

I/70881/2019

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

No. Labr/1026.. /LC-IR/22015(11)/10/2018

Date : 27.12.18..

ORDER

WHEREAS an industrial dispute existed between The Managing Director, West Bengal Surface Transport Corporation, 37, Deshpriya Sashmal Road, Kolkata - 700 040 and Sri Bhaskar Ghosh, 42 A, Dharmatola Road, Kasba, Kolkata - 700 042 regarding the issue, being a matter specified in the second schedule to the Industrial Dispute Act, 1947 (14 of 1947);

AND WHEREAS the workman has filed an application under section 10(1B)(d) of the Industrial Dispute Act, 1947 (14 of 1947) to the Judge, Seventh Industrial Tribunal, Kolkata 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 Seventh Industrial Tribunal, Kolkata heard the parties under section 10(1B)(d) of the I.D. Act, 1947 (14 of 1947).

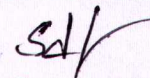
AND WHEREAS the said Judge Seventh Industrial Tribunal, Kolkata has submitted to the State Government its Award under section 10(1B)(d) of the I.D. Act, 1947 (14 of 1947) on the said Industrial Dispute.

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,



Deputy Secretary
to the Government of West Bengal

I/70881/2019

: 2 :

No. Labr/1026/1(5)/(LC-IR)Date 2/12/19

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

1. The Managing Director, West Bengal Surface Transport Corporation, 37, Deshpran Sashmal Road, Kolkata - 700 040.
2. Sri Bhaskar Ghosh, 42 A, Dharmatola Road, Kasba, Kolkata - 700 042.
3. The Asstt. Labour Commissioner, W.B. In-Charge, Labour Gazette.
4. The 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.

Markar
Deputy Secretary

No. Labr/1026/2(2)/(LC-IR)Date 2/12/19

Copy forwarded for information to :-

1. The Judge, Seventh Industrial Tribunal, Kolkata, with respect to his Memo No. 1504 - L.T. dated 20.11.2019.
2. The Joint Labour Commissioner (Statistics), West Bengal, 6, Church Lane, Kolkata - 700001.

Deputy Secretary

In the Seventh Industrial Tribunal, West Bengal
New Secretariat Buildings, Kolkata

Present: Shri Ashis Kumar Das, Judge,
Seventh Industrial Tribunal,
Kolkata.

CASE NO. 12/2012

Under Section 10(1B)(d) of the Industrial Disputes Act, 1947

Shri Bhaskar Ghosh,
42A, Dharmatola Road, Kasba, Kolkata-700042.

...Applicant

-Versus-

**The Managing Director,
West Bengal Surface Transport Corporation,**
37, Deshpriya Sasmal Road, Kolkata – 700 040.

...OP/Company

A W A R D

Dated : 19-11-2019

The applicant after obtaining a certificate in prescribed Form “S” under Rule 12A(3) of the West Bengal Industrial dispute Rules, 1958 filed the present petition before this Tribunal on 23.02.2012 under Section 10(1B)(d) of the Industrial Disputes Act, 1947 (West Bengal Amendment) challenging the termination of his service with a prayer for reinstatement with full back wages and consequential benefits declaring that the alleged termination of his service is illegal.

The applicant’s case, as made out in his written statement, in short, is that - he was a permanent employee under the Opposite Party viz. The Managing Director, West Bengal Surface Transport Corporation (WBSTC), 37, Deshpriya Sasmal Road, Kolkata-700040 as bus driver with Badge No. E.C.668 and was in continuous service without any break and with unblemished service records. While on 06.03.2003 at about 6:15 p.m. he was on duty and proceeding towards Kolkata from Ramdanga with bus No. WB 04A 1320 met with a road traffic accident with a Tata Sumo Van No. WB 02F 3708, at a distance of 6/7 feet, in same direction, near the ‘on’ traffic signal in front of a petrol pump, which is near a Maruti showroom on Belvedere Road and as a result of such accident, a Traffic Police Constable standing on its front right side, not within his sight, was severely injured. Anticipating danger, life risk and damage to the bus, a Government property, by the assembling public, he rushed to the depot, and reported the matter in details, which was duly recorded by the ‘on-duty’ In-charge on **06.03.2003** in the log book.

It is also stated that on **08.03.2003** he was allowed alternate garage duty inside depot as per normal procedure which he continued till **14.05.2019**. On 08.03.2003 Mr. Arindam

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Chowdhury, the then Traffic Officer of WBSTC Ltd. took his driving license and officially submitted the same before Lal Bazar F.S.T.P. on proper receipt and he took bail from the Court of Ld. Chief Judicial Magistrate at Alipore, 24-Parganas (South). On 14.05.2003 at about 12:30 p.m., while he was on duty, he was asked to meet with Sri Sankar Bhattacharjee, the then T.M. (Acting) and he met with him accordingly and at that time Mr. Bhattacharjee stopped his duty orally by ordering him not to report for duty without driving license. No notice or written order was served upon him for such stopping of his duty.

It is further stated that since 08.03.2003 he was allowed alternate garage duty without driving license. His driving license was not demanded for more than two months. On **15.05.2003** he attended his duty as scheduled because he was not served any office order, but he was refused duty, to sign the attendance register by the on-duty In-Charge as instructed by T.M. (Acting). He was not served any office order / notice for such stopping and refusal of duty. He continued to attend his duty as scheduled on all the days from 15.05.2003. On **19.05.2003**, his name with badge was found removed from the daily attendance register and he protested against such illegal acts, in writing to the Depot Manager, his unit head, on and from 15.05.2003 to 04.06.2003 (for sixteen times) alleging such illegal refusal of duty, seeking resumption of his duty with payment of full back wages, but to no effect. He continued to stay for duty for full hours from **15.05.2003** and on **01.06.2003** his name and badge No. reappeared in the daily attendance register, but he was not allowed to sign in the attendance register and was refused duty all along. He submitted a representation before the Managing Director, WBSTC Ltd. on **19.05.2003** seeking resumption of his duty with payment of back wages for such illegal refusal of duty period till resumption of his duty, which remained un-responded.

