

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

No. Labr/ 10 . . /(LC-IR)/ Date: 03/01/2023.

ORDER

WHEREAS under the Government of West Bengal, Labour Department Order No. Labr/65-IR/I.R./11L-64/10 dated 07.02.2014 the Industrial Dispute between M/s. Simplex Infrastructure Limited, Simplex House, 27 Shakespeare Sarani, Kolkata - 700017 and its workman Sri Swapan Kumar Chakraborty, Aurobindo Pally (Purbasa), 106, K.M.R.C. Road, P.O. - Dakshin Jagatdal, Pin - 700151 regarding the issue mentioned in the said order, being a matter specified in the Second Schedule to the Industrial Dispute Act, 1947 (14 of 1947), was referred for adjudication to the Judge, First Industrial Tribunal, West Bengal.

AND WHEREAS the First Industrial Tribunal, West Bengal, has submitted to the State Government its award dated 28/11/2022 on the said Industrial Dispute vide memo no. 1825 - L. T. dated. 13/12/2022.

NOW, THEREFORE, in pursuance of the provisions of Section 17 of the Industrial Dispute Act, 1947 (14 of 1947), the Governor is pleased hereby to publish the said award as shown in the Annexure hereto.

ANNEXURE

(Attached herewith)

By order of the Governor,

sdt

Joint Secretary
to the Government of West Bengal

I/352101/2022

H/A ZIM
3/2

No. Labr/.10/1(5) ./ (LC-IR) Date: 03/01 /2022.

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

1. M/s. Simplex Infrastructure Limited, Simplex House, 27 Shakespeare Sarani, Kolkata - 700017.
2. Sri Swapan Kumar Chakraborty, Aurobindo Pally (Purbasa), 106, K.M.R.C. Road, P.O. – Dakshin Jagatdal, Pin - 700151.
3. The Assistant Labour Commissioner, W.B. In-Charge, Labour Gazette.
4. The O.S.D. & E.O. Labour Commissioner, W.B. New Secretariate Building, 1, K. S. Roy Road, 11th Floor, Kolkata- 700001.
5. The Sr. Deputy Secretary, IT Cell, Labour Department, with the request to cast the Award in the Department's website.


Joint Secretary

No. Labr/ 10/2(2) ./ (LC-IR) Date: 03/01 /2022.

Copy forwarded for information to:

1. The Judge, First Industrial Tribunal, West Bengal with reference to his Memo No. 1825 – L. T. dated. 13/12/2022.
2. The Joint Labour Commissioner (Statistics), West Bengal, 6, Church Lane, Kolkata -700001.

Joint Secretary

In the matter of an Industrial Dispute exists between M/s Simplex Infrastructure Limited, Regd. Office – SIMPLEX HOUSE, 27 Shakespeare Sarani, Kolkata – 700 017 and their Workman named Sri Swapan Kumar Chakraborty, Aurobindo Pally (Purbasa), 106, K.M.R.C. Road, P.O. – Dakshin Jagatdal, Pin – 700 151.

G.O. No. 65-I.R./IR/11L-64/10, dated 07.02.2014

BEFORE THE FIRST INDUSTRIAL TRIBUNAL: WEST BENGAL

PRESENT

**SHRI UTTAM KUMAR NANDY, JUDGE
FIRST INDUSTRIAL TRIBUNAL, KOLKATA**

Date of Order: 28.11.2022

Case No.: VIII – 01/2014

The instant case is initiated on receipt of copy of government order of reference No. 65-I.R./IR/11L-64/10, dated 07.02.2014 from the Labour Department, IR Branch issued, East India House, 2nd Floor, 20B, Abdul Hamid Street, Kolkata – 700 069, referring an Industrial Dispute in exercise of the power conferred by Section 10 read with Section 2A of the Industrial Dispute Act 1947 between M/s Simplex Infrastructure Limited, Regd. Office – SIMPLEX HOUSE, 27 Shakespeare Sarani, Kolkata – 700 017 and their Workman named Sri Swapan Kumar Chakraborty, Aurobindo Pally (Purbasa), 106, K.M.R.C. Road, P.O. – Dakshin Jagatdal, Pin – 700 151, for adjudication of the matter regarding termination of service of the Workman by the employer and submitting its award to the State Government.

