, were duly received by the company. Ld. Lawyer for the workman submitted that the workman has filed the salary slip (Ext. 6) and the salary slip was issued by the management of the company to the workman (Ext. 6) and in that document the management of the company mentioned the designation of the workman as CAMBMAN, as deposed by P.W.-1 that he was initially appointed in 1972 as casual worker and considering his efficiency, seniority and honesty he was made permanent and he was given the post of cambman, there is no evidences against this document (Ext. 6) by the management of the company and by the oral evidences of the P.W.-1 that have totally remained un-rebutted with the documentary evidences specially the salary slip (Ext. 6), the workman has proved that he was the permanent workman with the capacity as CAMBMAN under the company.

Further the workman examined Mr. Dudh Kr. Roy as P.W.-2, he deposed that he knows the workman i.e. P.W.-1, P.W.-2 further deposed that he was an employee of the company and also a member of his union and P.W.-2 is the member of Bengal Provincial Chatkal Majdoor Union, P.W.-2 further deposed that the mill of the company was declared lock out by the management of the company on and from 01.05.2005 and it lasted till 30.04.2005, P.W.-2 also deposed that on 16.10.2006 the mill of the company was re-opened and on 17.10.2006 the workman went to the mill for joining his work but he was not allowed to join and P.W.-2 proved signature on the letters i.e. Ext. 3, Ext. 5 and his signatures were marked Ext. 3/1 and Ext. 5/1 and P.W.-2 also deposed that he signed the letters in the capacity of secretary of the union, this P.W.-2 Dudh Kr. Roy also corroborated the version of P.W.-1 that after he (P.W.-1) was terminated from service by way of refusal of employment and then he verbally requested the management of the company repeatedly to take him back to service and also to give him his due salaries but the management of the company did not do anything and then he signed letters making demands and also raising dispute over the matter before the management of the company and the secretary of the union who is P.W.-2 also wrote letters to the management of the



company requesting the management of the company to allow the workman to do his duties and also to pay him due salaries and as mentioned P.W.-2 also deposed that he signed the letters (Ext. 3, Ext. 5) and the signatures of P.W.-2 were marked Ext. 3/1 and Ext. 5/1. This P.W.-2 was cross-examined by Ld. Lawyer for the company and during cross-examination P.W.-2 further deposed / stated that settlement took place between the management of the company and the union before lifting of the lock out and lifting of the lock out was mentioned in a notice by the management of the company and it was displayed on the main gate of the company and P.W.-2 also denied a suggestion that P.W.-1 worked in the mill on 16.10.2006 as has been raised by the company in its written statement. P.W.-2 also proved the documents of settlement between the management of the company and the union, P.W.-2 denied a suggestion that he was deposing falsely. Thus, there is at all nothing in the cross-examination of P.W.-2 to distort the evidences he gave in his examination-in-chief corroborated the version of P.W.-1. The evidences i.e. evidence of P.W.-1, evidence of P.W.-2 and the documentary evidences adduced by both P.W.-1 and P.W.-2 have clearly prove that the workman Jagadindu Naskar was a permanent employee of the company with the post of Cambman and the service of the workman was taken away by way of refusal of employment in violation of compulsory requirement of law.

I have already mentioned the contention of written statement filed by the management of the company, to recapitulate the same in short it is to say that in the written statement filed by the company some legal technicalities such as the claim of the workman is belated, on the date of reference the workman was not in the service of the company etc. and thus the workman was not a workman legally and the dispute in question is accordingly not an industrial dispute, he also did not raise the dispute with the help of sufficient number of workmen of the establishment, he did not raise any demand before the employer and accordingly question of remaining those disputes unresolved did not arise etc. to bar the present proceeding as a whole, and also mentioned that the workman was appointed as badly workman in the company in 1976 but he was very much negligent in performing duties and he would remain absent from duty without any information and thus the workman himself abandoned his service and he was never made permanent in his service by the management of the company, with the addition that the suspension of work as was declared by the management of the company on 02.05.2005 was never challenged before any court of law and therefore the declaration of suspension of work cannot be described as illegal, the suspension of work was lifted on 21.08.2006 after execution of memorandum of settlement with the union but the workman did not report for duties till 16.10.2006 deliberately and thus the management of the company never terminated the service by way of refusal of employment and as the workman was a badly workman the law in the Industrial Disputes Act, 1947, has not given him any right to raise any question against the management of the company and the workman has been doing service elsewhere. I have already mentioned the argument made by Ld. Lawyer for the company. Ld. Lawyer for the company in support of the contention in his written statement has examined one witness, Mr. G.C. Pandey