Thereafter, on **02.06.2003** the Administrative Officer, WBSTC Ltd. through his **Order No. 373/WBSTC dated 02.06.2003** asked him to report to the Traffic Manager (Acting) for duty at the Head Office. Accordingly, in terms of said order, when he met with the Traffic Manager (Acting), said Manager handed over to him a blank leave application form and directed him to sign on the same, without showing any reason, but he refused to sign. On query, said Traffic Manager denied to state the reason and again asked him to sign on the same or to leave the place stating that **his service was no longer required** and no duty would be given to him. Then, he requested said Manager to give him an office order in this regard, when said Manager told him that no office order would be given and asked him to leave the place. Thereafter, he protested against such denial attitude of the Traffic Manager through his letter submitted before the appropriate authority detailing the fact inter alia seeking therein his duty with back wages for the refused employed period, but to no effect.



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Thereafter, he made an appeal to the Chairman of the Corporation, the Appellate Authority seeking "Demand Justice" describing the facts in details inter alia praying therein for his reinstatement of duty with payment of full back wages quashing the said termination order, but to no effect.

According to him, he was neither suspended nor paid any wage for the entire period. show-cause notice was issued against him after 5/6 years from the date of illegal termination, during pendency of conciliation, which was duly replied to.

It is also stated that his driving license was taken from him and was submitted before the Lal Bazar Police Headquarters and his said license was impounded and said license was subsequently released as per order passed by the Hon'ble High Court, Calcutta and the police case of aforesaid accident was also adjudicated and he was found not guilty of the charge brought against him and he was set at liberty. All these developments were known to the management, but no letter was served by them upon him to join his duty. Thereafter, he submitted representation to the office of the Labour Commissioner for conciliation and for settlement of such dispute, several joint conferences were held, but the dispute could not be settled for defiant attitude of the management, within the stipulated period and so, he applied for a non-completion certificate of the proceedings for filing this case before this Tribunal for adjudication and he received such certificate dated 09.03.2011 under Section 10(1B) in the 1st week of June, 2011 through post.

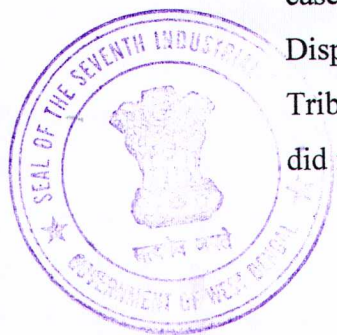
He could not file this case earlier because of illness of his wife, who gave birth to a female baby on 12.10.2011, and thereafter, she was under treatment at Nursing Home for more than a month. So, delay in filing this case was caused, which was beyond his control.

In the circumstances, he has prayed for quashing as well as setting aside the illegal termination of his service by refusal of employment with payment of full back wages and benefits.

OP/WBSTC after service of notice, entered appearance and filed written statement on 30.05.2012 wherein they have denied each and every allegation brought against them.

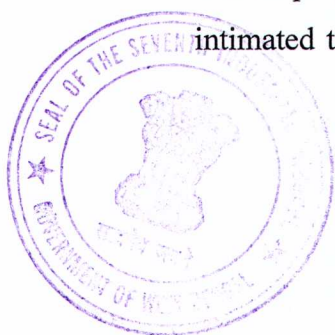
According to the OP, the present case is not maintainable in the eye of law as there is no cause of action arises; that Section 12A(4) is applicable only if there is a case of termination or dismissal of service, but in the present case, nothing has been done by the OP/Corporation and so, this case is not sustainable in the eye of law; that this is a premature case as the Departmental Enquiry is still pending against the workman and as per Industrial Disputes Act, 1947 the workman cannot challenge the Departmental Enquiry before the Tribunal; the employer-employee relationship has not yet been ceased and as the workman did not attend the duty inspite of direction of Management, the Management has initiated

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Departmental Enquiry after fulfilling all the formalities as prescribed by law; that this case is not maintainable as the workman prayed for back wages for the period which he had also prayed unpaid salary for the same period before the Learned Payment of Wages Court and so, the same is attracted the principles of *res judicata*.

The specific case of the OP is that the workman joined in the OP/Corporation as a driver vide letter dated 27.11.2001 and the said appointment was confirmed by letter dated 21.12.2002; that on 06.03.2003 said workman while driving bus committed an accident and due to such accident, a traffic constable of Kolkata Police was killed. His driving license was impounded by the Traffic Officer of the OP/Corporation and the same was handed over to the Lal Bazar, F.S.T.P. Department in accordance with law; that as the driving license of the workman was impounded by the Police Authority and without driving license he cannot drive vehicle outside, he was allowed non-route duty i.e. garage duty at Salt Lake Depot without driving license, as per verbal direction of the authority; that on 15.05.2003 his duty was stopped through a log-book entry by the Salt Lake Depot. The said workman made an appeal before the Managing Director for illegal refusal of employment. In the meantime, the OP has received one letter from Lal Bazar in connection with the driving license of the workman; that the Administrative Officer of the OP vide his letter dated 02.06.2003 directed the workman to report to Traffic Manager (Acting) for duty at Traffic Section, Head Office of the Corporation, but instead of joining duty he wrote a letter to the Authority by saying that he was illegally terminated from his service and informed that he would raise his grievances before the appropriate forum for redress and he did not turn up for resuming his duty; that the management of the OP vide their letter dated 11.07.2003 issued show-cause notice by stating that initially he tried to suppress the fact of the accident and after that when he was asked to join duty, he refused to join, which amounts to misconduct of dereliction of duty and directed to submit show-cause within seven days from the date of receipt of the same as to why enquiry should not be initiated against him; that the workman approached to the office of the Labour Commissioner on the point of the alleged illegal termination of service by the Management of the Corporation. In said representation, the workman stated that he had initiated one case for due wages before the Learned Payment of Wages Court and he submitted that if the Labour Commissioner intervened into the matter, he would withdraw said case. The said letter of the workman was duly forwarded to the Corporation for comments; that the OP appeared before the office of the Labour Commissioner and submitted their comments. It is further stated that on the basis of the charge-sheet, one domestic enquiry was initiated by the Management of the OP by engaging one Enquiry Officer. The workman appeared in the said enquiry initially, but after that he did not turn up though the date of enquiry was also intimated to him. The said fact was also intimated to the Labour Commissioner by the



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Management. The said enquiry is still pending; that the workman also refused to join in the post as asked by the Management; that he is still in service and the OP did not terminate his service as alleged by him. The enquiry is still pending, but no date was fixed as prayed by the workman as well as the matter is pending before this Tribunal. So, the prayer made by the workman cannot be granted. Hence, the OP has prayed for rejection of the prayer of the workman.