The case of the Workman in brief is that he was appointed as Manager under the Opposite Party/Company on 13.11.2008 on the strength of a letter of appointment dated 13.11.2008 but his service was terminated all of a sudden on 12.06.2012 without complying the condition stated in their appointment letter dated 13.11.2008 and statutory requirements under Industrial Disputes Act 1947.

He further states that in the letter of termination it was categorically mentioned that “Services in the capacity of Manager (QS) with the Company is being terminated as per Clause 4 of your appointment letter No. 01/MD/ER/C2293/EC20159/VOL2/197909 dated 13.11.2008”, but without offering 3 (three) months wages, that’s why the whole action was a nullity in the eye of law as demanded by the Workman.

Workman further stated that Company failed to pay retrenchment compensation and notice pay as mandatorily required u/s 25F of the Industrial Disputes Act 1947 as this action of the Company was amounted to retrenchment within the meaning of 2(OO) of the said Act.

It is further stated by the Workman that his service was continued till the termination letter dated 12.06.2012. The Workman thereafter, raised an Industrial Dispute with the Company by a letter dated 30.07.2012 against which the Company did not pay any hit. The Workman waited for about 2 (two) months but got no reply. Then the



Workman raised a formal Industrial Dispute with the Labour Commissioner, Government of West Bengal by a letter dated 07.09.2012 stating all the facts

The Conciliation Officer for conciliation sent notice to the Opposite Party / Company inviting their comments against the representation of the Workman dated 07.09.2012 and Company made their comments by a letter dated 10.11.2012 which is according to the Workman baseless and false. Calling the Workman was not a "workman" within the meaning of Section 2S of the Industrial Dispute Act 1947 though the Workman used to work of highly technical nature of job having no power being vested of managerial, administrative or supervisory in nature and even the Workman had no power to take any disciplinary action against any employee or to sanction leave to anybody or to act on behalf of the Company and there was no employee under him to supervise his job.

The Workman placed his rejoinder on 07.12.2012 addressing the Conciliation Officer and Deputy Labour Commissioner, Government of West Bengal against the objection of the Company.

Several conciliation meetings were held but all efforts ended in smoke and ultimately Labour Department, Government of West Bengal by their order dated 07.02.2014 referred the dispute before this Tribunal to adjudicate the following issues.

- 1) Whether the termination of service of Shri Swapan Kumar Chakraborty w.e.f. 30.06.2012 by the management of Simplex Infrastructure Limited is justified?
- 2) If not, what relief he is entitled to?

In view of the above circumstances the Workman prayed for declaring the action of the Company was illegal, unjustified by ordering to reinstate the Workman with full back wages along with other consequential benefits thereto.

The Company appeared on 26.03.2014 and filed Written Statement on 17.07.2014 and stating inter-alia that the order of reference is not maintainable and the concerned employee Shri Swapan Kumar Chakraborty worked as a Manager and he cannot be turned as "Workman" within the meaning Section 2S of the Industrial Disputes Act 1947 and as such order of reference is not an industrial dispute within the meaning of Section 2K of the Industrial Disputes Act.

It is further stated that this Tribunal has no jurisdiction whatsoever to adjudicate the issue as canvased in the purported application being filed u/s 2K of the Act.

It is further demanded the contractual termination of Shri Swapan Kumar Chakraborty cannot give rise to any industrial dispute.



It is categorically stated the nature of duties was admitted by the applicant himself. Moreover, he had admitted his nature of duties in an e-mail sent to Shri Goutam Kumar, Deputy General Manager of the Company vide e-mail dated 10.09.2011 along with the attachments and as such the applicant is not a workman u/s 2S of the Industrial Disputes Act and there cannot be any industrial dispute.

