

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

No. Labr/ 433 / (LC-IR)/ 22015(16)/29/2022

Date : 17-04-2025


ORDER

WHEREAS under Labour Department's Order No. Labr/647/(LC-IR)/22015(16)/29/2022 dated 29/06/2022 with reference to the Industrial Dispute between M/s. Eastern Chemofarb Pvt. Ltd., Vill.- Damda, P.O - Simulia, Dist.- Purulia, Pin -723102 and their workmen represented by Eastern Chemofarb Pvt. Ltd. Permanent Workers' Union, Damda (Tamna), P.O.- Simulia, Dist.- Purulia, Pin-723102, regarding the issues mentioned in the said order, being a matter specified in the Second Schedule of the Industrial Dispute Act, 1947 (14 of 1947), was referred for adjudication to the 9th Industrial Tribunal, Durgapur.

AND WHEREAS the 9th Industrial Tribunal, Durgapur, has submitted to the State Government its Award dated 08.04.2025 in Case No. 25 of 2022 on the said Industrial Dispute Vide e-mail dated 16.04.2025 in compliance of u/s 10(2A) of the I.D. Act, 1947.

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 in the Labour Department's official website i.e wblabour.gov.in.

By order of the Governor,



Assistant Secretary
to the Government of West Bengal

No. Labr/ 433 /1(5)/(LC-IR)/ 22015(16)/29/2022

Date : 17-04-2025

Copy forwarded for information and necessary action to:

1. M/s. Eastern Chemofarb Pvt. Ltd., Vill.- Damda, P.O - Simulia, Dist.- Purulia, Pin -723102.
2. Eastern Chemofarb Pvt. Ltd. Permanent Workers' Union, Damda (Tamna), P.O.- Simulia, Dist.- Purulia, Pin-723102.
3. The Assistant Labour Commissioner, W.B. In-Charge, Labour Gazette.
4. The O.S.D. & E.O. Labour Commissioner, W.B. New Secretariat Building, 1, K. S. Roy Road, 11th Floor, Kolkata- 700001.
5. The Deputy Secretary, IT Cell, Labour Department with request to cast the Award in the Department's website.



Assistant Secretary
to the Government of West Bengal

No. Labr/ 433 /2(3)/(LC-IR)/ 22015(16)/29/2022

Date : 17-04-2025

Copy forwarded for information to :

1. The Judge, 9th Industrial Tribunal, Durgapur, Paschim Bardhaman with reference to his e-mail dated 16.04.2025.
2. The Joint Labour Commissioner (Statistics), West Bengal, 6, Church Lane, Kolkata -700001.
3. Office Copy.


Assistant Secretary
to the Government of West Bengal

**IN THE MATTER OF INDUSTRIAL DISPUTE BETWEEN M/S
EASTERN CHEMOFARB PVT.LTD., VILL.-DAMDA, P.O - SIMULIA,
DIST.- PURULIA, PIN.-723102**

VS.

**WORKMEN REPRESENTED BY EASTERN CHEMOFARB PVT. LTD.
PERMANENT WORKERS' UNION, DAMDA (TAMNA), P.O- SIMULIA,
DIST.- PURULIA, PIN.-723102.**

Case No. 25 of 2022 u/s- 10 of Industrial Dispute Act, 1947.

*Reference order being no. Labr/647/(LC-IR)/22015(16)/29/2022
dated 29/06/2022 issued by the Joint Secretary,
Government of West Bengal, Labour Department.*

**BEFORE THE JUDGE, NINTH INDUSTRIAL TRIBUNAL,
DURGAPUR, WEST BENGAL. KOLKATA.**

**PRESENT:- SRI NANDADULAL KALAPAHAR, JUDGE,
9TH INDUSTRIAL TRIBUNAL, DURGAPUR.**

*Ld. Advocate for the petitioner/workman – Mr. S.K.Panda &
Smt.Anima Naji*

Ld. Advocates for the Employer, M/s Eastern Chemofarb Pvt.Ltd.-

*Mr. Soumalya Ganguly &
Mrs. Tanaya Sengupta.*

Date of Award : 8th April, 2025.