In order to establish his case, the applicant / workman has examined himself as P.W.-1 and filed documents, marked as Exhibits - 1 to 21/1. On the other hand, OP/Corporation has examined one witness namely, Tapan Maity as OPW-1. No document has been filed or exhibited on behalf of the OP/Corporation.

Upon considering the pleadings of both the parties, the following issues are framed for proper adjudication of this case :-

I S S U E S

1. Is the case maintainable ?
2. Has employment of the applicant Bhaskar Ghosh been refused by the O.P. Company w.e.f. 15.05.2003 and if so, is it justified ?
3. Is the applicant entitled to get the relief as prayed for ?
4. To what relief, if any, is the applicant entitled ?

DECISION WITH REASONS

Issue Nos. 1 to 4 :

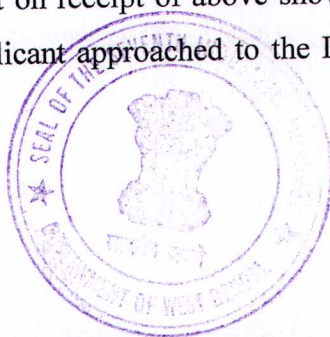
All these issues being interlinked character are taken up together for the sake of brevity and convenience of consideration.

In the instant case, the following facts are not disputed :-

- (i) that the applicant Shri Bhaskar Ghosh joined in the OP/Corporation as a driver vide letter dated 27.11.2001, issued by the OP/Corporation, and said appointment of his service was confirmed by letter dated 21.12.2002, issued by the OP/Corporation, and he was in continuous service till 06.03.2003 ;
- (ii) that on 06.03.2003 at about 6:15 p.m. the applicant while driving the bus bearing No. WB 04A 1320 met with a road traffic accident, with a Tata Sumo Van bearing No. WB 02F 3708, near traffic signal, on



- Belvedere Road, Alipur, Kolkata, which is near a Maruti Showroom, and as a result of such accident one on-duty Traffic Constable of Kolkata Police was injured and subsequently had died;
- (iii) that after such accident, the applicant had been to the depot of the OP/Corporation with the above numbered bus and reported the entire incident to the Depot-in-Charge, who, accordingly, recorded the same in the log book ;
 - (iv) that accordingly, a criminal case has been started by Alipur P.S. being Alipur P.S. Case No.29 dated 06.03.2003 (C.G.R. No.630/2003) u/s. 279/304A/427 of IPC against two accused persons namely, Bhaskar Ghosh (herein applicant) and another person namely, Md. Aftab;
 - (v) that on 08.03.2003 Mr. Arindam Chowdhury, the then Traffic Officer of W.B.S.T.C. Ltd., took the driving license of the applicant and submitted the same before Lal Bazar F.S.T.P. ;
 - (vi) that the accused / applicant was granted bail by the Learned Chief Judicial Magistrate, Alipur, South 24-Parganas in said case ;
 - (vii) that since the driving license of the applicant was seized by the Police in connection with the above referred criminal case, on 08.03.2003 he was allowed non-route duty i.e. garage duty at Salt Lake Depot and he continued such duty till 14.05.2003 and on 15.05.2003 his duty was stopped through a log-book entry by Salt Lake Depot ;
 - (viii) that the Administrative Officer, WBSTC Ltd. by his order No.373/WBSTC dated 02.06.2003 (Exhibit-4) directed the applicant to report to the Traffic Manager (Acting) for duty at traffic station, Head Office of the Corporation ;
 - (ix) that the management of OP vide their letter being No.590/WBSTC dated 11.07.2003 (Exhibit-6) issued a notice to the applicant asking him to show-cause within seven days from the receipt of the same as to why an enquiry should not be initiated against him on the grounds :- (a) that he intentionally did not inform the Corporation about the accident occurred on 06.03.2003 and continued to act as driver of the Corporation, (b) that he refused to join duty in spite of instruction in this regard and thereby he committed the misconduct of dereliction of duty ;
 - (x) that on receipt of above show-cause notice dated 11.07.2003, the applicant approached to the Labour Commissioner on 21.07.2003



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- for conciliation and settlement of the matter in dispute by his letter dated 21.07.2003 (Exhibit-8) ;
- (xi) that the applicant replied to said show-cause notice (Exhibit-6) by his letter dated 23.07.2003 (Exhibit-7) denying all the allegations brought against him, with the intimation that he already submitted representation before the conciliation machinery for conciliation on 21.07.2003, with a prayer "not to proceed" with the said show-cause notice ;
 - (xii) that thereafter the OP/Corporation appeared before the Labour Commissioner and submitted their comments and thereafter, several joint conferences (Exhibits-9, 10, 11, 12 & 13) were held before the Conciliation Officer, but the matter in dispute could not be settled within the stipulated period ;
 - (xiii) that during pendency of the conciliation proceedings, OP/Corporation issued charge-sheet (Exhibit-14) against the applicant on 16.02.2009, to which the applicant submitted his reply (Exhibit-16) on 18.03.2009 and further requested the OP/Management by issuing another letter dated 17.04.2009 (Exhibit-17) to refrain from further proceedings till disposal of the conciliation proceedings ;
 - (xiv) that during pendency of the conciliation proceedings, the applicant informed the OP/Management by issuing a letter dated 28.01.2010 (Exhibit-18) supported by copy of order dated 14.12.2009, passed by the Learned Judicial Magistrate, 7th Court, Alipur, South 24-Parganas, that he has been acquitted from the said criminal case arising out of an accident occurred on 06.03.2003 ;
 - (xv) that the OP/Management again issued a charge-sheet (Exhibit-19) against the applicant on 03.09.2010, to which the applicant submitted his reply (Exhibit-20) on 17.09.2010 requesting the OP/Management further to refrain from taking any action till finalization of the conciliation proceedings ;
 - (xvi) that thereafter, on 07.03.2011 the applicant applied for a certificate under Section 10(1B) of the Industrial Disputes Act, 1947 and the Conciliation Officer, accordingly, issued such pendency certificate on 09.03.2011 and thereafter, on 23.02.2012 the applicant filed the instant case before this Tribunal.



Now, the question which comes for consideration is that as to whether the employment of the applicant Bhaskar Ghosh was refused/stopped by the OP/Company with effect from 15.05.2003 or not and if so, what was the reason/cause behind such refusal of employment/stopping of his duty ?

Now, let us see the evidence, so adduced by the parties, in this regard.