It is further categorically stated that the applicant was appointed by the Company as a Manger for a period of 12 (twelve) months w.e.f. 01.11.2008 vide Company's letter dated 13.11.2008 on condition that the contract of appointment is terminable by 3(three) months' notice from either side without assigning any reason. Company may terminate him with payment of an amount equivalent to 3 (three) months' pay in lieu of 3 (three) months' notice.

It is further claimed that Company extended his service from time to time. The Company extended the contact by their letter dated 11.02.2010 for the period of 24 (twenty-four) months w.e.f. 01.11.2009. Thereafter, the Company amended the termination clause by stating that his service may be terminated by 1 (one) month notice from either side without assigning any reason and Company may terminate his service with payment of amount equivalent to 1 (one) month pay in lieu of 1 (one) month notice.

Thus, Company claimed that the original Clause 4, as envisaged vide their letter dated 13.11.2008 stood amended by the letter dated 11.02.2010.

Company admitted the reference of Government of West Bengal in respect of present dispute and ultimately Company prayed to decide the preliminary objection at the first instance before entering into the merit of the case regarding the maintenance of the case and finally to dismiss the case.

Issues have already been framed by the reference agency Labour Department, Government of West Bengal but for brevity of my discussion the issues are once again mentioned below:

ISSUES

- 1) Whether the termination of service of Shri Swapan Kumar Chakraborty w.e.f. 30.06.2012 by the management of Simplex Infrastructure Limited is justified?
- 2) If not, what relief he is entitled to?

Decision with Reasons:

In support of the case the case Workman Swapan Kumar Chakraborty has examined himself as WW-1.

That apart Workman has cited the following documents which marked as follows:

- 1) Photocopy of termination letter dated 12.06.2012 giving effect from 30.06.2012 to terminate the service of the Workman by the Company. **Exhibit – 1.**
- 2) Photocopy of appointment letter dated 13.11.2006 issued by the Company to the Workman. **Exhibit – 2.**
- 3) Photocopy of the protest letters dated 27.07.2012 and 30.07.2012 by the Workman to the Company. **Exhibit – 3 & Exhibit – 3/1.**
- 4) Photocopy of letters dated 07.09.2012 and 07.12.2012 by the Workman to the Labour Commissioner and Deputy Labour Commissioner. **Exhibit – 4 & Exhibit – 4/1.**

Now let us see what has been stated by the WW-1 in his evidence on 09.12.2014 to 15.11.2017.

WW-1, Swapan Kumar Chakraborty, aged about 63 years on 09.12.2014 has stated that he used to work under the Company named M/s Simplex Infrastructure Limited.

He joined the Company on 01.11.2008 as Engineer having designation of Manager (QS). **Exhibit – 2.**

He claimed that he had no managerial, administrative or supervisory power and he never discharge any such worker except the work which was purely technical.

He used to explain to the mason, labours, carpenters, bar binders and there was no employee working under him. And he had no power to recommend or sanctioned any leave of any workman having power to take disciplinary action against any employee or no scope to create innovative or prepare any plan in the field of his work nor he represented the Company anywhere.

By **Exhibit – 1**, he was terminated from the Company.

PW-1 claimed that the Company did not pay him 3 (three) months' notice at the time of termination in terms of Clause being referred in the appointment letter and no retrenchment compensation was also paid, only the Company paid one month's notice pay after long time of his termination.

By **Exhibit – 3** and **Exhibit – 3/1**, PW-1 has made protest against his illegal termination and since he did not achieve any result he raised the dispute before the Labour Commissioner and Deputy Labour Commissioner by **Exhibit – 4** and **Exhibit – 4/1.**

Since termination he was unemployed up to 22.07.2014 and thereafter, from 23.07.2014 he got employment in a semi-government organization for his subsistence.