*This is a referred case under section – 10 of Industrial Dispute Act,
1947 (14 of 1947) for adjudication of the following issues in terms of the
Letter no. Labr/647/(LC-IR)/22015(16)/29/2022 dated 29/06/2022 issued by
the Joint Secretary, Government of West Bengal, Labour Department.*

ISSUES

- 1) *Whether the suspension of work in M/s.Eastern Chemofarb
Pvt.Ltd., Vill.- Damda, P.O- Simulia, Dist.- Purulia, PIN.-
723102 with effect from 13.07.2021 is justified?*
- 2) *If not, what relief, the workmen are entitled to?-*

*Sd/-
Judge*

The petitioner, Eastern Chemofarb Pvt.Ltd. permanent Workers' Union have filed a verified application with a prayer for to decide the dispute as per the referred issues, direct the employer to withdraw the illegal suspension of work from the employer establishment, the management of the employer to reinstate of those workers in the said establishment, as earlier with full back wages and other benefits i.e the suspension amounts which is a bonafide claim of the Union/workmen as per the provision of law and pass any other further order / orders at this tribunal may be fit and proper on the basis of the fact that the above named Union is a registered union as per the Trade Union Act. The concerned workmen of the above named employer are the bonafide members of the Union above named. That the aforesaid employer issued appointment letters to those employees individually at the time of their appointment in the said company. That the concerned workmen of the Union used to discharge their unblemished service towards the management of the company from the date of their appointment till the date of illegal suspension of work of the establishment of the employer.

That all the workmen of the aforesaid Union employed under this company used to extend their full co-operation to the management for smooth running of the business of employer and those workmen / members of the Union used to maintain peace and harmony and all of them are / were very much concerned about their work entrustment and discharged their duties with due deligence to enrich the production target day by day.

That during the course of their management they used to get their salary as per the decision of management. That on several occasions the aforesaid union observed the deprivation attitude of the employer to the concerned workmen by not providing the minimum wages and other legitimate claims and dues which the workmen were/are entitled to get.

After that the Union informed the matter to the management of the employer but the management kept mum in this matter. Thereafter, the Union informed the matter to the higher management but they did not pay any heed to this matter for the reason best known to them.

*Sd/-
Judge*

Despite that the workmen performed their job in the said premises for the interest of the management and all of a sudden the management pasted a notice of suspension of work in the notice board of the factory gate on a false pretext with a malafide intention to deprive the concerned workmen. That the matter was highlighted immediately and challenged the unilateral decision of the management disregarding the legal provision to be complied with before taking such stringent decision.

That after the suspension of work, the Union called on joint meeting with the management and the said joint meeting was held on several occasions but the management verbally assured the concerned workmen and commit to open the factory and resume the work very soon and they were further assured by the management that they will not admit the demand of union regarding payment of due salary of the workmen during the suspension period. Therefore, the Union was compelled to raise the dispute before the local Asstt. Labour Commissioner at Purulia who issued the notice upon the management as well as the Union for conciliation of their matter. Thereafter, both the parties named the management and the Union participated before the conciliation authority but the conciliation could not be achieved, then the concerned Asstt. Labour Commissioner / Jr.Labour Commissioner referred the matter before the Labour Deptt. , Govt. of West Bengal. Subsequently, the Govt. of West Bengal Labour Deptt. referred the matter to this Tribunal, Durgapur for adjudication of the dispute as per the issues framed by the Labour Deptt. , Govt. of West Bengal. After the receipt of the said reference from the Labour Deptt. , the Ld. Tribunal was pleased to issue the summon upon both the parties for their appearance and the parties appeared before the ld.Tribunal through their authorised persons.

That at first the Union tried to settle the matter through Asstt. Labour Commissioner / Jr.Labour Commissioner about the illegal continuation of suspension of work issued by the management but it was failed.