PW-1 has deposed (para. 6 of his affidavit-in-chief) that although he had been attending duty since 08.03.2003 in the garage of WBSTC Ltd. situated at Bidhan Nagar without possessing his driving license, because the said license had already been taken away by Sri Arindam Chowdhury, Traffic Officer of the OP/Corporation, but all on a sudden he was asked by Sri Shankar Bhattacharya, the then Traffic Manager (Acting), when he met him in the head office of the OP/Corporation on his call on 14.05.2003 at 12:30 p.m., not to report for duty in the garage any further as he does not possess his driving license with him. He objected to such instruction and told him that his driving license was taken away by Arindam Chowdhury on 08.03.20903 and he has been performing his duty without having any driving license since 08.03.2003 as yet and requested the said Traffic Manager not to discontinue his duty, but the said Traffic Manager paid no heed to his request and further deposed (para. 7 of his affidavit-in-chief) that since 15.05.2003 he was not allowed to put signature in the attendance register although he had been regularly attending duty in the aforesaid scheduled place at Salt Lake Depot and stay there during his full schedule of duty hours and continued to attend the said Depot regularly till 04.06.2003.

OPW-1 has admitted in his cross-examination that it is true that on and from 06.03.2003 he i.e. the applicant performed his official duty inside the garage at Salt Lake as he committed an accident on the said date.

During cross-examination, PW-1 has confirmed his above oral testimony by saying that he was verbally terminated by the OP/Management on and from 14.05.2003.

Exhibit-1 series are the copies of letters dated 15.05.2003, 18.05.2003 to 20.05.2003, 22.05.2003, 24.05.2003 to 29.05.2003, 31.05.2003 to 04.06.2003, issued by the applicant to the Depot Manager of the OP/Company, wherefrom it is seen that on 15.05.2003 he was not allowed to put his signature in the attendance register, his number (being E.C. No.668) was not found in the attendance register on and from 17.05.2003 to 20.05.2003, 22.05.2003, 24.05.2003 to 29.05.2003 and 31.05.2003, when he attended his duties at about 6:00 a.m. on the aforesaid dates and he found his said number in the attendance register again on and from 01.06.2003 to 04.06.2003, when he attended his duty



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at about 6:00 a.m., but the Duty Officer did not allow him to put signature in the attendance register on the aforesaid days and he requested to the Depot Manager by the aforesaid letters to inform him about the cause of disappearance of his name and number in the attendance register and also the cause of stopping his duties. Exhibit-2 is another letter dated 19.05.2003 issued by the applicant Bhaskar Ghosh, addressed to the Managing Director, WBSTC, by which the applicant informed the Managing Director about the fact of his meeting with the T.M. (Acting) on 14.05.2003 at about 3:00 p.m. at Head Office, when said T.M. (Acting) conveyed him that his duty was stopped forthwith and also the fact when on 15.05.2003 he went to attend his duties as usual, he was illegally refused to join his duties orally by the on-duty J.T.S. By that letter, he also requested to the Managing Director to pass an order allowing him to join his duties.

With regard to the above letters, OPW-1 Sri Tapan Maity, the Administrative Officer, during his cross-examination has clearly stated that he cannot say as to whether the OP/Management replied Exhibit-1 series or not ; that he cannot say as to whether any reply was given against Exhibit-2 or not by the OP/Corporation. OPW-1 has admitted that he is (wrongly typed as 'was' in place of 'is') associated with the OP/Management since the year 1992. So, he is a competent officer to say as to whether reply to the aforesaid letters (Exhibit-1 series and Exhibit-2) of the applicant were given by the Depot Manager and the Managing Director or not, but he cannot say. Had reply-letters been issued by the Depot Manager and the Managing Director, it would certainly have been within the knowledge of the OPW-1, who is an Administrative Officer. So, it can safely be presumed that no reply to the aforesaid letters (Exhibit-1 series and Exhibit-2) was given to the applicant by the Depot Manager and the Managing Director.

Therefore, in view of above referred oral testimony of PW-1, duly corroborated by Exhibit-1 series and Exhibit-2 and also for the reason of non-giving of any reply to the aforesaid letters of the applicant by the Depot Manager and also by the Managing Director, it can safely be held that the duty of the applicant was stopped on 14.05.2003 after 12:30 p.m. and he was not allowed to put signature in the attendance register on and from 15.05.2003, though he attended his place of duty in time on and from 15.03.2003 to 04.06.2003 regularly. OP/Corporation has also admitted the said fact in para. 10 of their written statement, wherein it has clearly been stated that on 15.05.2003, his duty was stopped through a log-book entry by Salt Lake depot, but cause of such stopping of duty has not been stated therein.

It is the case of the OP/Corporation that as the driving license of the workman was impounded by the Police Authority and without driving license, he cannot drive vehicle



outside, so as per the verbal direction of the authority he was allowed non-route duty i.e. garage duty at Salt Lake Depot without driving license.

It is already established that the applicant performed his allotted non-route duty i.e. garage duty at Salt Lake Depot, without driving license, on and from 08.03.2003 to 14.05.2003.

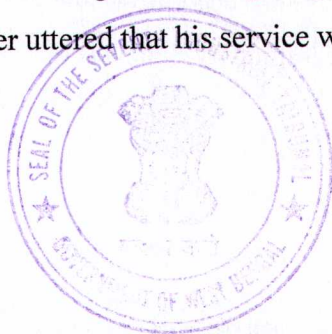
Now, question automatically comes as to for what reason, the OP/Management suddenly stopped his duty w.e.f. 15.05.2003 especially when they allowed him non-route duty i.e. garage duty at Salt Lake Depot, without driving license, after the road traffic accident occurred on 06.03.2003, and allowed him to continue such garage duty till 14.05.2003 ?

There is no explanation on this point from the side of the OP/Management.

In view of the position as well as considering the above referred oral testimony of PW-1, Exhibits-1 (series) & 2 and also the fact of directing the applicant by the OP/Management all on a sudden on 02.06.2003 to report to the Traffic Manager (Acting) for duty at traffic station by letter No.373/WBSTC dated 02.06.2003 (Exhibit-4), without giving any reply to the letters [Exhibits-1 (series) & 2], it can safely be held that the OP/Corporation, without giving any notice or serving any order upon the applicant, arbitrarily stopped the duty of the applicant w.e.f. 15.05.2003, without any cause / reason, and when they realized about their such mistake, they issued letter dated 02.06.2003 (Exhibit-4) asking him to report to the Traffic Manager (Acting) for duty at traffic station.