He denied all the allegations made in para-4 and 5 of the Written Statement of the Company along with averments made in other paragraphs.

WW-1 prayed for back wages, legal explanation and consequential benefits.

From his cross examination it is revealed that PW-1 admitted that nothing was mentioned in **Exhibit – 2** about any point of "Engineer".

He also admitted that he did not file any document to show that **Exhibit – 3/1** was actually sent by him in the address of the Company and/or despatched or delivered to the Company in its official address.

He also admitted that he received the letter dated 11.02.2010 from the Company which has been marked as **Exhibit – A** from the side of the Company.

He also admitted after showing the letter dated 10.11.2012 issued by the Company to the Labour Commissioner, whether **Exhibit – 4/1** was a reply to the letter dated 10.11.2012.

PW-1 could not remember whether he received any copy of letter dated 28.12.2012 addressed to the Deputy Labour Commissioner by the Company.

PW-1 stated that his gross salary was Rs. 66,000/- (Rupees sixty-six thousand) only on the date of his termination.

He denied that he used to give advice regarding policy matter to his superior.

He also stated that he was posted in the project of the Company at Sodepore at the time of his termination and some disputes and differences were cropped up between himself and the management prior to his termination of service which was relating to his designation Manager because of the fact that though his designation was noted as Manager (QS) but he was not allowed to perform his job in the said capacity.

He admitted that he did not submit any written protest to the management relating to the aforesaid dispute prior to his termination of service.

He denied all other suggestions as led by the other side in spite of his positive statement as stated before.

He admitted that the Company at the time of his termination paid him one month salary.



PW-1 admitted that on and from 23.07.2014 he was employed in Westing House Saxby Pharma Ltd. in the capacity of 'Professional' and the said Company situated at 17 Convent Road and presently i.e. 15.11.2017 he was not doing any job.

He also admitted he used to get salary of Rs. 35,000/- (Rupees thirty-five thousand) only in the said concern.

He denied that prior to joining at Company under reference he used to work in the concern named LEA Associates South Asia Pvt. Ltd.

He admitted that he received a letter dated 29.08.2008 from LEA Associates South Asia Pvt. Ltd. did not accept the same and summarily rejected the same.

He affirmed that he did not depose falsely rather he is entitled to the reliefs as prayed for.

On the other hand the Company has cited 2(two) witness named Tarak Kumar Bhaumik, Assistant General Manager (Administration) of the Company as CW-1 and one Suman Nandy, Assistant Manager in respect of the information and Technology of the Company as CW-2.

That apart Company has filed some documents which has been marked as follows:

- 1) Photocopy of letter dated 11.02.2010 issued by the Company to Swapn Kumar Chakraborty regarding extending his contract of appointment. **Exhibit – A.**
- 2) Photocopy of letter of appointment issued by the Company to Swapn Kumar Chakraborty on 13.11.2008. **Exhibit – B.**
- 3) Photocopy of mail containing 4 (four) sheets dated 10.09.2011 issued by Swapn Kumar Chakraborty to one Goutam Kar, the Project Coordinator of the Company. **Exhibit – C collectively (objected to).**
- 4) Photocopy of letter dated 30.07.2012 of Swapn Kumar Chakraborty to the Company. **Exhibit – D.**
- 5) Photocopy of letter dated 10.11.2012 containing 4 (four) sheets issued by S. Sengupta, Chief Manager (Administration) of the Company to Deputy Labour Commissioner. **Exhibit – E collectively.**
- 6) Photocopy of letter dated 28.12.2012 (2 sheets) issued by the Company to Deputy Labour Commissioner. **Exhibit – F.**
- 7) Photocopy of letter dated 29.08.2008 (2 sheets) issued by the General Manager of LEA Associates South Asia Pvt. Ltd. addressed to Swapn



Kumar Chakraborty and the same was submitted to the Company under reference by Swapam Kumar Chakraborty. **Exhibit – G collectively.**

- 8) Photocopy of letter dated 26.10.2009 containing 2 pages signed by Swapam Kumar Chakraborty. **Exhibit – H collectively.**
- 9) Photocopy of letter dated 02.03.2010 issued by Swapam Kumar Chakraborty to the Deputy General Manager of the Company (4 sheets). **Exhibit – I collectively (objected to).**

Now let us examine what the witness has deposed on behalf of the Company.