That Opposite Party, The Management of M/S Eastern Chemofarb Pvt. Ltd .has contested this case by filing a written statement and whereby he has denied all the allegations brought against him save and except those

*Sd/-
Judge*

which are admitted by him . Tht the OP has received a complaint being Ref. No.25/2022 with regard to the industrial Dispute and was being represented by its Director, Mr. Samirandra Narayan Chatterjee, who has understood the contents and purports thereof. That before dealing with the contentions of the petitioners , the OP has intended to focus lights upon few facts which is vital for adjudications of the instant matter and the same has been described herein below –

A. At the outset , what the OP has intended to describe is

- 1) That the OP is a private Company attaining a good will and reputation in the market.
- 2) That sometime in the year 2019, the OP had issued a notice dated 26/09/2019 to its Union Worker thereby notifying them about the 15 days work and 15 days pay concept from 01/10/2019. But as usual the Union Workers being the Petitioners did not agree as they demanded one month salary and asked the Oppostie Party to withdrew lay off as alleged by them vide letter dated 27/09/2019. Thereafter, vide letter dated 30/09/2019, the Assistant Labour Commissioner , Purulia Sadar East RLO, asked the Management of the Opposite Party as well as the petitioners to remain present and appear before him for a discussion on 18/10/2019 . On the date of meeting, the Opposite Party vide letter dated 18/10/2019 informed the ld. Assitant Labour Commissioner, Purlia Sadar East RLO that as a result of lack of orders, the production had diminished and was almost zero in the last six months . There was non - availability of raw materials which were vital for any production and that the Opposite Party was facing severe financial crunch . But despite such financial crisis, the OP thought of continuting its operations of factory unit with its workers on 15 days work with 15 days pay basis from the 1st October, 2019 and had clarified the fact that the OP had never declared of any lay off as was alleged by the Union being the petitioners herein.
- 3) Thereafter, vide letter dated 13/11/2019, the ld. Assistant Labour Commissioner, Purulia Sadar (East), Purulia called upon the petitioner and the OP herein for a discussion on 29/11/2019in the chamber of the Deputy Labour Commissioner, Asansol to which the O.P relpied vide letter dated 29/11/2019 wherein the O.P informed the competent

Sd/-
Judge

authority about the fact that although so far the O.P had made full payments to all its workers along with other benefits, it will not be able to do such any further as there was no progress in the production at the factory and the financial condition was getting worse with each passing day. Thus, on 29/11/2019, it was agreed and /or recorded in the meeting that the OP will deploy its employees rotationally for the next three months from 1st December , 2019 and that after three months the situation will be reviewed and that both the parties had agreed to run the factory smoothly .

- 4) *Thereafter, in the year, 2021, on 16/05/2021, OP declared suspension of work from 01/06/2021 onwards due to lack of orders , recessions in the market, excess employees of more than 30 workmen who were idle without any job, paucity of funds and severe financial crisis . Thus, management of the OP found it extremely difficult and /or was absolutely unable to continue and keep the factory unit open. Thereafter the op vide letter dated 10/06/2021 informed the learned Assistant Labour Commissioner, Purulia Sadar Para East RLO about their state of affairs and how it was becoming the extremely difficult for the OP to run the factory with severe financial crunch. On the same day, the ld. Assistant Labour Commissioner, Purulia Sadar para (East) RLO informed the Union being the petitioners herein to submit its written comment on the said letter dated 10/06/2021 submitted by the OP and thereafter vide letter dated 22/06/2021 called for a joint meeting of the petitioners and the OP on 23/06/2021. However, in the said meeting , it was submitted by the management of the OP that they had not given effect to the Suspension of work Notice dated 15/05/2021 and therefore it was concluded that the dispute between the Management of the OP and the Union being the Petitioners was settled .*
- 5) *That it is pertinent to mention herin that after sometime on 09/07/2021, the OP again declared Suspension of Work with effect from 13/07/2021 and declared “no work and no pay”.The petitioners being the Union did not agree and notify the same vide letter dated 10/07/2021. The OP asked the Union being the Petitioners herein to stop forceful entry of labourers into the factory premises as Suspension of Work was declared from 13/07/2021 and also informed about the situation to learned Assistant*

*Sd/-
Judge*

Labour Commissioner , Purulia Sadar para (East) RLO who held a joint meeting and asked the petitioner to submit its comments . Since the situation was getting out of hand OP requested the Police station and also intimated the ld. Assistant Labour Commissioner, Purulia Sadar para (East) RLO about how 25 labourers forcefully and /or unlawfully entered into the factory premises and the Police protection was needed in such a situation . Another Joint meeting was also held by the ld. Assistant Labour Commisisoner, Purulia Sadar para (East) RLO on 02/09/2021, but no settlement was reached between the parties. Finally, on 05/10/2021, the ld. Assistant Labour Commissioner decided in the joint meeting that the matter be referred to the Labour Tribunal for further adjudication . On 04/12/2021 the OP was in receipt of a Legal notice from Sri Saradindu Kr. Panda , the ld. Advocate demanding withdrawal of Suspension of work.