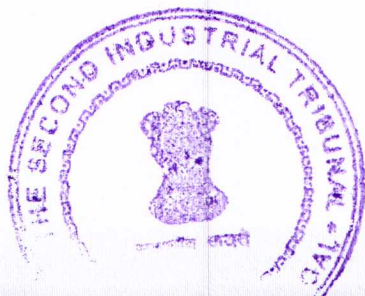


along with some documents. The factory manager Mr. Pandey as O.P.W.-1 deposed that the workman was a badly worker in his company, he was also not regular in discharging his duties and in 2005 lock out was declared by the management of the company and it was withdrawn in 2006 and denied that the workman was denied to perform his duty on 17.10.2006 and the workman never sent any letter to the company mentioning refusal of employment to him by the company, but from the case record I find that Ld. Lawyer for the management of the company filed one petition with a prayer to expunge the evidence of Mr. Pandey the factory manager of the company as O.P.W.-1 and it was allowed and accordingly the evidences of O.P.W.-1 was expunged and thus the evidences given by O.P.W.-1 are of no use. After that the management of the company examined one of the directors of the company Mr. Abul Hussain and MR. Hassan as O.P.W.- 2 deposed that the workman Jagadindu Naskar used to work in badly capacity in the weaving department of the company, there was a suspension of work in the company starting from 02.05.2005 and it was lifted on 21.08.2006 and workman worked in the company on 17.10.2006 for about 5 hours and denied that workman was refused employment on 17.10.2006, O.P.W.- 2 also deposed that as per xerox copy of service book of the workman (Ext. B) the workman was a badly worker. In cross O.P.W.- 2 denied suggestion that he was not the director of the company and also denied that he was the chief personnel manager of the company during the time in question. In cross-examination O.P.W.- 2 admitted that he cannot say the abbreviation of D/O as in Ext. B, also admitted that he cannot say if the workman joined the company in 1972 and also admitted that he cannot say if the workman was made permanent in his service by the management of the company in 1980 as CAMBMAN. O.P.W.- 2 also admitted that as per settlement it was decided that 45% of the suspended workers would be re-employed and then he further deposed that he cannot say whether 45% of the suspended workers would be employed or not. O.P.W.- 2 denied a suggestion that on 17.10.2006 the workman reported for duty after withdrawal of suspension but Mr. Pandey was a department-in-charge of weaving department did not allow him to do his duty and then the workman made protest over denial of duty to him by the management of the company and then workman submitted protest letters to the management of the company letters being dated 27.09.2007 and 20.11.2007 requesting the management of the company to allow him to join his duty. O.P.W.- 2 further admitted in cross-examination by Ld. Lawyer for the workman that it is a fact that no charge-sheet was issued to him i.e. the workman and no domestic enquiry was also conducted against the workman and denied a further suggestion put to him by Ld. Lawyer for the workman that the workman was not a badly worker in the company.

The main argument by Ld. Lawyer for the company as I mentioned earlier is that the dispute was raised before the Labour Department at a belated stage by about 4 years and the workman was not terminated by the management of the company but the workman himself abandoned his service in the company. Here I want to mention the argument made by Ld. Lawyer for the workman, it is that there is no provision about any delay in raising dispute before