CW-1 has produced the documents on behalf of the Company, which has been marked as **Exhibit – A to Exhibit – I** out of which **Exhibit – C** and **Exhibit – I** were objected to at the time of making exhibits of them.

From the cross examination of CW-1 it is revealed that he was attached with the Company from May 1995.

He claimed that though **Exhibit – 2**, the appointment letter was issued on 13.11.2008 but PW-1 had been serving from 01.11.2008.

CW-1 has failed to show any document that PW-1 was intimated prior to his joining that his service was purely contractual in nature and CW-1 admitted that nothing has been mentioned in **Exhibit – 2** about the nature of work, which PW-1 had to perform by the strength of his appointment letter.

According to CW-1 the notice of termination is required to be served of 3(three) months ahead before termination.

As per **Exhibit – 1**, the service of Mr. Chakraborty was terminated in terms of Clause No. 4 of letter of appointment dated 13.11.2008 and one month's salary was offered to the Workman as mentioned in letter of termination i.e. **Exhibit – 1**.

Even then CW-1 denied that Company did not pay to the Workman the salary which he entitled to at the time of termination.

CW-1 admitted that in the letter of termination nothing is mentioned about the **Exhibit – A**.

CW-1 claimed that Company's documents being **Exhibit No. – G & H** shall prove that Mr. Chakraborty performed the administrative job.

CW-1 claimed that **Exhibit – C** was sent by Swapam Kumar Chakraborty when this Tribunal put him a question "have you produced anything regarding such proof before this Tribunal?", CW-1 answered "No", then voluntarily stated that the staff

holding the post of Manager and other Departmental Heads are provided with a Code No. of e-mail and such Code No. will be made available from their server and he could produce the mail to show that the Code No. mentioned in that **Exhibit – C**, was allotted to Shri Swapan Kumar Chakraborty.

He admitted that there is no signature of Shri Swapan Kumar Chakraborty in the relevant place in **Exhibit – G**.

He admitted that Mr. Chakraborty had been in their Company on 01.11.2008 and before joining Mr. Chakraborty submitted his bio-data, but CW-1 could not produce any such bio-data of Shri Chakraborty.

CW-1 further states that HR Section of their Company received documents from Mr. Chakraborty prior to his joining in their Company relating to his release from the earlier concern where he used to work but CW-1 could not produce such documents before this Tribunal.

CW-1 admits that he has no personal knowledge regarding the matter relating to submission of any paper by Mr. Chakraborty before their Company.

CW-1 admits that Code No. mentioned in **Exhibit – C** is not identical with the Code No. as mentioned in **Exhibit – 1**.

He also voluntarily says that for each project separate Code No. is allotted to the staff working in the managerial posts. Even then he could not produce any document in support of his such contention.

He denied that Mr. Chakraborty was appointed on permanent basis.

He admits that it is fact that during last preceding calendar year (deposed on 10.10.2018) Mr. Chakraborty worked for more than 240 (two hundred forty) days.

He claimed that he produced documents to show that Mr. Chakraborty used to work in managerial post and he used to supervise the work of other staff.

He admits that no chargesheet or show-cause was issued to Mr. Chakraborty before termination and then voluntarily says that since he was working on contractual basis no such question arises.

CW-2 Mr. Suman Nandy, the Assistant Manager in respect of the Information and Technology of the Company has stated that has brought the device to run **Exhibit – C** and **Exhibit – 2** (both objected to) which are CDs to show that their attachments are still existing.