- 6) *That the O.P vide letter dated 03/01/2022 sent through its ld. Advocate , Mr. Tarak Dutta informed and/or stated the petitioners about its disagreement pertaining to withdrawal of the said notice of Suspension of Work. Finally vide order dated 29/06/2022 of the Government of West Bengal, the matter was referred to the ninth Industrial Tribunal who then issued a notice dated 14/07/2022 thereby requested the parties to appear on 18/08/2022.*
- 7) *That the O.P was left with no other options save and except the issuance of Suspenson of Work as because for a long time its was facing huge financial crisis and that the petitioners being the Union was not kept in dark about the same. Moreover, it is a matter of fact and record that the O.P made payments to its workmen despite low production and non receipt of orders and recission in the market . But when the situation was beyond control it had to take such a drastic step thereby stopping work completely.*

That the O.P has further replied against the averments made out in the complaint without prejudice to one another –

- a) *That the O.P has denied and disputed all the allegations and/or the contions of the Complaint , save and except what are matter of records.*

*Sd/-
Judge*

- b) *That the OP refrained himself from dealing with para – 1 to 5 of the complaint as all are matter of records.*
- c) *That the petioners being the Union used to extend their full co - operation and maintain peace and harmony are false. That the petitoiner never cooperated with the OP , rather the Petitioners forced the OP to pay idle wages, bonus, medical and leave even with extended periods of no work . Furhter more , the salary was not paid as per the decision of the management of the OP as because the salary , bonus, increment and other benefits were decided by the workers of the trade Union who forcefully demanded the same and made the management to pay such.*
- d) *That the workers have been paid over and above the minimum Wages Act. Futher workers have been paid legitimate statutory dues such as Gratuity, Bonus, leave salary, House rent Allowance , etc in compliance with the respective statutory laws. Furthermore, it is matter of facts and records that the management of the OP was always involved and /or had accepted the demands of the petitioners Union and additionally paid bonus to all its workers although they were not entitled to the same. The fact that Suspension of Work Notice was suddenly put up is vehemently denied and disputed . This is because the petitioner union was always aware of the state of OP and for a long time the OP was under severe financial distress and had earlier also decided to suspend its work but continued to pay salary to all its workers as because the petitioners Union demanded the same and did not co-opertate with the management of the OP. In this regard the OP humbly submits that the OP has already stated the series of events in the foregoing pargraphs and thus reiterates its statements made in para 4. A.1 to 4.A.7 . That the OP was facing hardship since the year 2019 and no decision was abruptly taken and / or suddenly . The peitioners union herein never extended any kind of co-operation rather took advantage of the distress situation of the OP and demanded for all sorts of benefits apart from that salary although there was no improvement in the affaris of OP for considerable period of time.*
- e) *That the OP has not violated any legal provisions and all measures were followed and observed and /or complied with when the Suspension of Work Notice was put up. Furthermore, no assurance whatsoeverwas given to the*

*Sd/-
Judge*

Petitioner Union by the higher management of the Opposite Party regarding payment of salary during the suspension period . The management of the OP offered the Petitioner Union to resolve the dispute but they never co-operated and /agreed to the same . It is also a matter of fact and record that despite several requests by the ld. Assistant Labour Commissioner, Purulia Sadar Para East RLO, the Petitioner Union never submitted any response and took no initiative to amicably settle the issues. The OP again reiterates its statements made herein above in the paragraph nos. 4.A.1 to 4.A.7. That the petitioner Union never tried to settle the dispute neither before the Ld. Asst. Labour Commissioner, Purulia Sadar Para East RLO nor during the conciliation proceedings, rather they have not approached the court of law with clean hands. The Petitioners Union constantly made unnecessary demands and forced the Management of the OP to make payments of salary and all other additional benefits despite being well versed about the financial crisis of the OP . That the Petitioner Union has initiated the legal proceedings to harass the Opposite Party unnecessarily.