Now, the second question which comes for consideration is that as to whether the applicant in compliance with the order vide Memo. No.373/WBSTC dated 02.06.2003 (Exhibit-4), passed by the Administrative Officer, WBSTC Ltd., reported to the Traffic Manager (Acting) for duty at traffic station, Head Office of the OP/Corporation or not ?

In this regard, the applicant (PW-1) has deposed (para. 12 of his affidavit-in-chief) that he received a written communication from the Administrative Officer, WBSTC Ltd. vide **Order No.373/WBSTC Ltd. dated 02.06.2003**, wherein he was instructed to report for duty to the Traffic Manager, Head Office. He has further deposed (para. 13 of his affidavit-in-chief) that thereafter in accordance with the aforesaid order dated 02.06.2003, he met Traffic Manager (Acting) for resumption of his duty, when said Traffic Manager asked him to sign on a blank paper. He asked him the reasons of his signing on such a blank paper, but the Traffic Manager without giving any explanation to him told him to leave the said place and further uttered that his service was no longer required. He requested the said



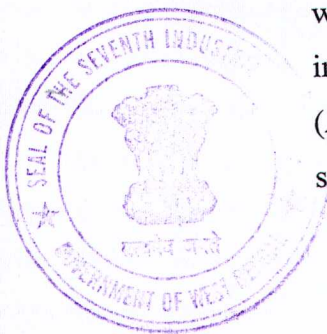
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Traffic Manager to give him the aforesaid verbal order in writing, but he declined to give the same. He has also deposed (para. 14 of his affidavit-in-chief) that thereafter, he made a **written representation dated 06.06.2003**, addressed to the Administrative Officer, WBSTC Ltd. stating the entire fact including the incident of insistence of Traffic Manager to sign on a blank paper by him and further deposed (para. 15 of his affidavit-in-chief) that thereafter, he represented the entire matter since from the very beginning of occurrence of the accident on 06.03.2003 till his refusal of employment and subsequently termination order was orally pronounced by the Traffic Manager (Acting) **vide his letter dated 24.06.2003** addressed to the Chairman, WBSTC Ltd. with a demand of his reinstatement in service with full back wages.

Exhibit-4 is the Memo. No.373/WBSTC dated 02.06.2003, issued by the Administrative Officer, WBSTC Ltd. to the applicant directing him to report to the Traffic Manager (Acting) for duty at traffic station, Head Office of the Corporation immediately.

Exhibit-3 is the said letter dated 06.06.2003, issued by the applicant Bhaskar Ghosh, addressed to the Administrative Officer, WBSTC Ltd., with reference to Memo. No.373/WBSTC dated 02.06.2003, wherefrom I find that he received Memo. No.373/WBSTC dated 02.06.2003 on 04.06.2003. In said letter, he informed about the entire fact of his illegal refusal of duty including the fact of his reporting to the T.O. (Acting) in compliance with the above Memo. No. 373/WBSTC dated 02.06.2003 for joining his duties, when said T.M. (Acting) handed over to him a blank leave application form directing him to sign on the same and when he refused to sign, said T.M. asked him to leave the place by saying that no duty would be allotted to him and his service would no longer be required. By said letter, he strongly protested against such act of the T.M. as well as illegal refusal of his duties w.e.f. 15.05.2003 without any notice and requested the Administrative Officer to arrange for allowing him to join his duties with payment of full back wages annulling the oral illegal termination order.

Exhibit-5 is another letter dated 24.06.2003 issued by the applicant Bhaskar Ghosh, addressed to the Chairman, W.B. Surface Transport Corporation, 37, Deshpriya Sashmal Road, Kolkata-40. In said letter, he informed the entire fact of his illegal termination of service with effect from 15.05.2003 and again on and from 04.06.2003 by illegal refusal of employment and also the fact of taking non-action by the Administrative Officer, WBSTC on his letter dated 06.06.2003. In said letter he has specifically stated that in compliance with Memo. No.373/WBSTC dated 02.06.2003, he met with the Traffic Manager (Acting) in his office on **04.06.2003**, after meeting with the A.D.O. for duty, when said T.M. (Acting) handed over a blank leave application form to him and asked him to sign on the same, which was a condition for allowing him to join duty and when he refused to sign on



the said blank leave application form, the said Traffic Manager (Acting) asked him to leave the place by saying that no duty would be allowed to him and his service would no longer be required. It is also stated in said letter that for such illegal refusal of duty and illegal termination of service w.e.f. 04.06.2003, he was neither issued any notice, show-cause nor charge-sheet, any such notice or notice pay. By said letter, he requested the Chairman, WBSTC to intervene into the matter personally **demanding justice** and also to quash the order of such illegal termination of his service and to reinstate him with full payment of back wages.

OPW-1 has stated in his cross-examination that he cannot say as to whether the OP/Management gave reply to the Exhibit-3 (above referred letter dated 06.06.2003) and Exhibit-5 (above referred letter dated 24.06.2003) or not. Had reply to the above two letters been really given by the OP/Management, it would certainly have been within the knowledge of OPW-1, but OPW-1 being a competent officer of the OP/Management has failed to say as to whether reply to said letters were given or not. Therefore, it can safely be presumed that no reply to the aforesaid two letters (Exhibits-3 & 5) was given to the applicant by the OP/Management. Moreover, OPW-1, during his cross-examination, has further admitted that he was present when the applicant had been to the office of the Traffic Manager and when he alleged to have been asked to put his signature on the blank paper. This very admission clearly proves that the applicant in compliance with Memo. No.373/WBSTC dated 02.06.2003 had gone to the office of Traffic Manager (Acting) on 04.06.2003 to join his duties, when the Traffic Manager (Acting) asked him to sign on a blank leave application form and when he refused to sign on the said blank paper, the Traffic Manager (Acting) asked him to leave the place and also told him that no duty would be allotted to him and his service would no longer be required. So, I do not find any reason to disbelieve the above referred oral testimony of PW-1 in this regard, which has duly corroborated by Exhibits-3 & 5 and also by OPW-1.

So, it is established that applicant was again refused to join his duty on 04.06.2003 when he had gone to the office of Traffic Manager (Acting) to comply with the order vide Memo. No.373/WBSTC dated 02.06.2003, which he received on 04.06.2003.