CW-2 has further stated that it is the system in their Company that an e-mail along with Password is allotted to the respective employee who can only send e-mail to the

office from the respective sites and it is done for the security of the business of the Company.

According to CW-2, the first CD was sent to Mr. Swapan Kumar Chakraborty, the Workman was serving in the capacity of Manage (QS) BUUIPL, Rajarhat and the second CD was sent to Sri Swapan Kumar Chakraborty when he was serving as Manager (QS) of the Company in the site KMDPL, Rajarhat.

According to the sheets of 4 (four) pages in respect of list of e-mail IDs being given to the employee shows that CD being No. C2190, this e-mail ID was given to Mr. Swapan Kumar Chakraborty and the CD being No. C2362 i.e. e-mail ID was also given to Mr. Swapan Kumar Chakraborty who was the only person can send this e-mail to the head office.

Then the device is run in the open court in presence of Ld. Counsels and the Workman Mr. Swapan Kumar Chakraborty by which CD was run through.

From cross-examination of CW-2 it is revealed that another mail from the e-mail ID No. C2190 was sent from Mr. Giridhari Roy to R.O. Accounts as the same is found from the system, which was equally accessed by Mr. Giridhari Roy to R.O. Accounts Section.

Then CW-2 voluntarily opines that this ID, which has been accessed by Mr. Giridhari Roy may be given by Mr. Swapan Kumar Chakraborty himself because Mr. Giridhari Roy was the then Accounts Officer on the site named BUUIPL, Rajarhat. But CW-2 has failed to show any proof that Mr. Swapan Kumar Chakraborty allowed Mr. Giridhari Roy to used the e-mail ID being No. C2190.

CW-2 also admits that all officers from the above site would use the said e-mail ID being No. C2190 perhaps with the consent with Mr. Swapan Kumar Chakraborty. But this time also CW-2 fails to show any proof that these persons who used to the said e-mail ID being No. C2190 with the consent of Mr. Swapan Chakraborty or Mr. Chakraborty was ordered earlier to do so. But he denied that said e-mail ID being No. C2190 to all the officers of that site to use the same.

CW-2 also admitted that CD being No. C2190 can be played through normal computer to run the same. It shall have the specific software to be installed thereon.

Then CW-2 was handed over 4 (four) CDs and he candidly admit that there is no mark in which the software has been installed without playing the CDs.

He also fails to who that in which CD mail box of C2190 or mail box of C2362 has specific software without opening the CDs.

In spite of the fact CW-2 denied that the CDs which the Company get to the Workman has not the specific software in it to read the same or the contents the CDs were prepared by the Company afterwards.

But lastly, he admits that the Company did not file any assignment letter with regard to assignment of User ID and Password of the mail ID to the Workman Sri Swapan Kumar Chakraborty.

At the time of argument, the employee concerned claimed that he was never been appointed by the Company in the category of managerial / administrative / supervisory capacity.

He was all alone a Workman within the meaning u/s 2S of the Industrial Disputes Act. The 2 (two) CDs Exhibit – C and Exhibit – I (both objected to) being filed by the Company shows nothing that the Workman ever function his job in the managerial or supervisory or administrative capacity because Company has failed to prove that e-mail ID of those CDs was only given to him rather it could be used by all the officials of the site.

It is the specific demand of the Workman that his termination from the job by the Company by their letter dated 12.06.2012 w.e.f. 30.06.2012 is as good as retrenchment of the employee by the management as per Clause No. 2(00) of Industrial Disputes Act and also non-compliance of Clause No. 25F of the Industrial Disputes Act. So, he is now entitled to receive the payment from 1st July of 2012 to till date including all perks as was paid earlier.

During his service in the Company along with other incidental payment in terms of law after declaring the aforesaid said termination as null and void.