That the written statement filed before this Tribunal is made bonafide and for the ends of justice.

The following issues are referred by the appropriate Govt. for proper adjudication of this Industrial dispute:

Referred Issues

- 1) *Whether the suspension of work in M/s.Eastern Chemofarb Pvt.Ltd., Vill.- Damda, P.O- Simulia, Dist.- Purulia, PIN.- 723102 with effect from 13.07.2021 is justified?*
- 2) *If not, what relief, the workmen are entitled to?*

In proving this case the petitioners/permanent Workers' Union of M/s.Eastern Chemofarb Pvt.Ltd.has examined one Balaram Bauri and cross-examined as P.W-1 and discharged. Petitioners/permanent Workers' Union of M/s.Eastern Chemofarb Pvt.Ltd. has produced some documents such as appointment letter dated 07.07.1997, a copy of legal notice dated 04.12.2021, a copy of reply of the employee, Union's letter dated 13.07.2021, receipt copy of Union's letter dated 17.07.2021, letter sent to the Director

*Sd/-
Judge*

dated 17.07.2021 and letter sent to the Director dated 10.07.2021 which were marked as Exbts. 1,2,3,4,5,6 & 7 respectively in this case.

Whereas on the other hand, M/s.Eastern Chemofarb Pvt.Ltd. has examined and cross-examined one Mr. Samirendra Narayan Chatterjee as O.P.W-1 in this case and discharged. M/s.Eastern Chemofarb Pvt.Ltd. has also produced some documents such as 1)Resolution of the meeting of Board of Directors, 2) suspension of work notice dated 26.09.2019, 3) letter dated 27.09.2019 of the Union, 4) letter dated 30.09.2019 of the A.L.C, Purulia Sadar, 5) letter dated 18.10.2019 of the employer (receipt copy), 6) notice dated 13.11.2019 of the A.L.C, Purulia Sadar, 7) a reply dated 29.11.2019 submitted by DLC, 8) a reply dated 18.10.2019 by the A.L.C, Purulia Sadar, 9) a notice of suspension of work dated 26.05.2021, 10) a letter dated 10.06.2021 issued by the A.L.C, Purulia Sadar, 11) a letter dated 10.06.2021 to the employer by the A.L.C, 12) a notice dated 22.06.2021 of DLC, Purulia Sadar, 13) a notice of suspension of work dated 09.07.2021, 14) a letter dated 10.07.2021 of the workers' Union, 15) a letter dated 13.07.2021 sent to Workers' Union, 16) a letter dated 13.07.2021 to the A.L.C, Purulia Sadar, 17) a note sheet dated 13.07.2021 of the A.L.C, Purulia Sadar, 18) a complaint dated 04.04.08.2021 submitted with the Officer-in-charge, Tamna P.S, Purulia, 19) ld.lawyer's notice dated 04.12.2021 and postal envelope which was received by the employer, 20) a letter dated 03.01.2022 to Mr. S.K.Panda , ld.lawyer by Tarak Dutta and postal receipt which were marked as Exbts.A, B, C, D, E, F, G, H, I, J, K, L, M, N, O, P, Q, R, S & S/1, T & T/1 respectively in this case.

Thereafter, the evidence of both the parties were closed.

Having heard the argument of ld.lawyers of both the parties to this industrial dispute and persuing the oral and documentary evidence of both the parties as has been produced and adduced before this Tribunal, the instant case is taken up today for delivey of judgement / award.

Decisions with Reasons

It has been argued by the ld.lawyer for the petitioners/ permanent Workers' Union of M/s.Eastern Chemofarb Pvt.Ltd. that the petitioners'

*Sd/-
Judge*

Union is a registered union as per the Trade Union Act and the concerned workmen are also the bonafide members of the union and the workmen are also bonafide employees of M/s.Eastern Chemofarb Pvt.Ltd. and these employees were appointed by their employer/ company by issuing the appointment letters and the said workmen rendered their unblemished service towards the employer from the date of their appointment till their illegal retrenchment. The cause of the illegal retrenchment which is directly involved with the employer itself.