Therefore, in view of my above made discussion and findings, I have no hesitation to hold that the employment of the applicant was refused by the OP/Corporation with effect from 15.05.2003 and such refusal of employment was illegal, unjustified and void. In other words, the applicant was illegally terminated from his service by the OP/Corporation by way of refusal of employment with effect from 15.05.2003.



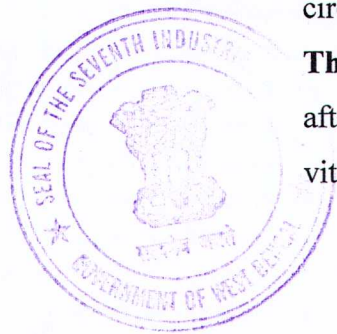
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Now, the third question which comes for consideration is that as to whether this case is maintainable or not and as to whether this Tribunal has jurisdiction to adjudicate this case or not ?

The argument in this regard, as advanced by the Ld. Advocate for the OP/Corporation, are based mainly on the following three points :-

- (i) that the domestic enquiry / departmental proceedings, so initiated against the applicant by the Management of the OP/Corporation on the basis of charge-sheet, is still pending ;
- (ii) that the applicant is still in service and he has not yet been terminated from his service by the OP/Corporation ;
- (iii) that as per Section 10, sub-Section (1-A)(c) of the Industrial Disputes Act, 1947, a workman may within a period of sixty (60) days from the date of receipt of the certificate from a Conciliation Officer filed an application in such form and in such manner and within such particulars of demands as may be prescribed to the Labour Court or Tribunal, but in the instant case, the applicant has filed the application under Section 10(1-B)(d) of the said Act more than eleven months after his receipt of the material certificate from the Conciliation Officer and as such the instant application is barred by limitation and is not maintainable. In support of his above contention, Ld. Advocate for the OP/Corporation has cited three decisions viz. (1) 2015 AIR SCW 812, (2) 2006 LAB. I.C. 2127 & (3) 2006 LAB. I.C. 2133 ; (4) Decisions of the Hon'ble High Court at Madras in W.P. No.1212 of 1962 & W.P. No.832 to 837 of 1962 and 273 to 275 of 1962 & (5) W.P. No.938(W) of 2011.

In reply, Ld. Representative for the applicant argued that no notice about such domestic enquiry / departmental proceedings was served upon the applicant ; that no copy of notice of said enquiry / proceedings has been filed or proved by the OP/Corporation ; that no document i.e. record of such domestic enquiry / departmental proceedings has been filed or proved by the OP/Corporation. In absence of those documents, it cannot be said that the alleged domestic enquiry / departmental proceedings was started and/or is still pending. **Secondly**, the applicant by adducing his evidence and proving some documents has successfully proved that he was terminated from his service w.e.f. 15.03.2003 by the OP/Corporation by way of refusal of employment and so, it cannot be said under any circumstances that he is still in service and he has not yet been terminated from his service. **Thirdly**, it is admitted position that this case has been filed more than eleven (11) months after receipt of pendency certificate, but for that reason, the instant proceedings would not vitiate on the ground that the time limit prescribed in Section 10(1-B)(c) of the Industrial



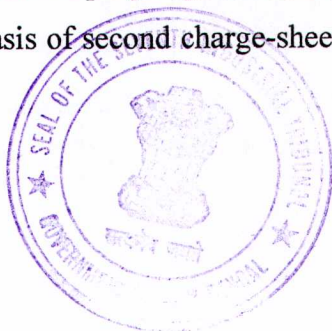
Disputes Act, 1947 uses the word 'may' which is directory in nature and not mandatory. Moreover, applicant (PW-1) has deposed about the cause of such delay in filing the present case and thereby satisfactorily explained such delay in filing this case. He has cited a decision of the Hon'ble High Court, Calcutta reported in 2011 (130) FLR 719, in support of his above contention.

Concluding his above argument Ld. Representative submitted that the instant case is quite maintainable and this Tribunal has ample jurisdiction to adjudicate this case.

With regard to the Point No. 1, I find that the OP/Corporation issued first charge-sheet (Exhibit-14) against the applicant on 16.02.2009 and thereafter, issued second charge-sheet (Exhibit-19) on 03.09.2010. I further find from the record that the applicant submitted his reply to the first charge-sheet by issuing letter dated 18.3.2009 (Exhibit-16), addressed to the Managing Director of the OP/Corporation, with a request to drop the proceedings till disposal of the writ petition being No. 17546 (W) of 2004, pending before the Hon'ble High Court, Calcutta. No document, whatsoever, has been filed by the OP/Corporation to show that domestic enquiry/departmental proceedings was started against the applicant on the basis of first charge-sheet (Exhibit-14), ignoring the prayer of the applicant, as made in his reply letter (Exhibit -16). In absence of any such document, it can safely be presumed that no domestic enquiry/departmental proceedings was started against the applicant on the basis of said first charge-sheet (Exhibit-14).

With regard to second charge-sheet (Exhibit-19), OPW-1 has deposed that opposite party had also issued one charge-sheet to the applicant and decided to hold one departmental enquiry on the basis of said charge-sheet. The said fact was intimated to the applicant and the same was also informed to the office of the Labour Commissioner (para. 8 of his affidavit-in-chief). He also deposed that the applicant replied to the said charge-sheet and initially appeared before the Enquiry Officer, who was outsider of the Corporation and engaged by the Management. But, after that the applicant did not participate into the said enquiry though the date of enquiry was duly communicated to him. The said fact was also duly intimated to the office of the Labour Commissioner. It is to be stated that the said enquiry is still pending incomplete and the applicant did not respond to the notices issued by the Enquiry Officer / Management of the Corporation (para. 9 of his affidavit-in-chief). In cross-examination, he has stated that it is true that a notice was issued to the applicant by the Enquiry Officer regarding initiation of the domestic enquiry. He did not file the copy of said notice before this Tribunal.