On the other hand, Ld. Counsel for the Company claimed that the applicant was appointed as manager at first for a period of 12 (twelve) months w.e.f. 01.11.2008 vide Company's letter dated 13.11.2008, wherein one of the terms and conditions of the said appointment letter was that the contract of appointment is terminable by 3 (three) months' notice from either side without assigning any reason with payment of an amount equivalent to 3 (three) months' pay in lieu of 3 (three) months' notice.

Thereafter his service was extended from time to time and ultimately it was extended for a period of 24 (twenty-four) months w.e.f. 01.11.2009 vide letter dated 11.02.2010 along with amended Clause to the effect.

The service of the Workman will be terminable by one month notice from either side without assigning any reason with a pay of an amount equivalent of one month's pay in lieu of one month's notice and thereafter, the original Clause No. 4 as mentioned in letter dated 13.11.2008 stood amended by the letter dated 11.02.2010 and thereafter, the service of Sri Swapan Kumar Chakraborty was terminated w.e.f. 30.06.2012 by letter dated 12.06.2012 complying the amendment clause of



appointment letter dated 11.02.2010 although the service period was extended from 01.11.2011 to 11.06.2012.

The Company also stated that since Mr. Chakraborty was not an Workman u/s 2S of the Industrial Disputes so Section 25F or Section 2(00) of the Industrial Disputes Act shall not applicable to him.

It is further claimed to prove that e-mail ID being given to the Workman as per 2 CDs i.e. Exhibit-C and Exhibit-I (both objected to) goes to show that he was working as managerial, administrative and supervisory capacity.

Findings:

I have carefully gone through the facts of the case of the parties, evidences, evidences on record both oral and documentary and considered the submission of Ld. Counsels of the parties and after consideration all it is the admitted position that M/s Simplex Infrastructure Limited is an industry.

It is also admitted position that the employee Mr. Swapan Kumar Chakraborty was appointed as Manager under the Opposite Party on 13.11.2008 on the strength of a letter of appointment for a period of 12 months on condition that the contract of appointment is terminable by 3(three) months' notice from either side without assigning any reason Company may terminate him with payment of an amount equivalent to 3(three) months pay in lieu of 3 (three) months' notice.

It is further admitted position that Company extended his service from time to time and lastly Company extended his service by a letter dated 11.02.2010 for the period of 24 months w.e.f. 01.11.2009 and which should have ended 31.10.2011 on condition that Company may terminated him with payment of an amount equivalent to 1(one) month pay in lieu of 1(one) month notice. But facts remain Mr. Swapan Kumar Chakraborty was terminated on 30.06.2012 by a letter dated 12.06.2012 wherein it is categorically stated that this letter would effect on 30.06.2012. So, the alleged contract/service whatever may be continues after 31.10.2011 to 30.06.2012 without any increment and Company also fails to produce any such extended letter of service of Mr. Swapan Kumar Chakraborty which has been extended from time to time as demanded by the Company.

Now we should discuss the bone of contention of the instant case whether Mr. Swapan Kumar Chakraborty worked in the Company in managerial post or as a workman.

Mr. Chakraborty categorically stated that he was appointed as a manager but he used to work of highly technical nature of job, having no power being vested upon him as managerial or administrative or supervisory in nature and even he had no power to take any disciplinary action against any employee or to sanction leave to anybody or to act on behalf of the Company and there was no employee under him to supervise his job.



He is therefore, a workman within the meaning of Section 2S of the Industrial Disputes Act.

On the other hand, Company demanded that he worked as managerial post but though technical and according to the rules of the Company as evident from the evidence of CW-1 or CW-2 where they claimed that **Exhibit-G & HB** shall prove that Mr. Chakraborty performed administrative job in the Company.

Let us see what is **Exhibit-G & H**.

Exhibit-G is the photocopy of letter dated 29.08.2008 (2 sheets) issued by General Manager of LEA Associates South Asia Pvt. Ltd. addressed to Swapan Kumar Chakraborty and the same was submitted to the Company by Swapan Kumar Chakraborty and **Exhibit-H** is the photocopy of letter dated 26.10.2009 containing 2(two) pages signed by Swapan Kumar Chakraborty.