Labour Department as per law under Section 2A of the Industrial Disputes Act, 1947 and there is no limitation in this regard, Ld. Lawyer has also mentioned that the workman did not abandon his service but the management of the company terminated his service by way of refusal of employment, asserting that the law over the matter is very much clear that if a workman absented himself from service of the company, then the management is required to issue notice directing the workman to join his duty but in the present case no such notice was issued to the workman by the management of the company and as to why the management of the company did not do so, it is best known to the company but the company has not given any such reason in any way either by evidence or by pleadings, Ld. Lawyer for the workman also raised that the management of the company also did not issue any show cause notice, any charge-sheet to the workman and the workman was not given any opportunity of hearing before he was illegally terminated by the management of the company by way of refusal of employment, and to support his submission as I mentioned earlier he cited case laws. In 2007(1) CLR 244 of Hon'ble Bombay High Court, Hon'ble Court was pleased to observe that in case of abandonment of service, employer must give notice calling upon the workman to resume duty and the management of the company must hold enquiry before terminating his service, and I find that the director of the company MR. Hassan has already admitted in cross as O.P.W.- 2 that no charge-sheet was issued against the workman and no domestic enquiry was also held by the management of the company against him and I find that the above cited case law by Ld. Lawyer for the workman has become applicable for such admission by the director of the company (O.P.W.- 2). In the case law cited by Ld. Lawyer for the workman in 1998(II) LLJ 62 of Hon'ble Delhi High Court, it is the observation of Hon'ble Court, inter alia, that termination of service on the ground of abandonment of service that constituted a mis-conduct and such termination was effected without giving any opportunity to show cause and it is always held to be unsustainable, I have already mentioned the admission made by the director of the company as O.P.W.- 2 and I find that this observation of Hon'ble Court in this case law also becomes applicable in this case. Ld. Lawyer for the workman has cited a case law in 2003 (97) FLR 262 of Hon'ble Jharkhand High Court, it is the observation of Hon'ble Court that termination of service due to abandonment of service of work would be retrenchment and Section 25F applies and also held that a dispute over such matter raised even after 12 years regarding termination in violation of 25F would not become stale, Ld. Lawyer for the workman also cited another case law in 1991 (93) FLR 679 of Hon'ble Bombay High Court and the observation of Hon'ble Court is that even if the workman abandoned the work voluntarily, it is incumbent on the employer to hold an enquiry and as per admission by the director (O.P.W.-2) this observation of Hon'ble Bombay High Court also becomes applicable in this case. In the written statement the management of the company has raised that the workman did not raised any dispute, it is the argument by Ld. Lawyer for the workman that the workman raised the dispute first before the management of the company by its letter dt. 27.09.2007 (Ext. 1, Ext. 2, Ext. 3, Ext. 4) and the workman in these letters also made his demands and referred the



evidence of P.W.-1 that after withdrawal of the lock out in the company P.W.-1 went to the company on 17.10.2006 for discharging his duty but he was not allowed to join. Ld. Lawyer for the workman also argued that O.P.W.- 2 denied receiving protest letters but Ext. 1/1 and Ext. 2/1 are the postal acknowledgement showing delivery of those letters by registered post by postal department in the recorded address of the company, Ld. Lawyer also argued that there is no denial of the recorded address of the company and therefore the position of law is there it is that to be presumed that those letters were delivered to the addressee. Thus I find that the workman has adduced sufficient evidence to show that he sent the letters to the company by registered post with acknowledgement due and the acknowledgement were given to him back after due service and when the management of the company has denied receiving those letters as in the written statement of the company, then it was necessary on the part of the management of the company to prove the same and for this purpose to call for records from postal department but admittedly it did not do so, the recorded address of the company is admittedly correct and thus there is no escape but to come to presumption by the Court that those registered letters were delivered to the company in due course. Ld. Lawyer for the workman also raised that there is contention that no workman employed in any industry etc, shall be retrenched by employer until he has been given one month's notice in writing with reasons for retrenchment with retrenchment compensation but this mandatory requirement of law was not complied with as admitted by O.P.W.- 2. Section 25F of the Industrial Disputes Act, 1947 encompasses conditions which are one month's notice in writing indicating reasons for retrenchment for wages in lieu of such notice, payment of compensation equivalent to 15 days average pay for every completed year of continuous service or part thereof in excess of six months and notice to the appropriate government as required by law and thus Section 25F provides a mandatory duty on the employer but the employer has not considered to comply with the same and acted most arrogantly and thus committed illegality. I have already mentioned the admission made by the director of the company Mr. Hasan as O.P.W.-2, I further mentioned it, he admitted in cross that no charge-sheet was issued to the workman, no enquiry was held against him and therefore all the argument made by Ld. Lawyer for the workman as mentioned above are supported by case laws as are found to be most appropriate in this case. The main contention of the company in its written statement that the workmen was engaged as badly worker and the workman remained badly during entire period of service but the document which is the pay slip issued by the management of the company to workman as was proved and admitted into evidence as Ext. 6 without any objection by Ld. Lawyer for the company, along with the admission by the director as O.P.W.-2, have rendered the entire case raised by management of the company that workman remained badly through out his carrier etc., have been rendered to be nothing but false and manufactured and imaginary as Ext. 6 shows that the workman had been working with the promotional post of CAMBMAN as deposed by workman as P.W.-1 that he joined the service of company on 13.11.1972 as casual