That the O.P is a private company who illegally issued a notice dated 26.09.2019 to the Workers' Union about the 15 days work for 15 days pay which is to be introduced from 01.10.2019 which was illegal. That for 15 days work for 15 days payment introduced by the management of the employer intended to impose upon the workmen which is barred under the Factory Act. The management of the aforesaid company illegally tried to impose their unlawful decision regarding 15 days payment for 15 days work was not accepted by the employees or the workmen of the factory. The employer failed to introduce the actual procedure of that policy i.e. 15 days work for 15 days salary. That the management of the employer has failed to show any reason for adopting the said policy i.e 15 days work for 15 days salary as per the provision of law. The management of the employer arbitrarily introduced their aforesaid policy upon the workmen. They directly violated the actual provision of law. The management of the employer has failed to understand the guideline of the factory. Those guidelines are guided by the various acts of the establishment as per provisions of Factory Act and the standing order of the company. So, the employer directly exploited their workmen by introducing such policy. The management of the employer has failed to adopt the rules and regulations of their standing order. It is a fact that the factory is called for production system where the man power is required and those man power i.e the function of the direct involvement of the workmen. That the management of the employer whimsically and illegally imposed their policy of suspension of work. That the management of the employer did not think of minimum requirement of their workmen at the time of the issuance of illegal suspension of work notice. So, the management has violated the provision of law in this regard.

*Sd/-
Judge*

As per the provision of law a factory can smoothly run by their workmen as well as requirement of materials to be supplied by the employer management. If insufficient materials are supplied by the management and the production will be hampered. That the management has failed to supply the raw materials for production intentionally because they have decided to introduce their said policy of suspension of work for victimising their employees which are out and out illegal and those policies have violated the Factory Act and the standing order as well as the principal of Natural Justice.

That the dispute raised by the Union before the Labour Commissioner for settlement through conciliation proceeding but the conciliation authority failed to reach the goal. So, they referred the matter to the appropriate Govt. and that appropriate Govt. was further pleased to refer the matter to the 9th Industrial Tribunal after framing issues for its adjudication.

That after 15 days the workmen were prevented from entering into the premises of factory. That the lay off of the company is illegal as per the provision of sec.25L of Industrial Dispute Act, 1947. The factory has been closed intentionally. The workmen had demanded the minimum wages from the factory owner. That the workmen of the Union have been deprived of by the management and as a result there has been a violation of the provisions of sec. 25 M of Industrial Dispute Act, 1947. It is one kind of mode for a retrenchment of the workmen by the employer/company.

Whereas on the other hand, the O.P/ management of M/s.Eastern Chemofarb Pvt.Ltd. has argued before this Tribunal that the O.P/Pvt.Co. was having goodwill and reputation in the market. That sometimes in the year 2019, the O.P had issued a notice on 26.09.2019 to its Union Worker thereby notifying them about the 15 days work and 15 days pay concept from 01.10.2019. But the Union Workers being the petitioners did not agree as they demanded one month salary and asked the O.P to withdraw lay off as alleged by them vide letter dated 27.09.2019. Thereafter, vide letter dated 30.09.2019, the ALC, Purulia Sadar East RLO asked the management of the

*Sd/-
Judge*

O.P as well as the petitioner to be present and appear before him for discussion on 18.10.2019. On the date of meeting the O.P vide letter dated 18.10.2019 informed the ALC, Purulia Sadar East RLO that as a result of lack of orders the production had diminished and was almost zero in the last six months. There was non-availability of the raw materials which were vital for any production and the O.P was facing severe financial crunch but despite that the O.P thought of continuing its operations factory unit with its workers on 15 days work with 15 days pay basis from 01.10.2019 and clarified the fact that the O.P has never declared any lay off as was alleged by the Union being the petitioner herein.

Thereafter, as per the letter dated 13.11.2019 the ALC, Purulia Sadar (East) called upon the petitioner and the O.P herein for that discussion on 29.11.2019 in the chamber of DLC, Asansol to which the O.P replied vide letter dated 29.11.2019 wherein the O.P informed the competent authority about the fact that although so far O.P has made full payments to all the workers along with other benefits. That there was no progress in production at the factory and the financial condition was getting worse with each of the passing days. Thus, on 29.11.2019 it was agreed and / or recorded in the meeting that the O.P will deploy its employees rotationally for the next three months from 01.12.2019 and that after 3 months the situation will be reviewed and both the parties have agreed to run the factory smoothly. Copies of all letters dated 13.11.2019 to 29.11.2019 along with the result of the said meeting were marked as Annexure- 'B'.