On perusal of these documents, I do not find anything which can prove that Swapan Chakraborty claimed himself that he had been working in the Company as managerial nature of job rather it is found that there was no signature of Shri Swapan Kumar Chakraborty in the relevant places in **Exhibit-4**.

Lastly Company depends upon **Exhibit-C** and **Exhibit-2** which are CDs to show that their attachments are still existing wherein an e-mail along with password is allotted to the respective employee who can only e-mail to the officer from the respective sites and it is done for the security of the business of the Company.

With the help of device, the CDs were run in open court in the presence of Ld. Counsels and the Workman Mr. Swapan Kumar Chakraborty but from the same it is proved that another mail from the e-mail ID C2190 **Exhibit-2** or **Exhibit-C** was sent from Mr. Giridhari Roy to R.O. Accounts, as the same is found from the system it was clearly accessed by R.O. Accounts Mr. Giridhari Roy.

And CW-2 also admitted that CD being No. C2190 can be played through normal computer to run the same, it should have specific software to be installed thereon. He candidly admits that there was no mark in which the software has been installed without playing the CDs and he also admits that the Company did not file any letter with regard to assigning of User ID and Password of the e-mail ID to the Workman Shri Swapan Kumar Chakraborty.

So, it can be concluded safely that Company could not prove the factum of e-mail which as per their demand it is the sign of managerial function of an employee of the Company. Therefore, it is proved that Mr. Swapan Chakraborty was the Workman under the Company under reference and it is an industrial dispute within the meaning of Section 2K of the Industrial Disputes Act 1947.

We have already discussed that Mr. Chakraborty worked continuously from 01.11.2011 to 30.06.2012 and thereafter he was terminated by the Company without any reason violating the mandatory provision of Section 25F of the Industrial Disputes Act and it is out and out case of retrenchment under Section withing the meaning of Section 2(OO).

In the instant case according to the evidence of PW-1 Mr. Swapan Kumar Chakraborty, it is revealed that since termination he was unemployed up to 22.07.2014 and thereafter from 23.07.2014 he got employment in a semi-government organization for his subsistence. So, Mr. Chakraborty should get the salary from the Company from July 2012 to July 2014 @ of monthly salary which he used to get when he was lastly worked in the Company i.e. month of June 2012.

He should also get the consequential reliefs as well as the retrenchment compensation to the tune of Rs. 2,00,000/- (Rupees two lakh) only and also a cost of Rs. 20,000/- (Rupees twenty thousand) only as cost.

So, considering all aspects and circumstances coupled with discussion made above with reasons I am constraint to hold that the concerned Workman Mr. Swapan Kumar Chakraborty has successfully made out his case to get relief as prayed for.

Hence it is

Ordered / Awarded

That the instant case No. VIII – 01/2014 be and the same filed by the Workman Mr. Swapan Kumar Chakraborty is allowed on contest with cost of Rs. 20,000/- (Rupees twenty thousand) only and the Company is hereby directed to pay the dues i.e. outstanding salary from July 2012 to July 2014 @ last month salary being paid to the Workman in the month of June 2012 and the Workman is also entitled to get a sum of Rs. 2,00,000/- (Rupees two lakh) only from the Company as retrenchment compensation along with other consequential benefits, if any.

The Company is directed to pay the same within 3 (three) months from the date of receipt of this order in default the concerned Workman is at liberty to take the shelter of the law as provided for execution of this Award.

This is my Award.

Let the Award be sent to the Government.

Sd/-

Dictated & corrected by me

Sd/-

(Uttam Kumar Nandy)
Judge
JUDGE
FIRST INDUSTRIAL TRIBUNAL
WEST BENGAL



(Uttam Kumar Nandy)
Judge
First Industrial Tribunal
Kolkata

JUDGE
FIRST INDUSTRIAL TRIBUNAL
WEST BENGAL