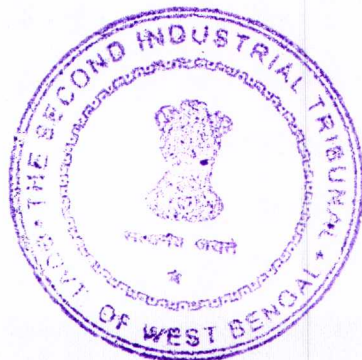
worker and considering his performance, sincerity and honesty, efficiency, he was made permanent in 1980 and he was given the post of cambman.

In the summing up it is to say that the case raised by the workman vis-à-vis order of reference is found to have been sufficiently proved and the stance taken by the management of the company in its written statement are found to be frivolous, vexatious and imaginary and without any base in any way. The workman as P.W.-1 has deposed that he has been made service-less since the time of his retrenchment by the management of the company against which Ld. Lawyer for the company / the company in its written statement has raised that the workman has been in service in another place till date but to support this the company has not adduced any acceptable evidence.

It is, therefore, to say that the principles of natural justice is integral part of the guarantee of equality as per principles of equality as has been enshrined in Article 14 of the Constitution of India and any action therefore on the part of the employer must be fair, just and must be reasonable, further Article 21 of Constitution of India has been given right to livelihood, the order of termination of the workman therefore visits civil consequence of jeopardising not only the livelihood of the workman but also that of his dependents and the management of the company has not followed the compulsory requirement of law and termination of the service of the workman by way of refusal of employment is found to be most illegal which cannot be sustained in law and the issues come to be decided in favour of the workman. It is, therefore,

ORDERED

that the issue i.e. 1) whether the termination of the service of Sri Jagadindu Naskar with effect from 17.10.2006 by the management of M/s. Delta Ltd. by way of refusal of employment is justified or not, and 2) to what relief, if any, the workman entitled- are decided in favour of workman Sri Jagadindu Naskar, Uttarpara, P.O.- Sarenga, P.S. – Sankrail in Howrah on contest against the management of the company M/s. Delta Ltd., Manickpor, Sankrail in Howrah and it is held that the termination of service of workman Sri Jagadindu Naskar w.e.f. 17.10.2006 by way of refusal of employment by the management of the company is illegal, unjust and void ab initio and the same is quashed and the workman Jagadindu Naskar is entitled to be reinstated in his service with full back-wages with other consequential benefits from the date of termination of his service by the management of the company w.e.f. 17.10.2006 till his retirement by way of attaining the age of superannuation and accordingly the management of the company is directed to make payment of his outstanding salaries with other consequential benefits as observed above immediately. There is no order as to cost. This judgement and order / direction is to be treated as an award of this Tribunal on contest and necessary number of copies of this award be prepared and send to the Ld. Additional Chief Secretary to the Government of West Bengal, Labour



Department, N.S. Buildings, 12th Floor, 1, K.S. Roy Road, Kolkata – 700001 as provided in the rules without any delay.

Dictated & Corrected by me.

sd/-
Judge

sd/-
(Sribash Chandra Das)

Judge

Second Industrial Tribunal

Kolkata

31.10.2019