Had any domestic enquiry/departmental proceedings been really initiated against the applicant on the basis of second charge-sheet (Exhibit-19) and / or had any notice of



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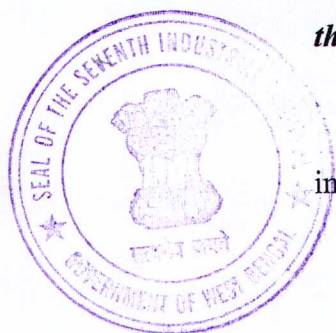
said enquiry/departmental proceedings been really issued and served upon the applicant by the Enquiry Officer, the OP/Corporation would have certainly disclosed the name of said Enquiry Officer and also produced the copy of said notice along with records of such proceedings in order to corroborate the above oral testimony of the OPW-1, but they did not think it necessary. So, it can again safely be presumed that no domestic enquiry/departmental proceedings was also initiated against the applicant on the basis of second charge-sheet (Exhibit-19). ***Therefore, in view of my above-made discussions and findings, I am inclined to hold that no domestic enquiry / departmental proceedings has yet been initiated against the applicant by the OP/Corporation and/or no such enquiry / departmental proceedings is still pending against the applicant.***

Moreover, I find from Exhibit-21 (Order dated 14.12.2009, passed by Ld. Judicial Magistrate, 7th Court, Alipur in C.G.R. No.630/2003) and Exhibit-21/1 (Judgment dated 14.12.2009, passed by Ld. Judicial Magistrate, 7th Court, Alipur in C.G.R. No.630/2003) that the applicant Bhaskar Ghosh and another accused namely, Md. Aftab were found not guilty of the offence u/s. 279/304A/427 of I.P.C. and they are acquitted from the said case arising out of an accident occurred on 06.03.2003 at 18:00 hours involving bus No. WB-04A-1320. The applicant by his letter dated 28.01.2010 (Exhibit-18) informed the Managing Director of the OP/Corporation about the fact of such acquittal from the above referred criminal case, but instead of issuing a letter directing the applicant to join his duties immediately as driver, the OP/Corporation on 03.09.2010, which is more than after eight months of such order of acquittal, issued second charge-sheet (Exhibit-19), which is, in my opinion, a clear violation of natural justice, because of the fact that at the time of passing aforesaid judgment dated 14.12.2009, no departmental enquiry / proceedings was pending against the applicant. So, the decisions, as cited by the Ld. Advocate for the OP/Corporation, which are reported in 2015 AIR SCW 812 and 2006 LAB. I.C. 2117 (S.C.) are not applicable in view of the facts and circumstances of this case.

Therefore, the argument as advanced by the Ld. Advocate for the OP/Corporation in this regard has got no force and so, the same is not accepted.

With regard to Point No. 2, I have already come to a conclusion that the applicant was terminated illegally from his service by the OP/Corporation by way of refusal of employment w.e.f. 15.05.2003. ***Therefore, in view of my such findings it cannot be said that he is still in service and/or he has not yet been terminated from his service.***

Therefore, the argument as advanced by the Ld. Advocate for the OP/Corporation in this regard is also not accepted.



With regard to Point No. 3, it is admitted position that on the prayer of the applicant, the Conciliation Officer issued pendency certificate in pursuance of the provision of Section 10(1B) of the Industrial Disputes Act, 1947 **on 09.03.2011** and thereafter, **on 23.02.2012** the applicant filed this case under Section 10(1B)(d) of the Industrial Disputes Act, 1947, which is more than after eleven (11) months after his receipt of such pendency certificate from the Conciliation Officer concerned.

Now, let us see Section 10 (1B) of the Industrial Disputes Act, 1947 (West Bengal Amendment), which runs as follows :-

- “(1B)(a) Notwithstanding anything contained elsewhere in this Act, where in a conciliation proceeding of an industrial dispute relating to an individual workman, no settlement is arrived at within a period of sixty days from the date of raising of the dispute, the party raising the dispute may apply to the Conciliation Officer in such manner and in such form as may be prescribed, for a certificate about the pendency of the conciliation proceedings.
- (b) the Conciliation Officer shall, on receipt of the application under clause (a), issue a certificate within seven days from the date of receipt in such manner, in such form and containing such particulars as may be prescribed. A copy of the certificate shall also be sent to the appropriate Government for information.
- (c) The party **may**, within a period of sixty days from the receipt of such certificate or, where such certificate has not been issued within a period of sixty days from the receipt of such certificate or, where such certificate has not been issued within seven days as aforesaid, within a period of sixty days commencing from the day immediately after the expiry of seven days as aforesaid, **file an application** in such form and in such manner and with such particulars of demands as may be prescribed, in such Labour Court or Tribunal as may be specified by the appropriate Government by notification. Different Labour Courts or Tribunals may be specified for different areas or different classes of industries.
- (d) The Labour Court or Tribunal specified under clause (c) shall, within a period of thirty days from the date of receipt of an application under clause (c), give a hearing to the parties and frame the specific issues in dispute, and shall thereafter proceed to adjudicate on the issues so framed as if it were an industrial dispute referred to in sub-section (1)”.



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In this regard, the applicant has stated in para. 30 of his statement of claim "That your applicant further states that your applicant could not file the written statement, thereafter because of his pre-occupation for his wife's illness who was under treatment of the physician and who gave birth to a baby girl on 12.10.2011 and was under after care treatment and nursing for more than a month. Your applicant having no other relative and being alone was engaged for nursing and treatment of his wife and the child after its birth. Thus could not arrange for preparing the written statement and hence the delay in filing the statement. The Medical Certificate dated 27.12.11 issued in this regard will be relied on at the hearing."

PW-1 (applicant) has also deposed that he could not file the instant application (case) before the Learned Tribunal within the stipulated period after receiving the pendency certificate from Conciliation Officer due to acute trouble and personal difficulties caused due to his wife's illness and he prays for condonation of the said delay (para. 29 of his affidavit-in-chief).

There is no cross-examination on his above oral testimony. Even no suggestion has been put to him by the OP/Corporation on his above oral testimony during his cross-examination. Therefore, his above oral testimony remained intact. So, I do not find any reason to disbelieve such oral testimony. ***Consequently, I have no hesitation to hold that the applicant has explained the cause of delay of more than eleven months in filing this case satisfactorily.***

With regard to the argument, as advanced by the Ld. Advocate for the OP/Corporation that the instant application is barred by limitation, my contention is that ***it is well settled that the provisions of Articles 137 of the Schedule to the Limitation Act, 1963, are not applicable to the proceedings under the Industrial Disputes Act, 1947 and that the relief under it cannot be denied to the workman merely on the ground of delay.***

Moreover, I find from the above decision of the Hon'ble High Court, Calcutta, reported in **2011 (130) FLR 719** that the Hon'ble has been pleased to observe that the time limit as prescribed in Section 10(1-A)(c) of the Industrial Disputes Act, 1947 uses the word "**may**", which is practically **a directory provision**, not at all mandatory provision. If that be so, ***it cannot be said that a case under Section 10(1-B)(d) of the Industrial Disputes Act, 1947 has to be necessarily filed within sixty days of receipt of the pendency certificate from the Conciliation Officer.***

So, the argument, as advanced by the Ld. Advocate for the OP/Corporation in this regard, has also got no force and hence the same is not accepted and the decision, reported



in 2006 LAB. I.C. 2133, as cited, is not applicable in view of the facts and circumstances of this case.

Therefore, in view of my above made discussions and findings and also accepting the argument as advanced by the Ld. Representative for the applicant and also relying on the decisions of the Hon'ble High Court, Calcutta, reported in 2011 (130) FLR 719, ***I am inclined to hold that the instant application is not barred by limitation and this case is quite maintainable in law and this Tribunal has ample jurisdiction to adjudicate the matter in dispute and at the same time, considering all aspects, evidence as well as materials on record, armed with discussions, discussed above, I am further inclined to hold that the applicant is entitled to get an order of reinstatement in his service.***

Now, the last and vital question which comes for consideration is that as to whether the applicant is entitled to get full back wages and consequential benefits, as prayed for, or not ?

In this regard, Ld. Representative for the applicant argued that the applicant is not gainfully employed during the entire period of his illegal termination of service by way of refusal of employment and the applicant (PW-1) has also deposed in this regard ; that so, he is entitled to get full back wages, as prayed for. Ld. Representative has cited a decision reported in 2003 (139) FLR 541, Supreme Court, in support of his above contention.

In reply, Ld. Advocate for the OP/Corporation argued that since the applicant is still in service and departmental proceedings, so initiated against him, is still pending, question of allowing his prayer of payment of full back wages does not arise at all and so, the above decision, as cited by the Ld. Representative, is not applicable in this case.

In the case of Deepali Gundu Surwase versus Kranti Junior Adhyapak & Ors., reported in 2013 (139) FLR 541, the Hon'ble Supreme Court has observed that in order to get full back wages, the employee/workman is only required to either plead or at least make a statement before the adjudicating authority that he was not gainfully employed or employed on lesser wages. On the other hand, the employer is required to prove that the employee / workman was gainfully employed and getting amount equal to wages drawn by him / her prior to termination of service in order to avoid payment of back wages. In another case viz. Tapas Kumar Pal vs. BSNL & Anr., reported in 2014(5) Supreme 617, the Hon'ble Apex Court has observed that a workman whose service has been illegally terminated would be entitled to full back wages except to the extent he was gainfully employed during the enforced idleness and that is the normal rule.



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In the instant case, the applicant / employee has stated in para. 18 of his statement of claim that during this long period he has lost his everything for surviving with his family and is on the verge of starvation, death with his family. He has also deposed before this Tribunal (para. 30 of his affidavit-in-chief) that he is fully unemployed since his termination of service and have no source of earning as yet and passing very hard days somehow maintaining his family by the help of his well-wishers and taking loans. There is no cross-examination on his above oral testimony. Only one suggestion has been put to him that he is now gainfully employed, which he has denied. In cross-examination, he has clearly stated again that he has prayed for full back wages from the date of his termination i.e. from 14.05.2003. No evidence with regard to the fact that the applicant / employee was gainfully employed and getting amount equal to wages drawn by him prior to the alleged termination of service in order to avoid payment of back wages has been adduced by the OP/Corporation. Therefore, I do not find any reason to disbelieve the above oral testimony of the applicant (PW-1). Consequently, I have no other alternative but to hold that the applicant / employee has been able to prove successfully that he was / is not gainfully employed during the entire period of his termination by way of refusal of employment with effect from 15.05.2003 till date. In cross-examination, the applicant (PW-1) has admitted that he filed a case under the provisions of Payment of Minimum Wages Act for one and a half months for the months of October and November, 2001 and he is not aware about the order of the said case. The applicant has claimed back wages with effect from 15.05.2003. So, the above case filed under Payment of Wages Act has no connection with the present case, which the applicant has also stated in para. 19 of his statement of claim. Moreover, it is not the case of the OP/Corporation that they have paid any salary to the applicant during the period of his alleged termination by way of refusal of employment with effect from 15.05.2003. Therefore, it is established that the OP/Corporation paid no salary/wages to the applicant with effect from 15.05.2003 till date. The Decisions of the Hon'ble High Court at Madras in W.P. No.1212 of 1962 & W.P. No.832 to 837 of 1962 and 273 to 275 of 1962 and W.P. No.938(W) of 2011, so cited by the Ld. Advocate for the OP/Corporation in this regard, are not applicable in view of the facts and circumstances of the present case.

So, considering all aspects, evidence as well as materials on record, armed with discussions and findings, made above, and also accepting the argument as advanced by the Ld. Representative for the applicant and relying on the aforesaid decisions, so cited by the applicant, ***I have no hesitation to hold that the applicant has been able to prove his case successfully and therefore, he is entitled to get an order of reinstatement in service under the OP/Corporation with full back wages with effect from the date of his termination of service by way of refusal of employment i.e. on and from 15.05.2003 and consequential benefits, if any, accrued thereto.***



All the issues are, thus, disposed of in favour of the applicant.

In the result, the case succeeds.

Hence, it is,

ORDERED

that the case being No. 12 of 2012 under Section 10(1B)(d) of the Industrial Disputes Act, 1947 be and the same is allowed on contest without any order as to costs.

The Opposite Party viz. The Managing Director, West Bengal Surface Transport Corporation is hereby directed to reinstate the applicant / workman namely, Sri Bhaskar Ghosh in his service immediately and is also directed to pay full back wages to him along with consequential benefits, if any, from the date of termination of his service by way of refusal of employment i.e. with effect from 15.05.2003 till today. The OP/The Managing Director, West Bengal Surface Transport Corporation is further directed to comply with the Award within a period of 90 (Ninety) days from the date of this Award, in default, the OP/The Managing Director, West Bengal Surface Transport Corporation has to pay interest at the rate of 10 per cent till the realization of the entire due amount, failing which the applicant / workman will be at liberty to put the Award in execution in accordance with law.

This is my AWARD.

Let six (6) copies of this Award be sent to the appropriate authority for information and taking necessary action.

Dictated & corrected by me

sd/-

Judge

Judge

Seventh Industrial Tribunal

sd/-

(ASHIS KUMAR DAS)

Judge

Seventh Industrial Tribunal

Kolkata

19/11/2019

Judge

Seventh Industrial Tribunal