That the O.P thereafter in the year 2021 on 16.05.2021 declared the suspension of work from 01.06.2021 onwards due to lack of orders, recession in the market, excess employees of more than 30 workmen who were idle without any job, paucity of funds and severe financial crisis.

The management of the O.P found it extremely difficult and was absolutely unable to continue and keep the factory unit open. Thereafter, by the letter dated 10.06.2021 informed the ALC, Purulia Sadar Para (East)RLO about their state of affairs and how it was becoming extremely difficult for the O.P to run the factory with severe financial crunch. On the same day the ALC, Purulia Sadar Para East RLO informed the Union being

*Sd/-
Judge*

the petitioners herein to submit their written comment on the letter dated 16.06.2021 submitted by the O.P. Thereafter, vide letter dated 22.06.2021 a joint meeting was called for of the petitioner and the O.P on 23.06.2021. However, in the said meeting it was submitted by the management of O.P that they had not given effect to the suspension of work notice dated 15.05.2021 and therefore, it was concluded that the dispute between the management of the O.P and the Union being the petitioners was settled.

That after sometime on 09.07.2021 O.P. again declared suspension of work w.e.f 13.07.2021 and declared 'no work no pay'. The petitioners being the Union did not agree and notified the same vide letter dated 10.07.2021. The O.P.No.2 asked the Union being the petitioner herein to stop forceful entry of labourers into the factory premises as suspension of work was declared from 13.07.2021 and it was also informed to the ALC, Purulia Sadar Para East RLO the said situation who held a joint meeting and asked the petition to submit its comments. Since the situation was getting out of hand, the O.P requested the Police Station and also intimated the d. ALC, Purulia Sadar Para East RLO about how 25 labours forcefully and unlawfully intered into the factory premises. Another joint meeting was conducted by ALC, Purulia Sadar Para East RLO on 02.09.2021 but no settlement was reached between the parties. Finally, on 05.10.2021 Ld.ALC, Purulia Sadar Para East RLO decided in the joint meeting that the matter be referred to the Labour Tribunal for further adjudication. On 04.12.2021 O.P received a legal notice from Sri Saradindu Kr. Panda, Advocate demanding withdrawal of the suspension of work.

O.P vide letter dated 03.01.2022 sent through its ld.Advocate Mr. Tarak Dutta informed the petitioner about the disagreement pertaining to withdrawal of the said notice of suspernsion of work. Finally, vide order dated 29.06.2022 the Govt. of West Bengal, the matter was referred to 9th Industrial Tribunal who then issued a notice datecd 14.07.2022 requesting the parties to appear on 18.08.2022.

It was further argued by the ld.lawyer for the O.P M/s.Eastern Chemofarb Pvt.Ltd. that after Covid suspension of work notice was given. 15 days rotation job was also given to the workmen in the year 2019. When

*Sd/-
Judge*

the matter was not settled dispute was brought to the Industrial Tribunal. This is only a mere suspension of work. No letter has been produced before this tribunal by the union and the workmen that they have been removed from their job.

That the petitioner/union has initiated the legal proceeding to harass the O.P unnecessarily. That the workers of the Union have never cooperated with the O.P although they were aware of financial crisis of the company due to non-receipt of orders, low production, non availability of raw materials and the recession condition in the market and the workmen made unnecessary demand and forced the O.P to pay them salary and other benefits.

Hence, the instant referred case sent by the appropriate Govt. may kindly be dismissed as there is no merit in the eye of law.

Issue No. 1 :-

That from the pleadings of both the parties, I find that there is no contention and /dispute in between the parties that the Worker's Union is not a registered union under Trade Union Act,1926 and the workers of the M/S Chemofarb Private Ltd. are not the members of the Worker's permanent Union. That the workers of the M/S Eastern Chemofarb Pvt. Ltd were not appointed by the management of the M/S Eastern Chemofarb Pvt. Ltd. or the workers of the M/s Eastern Chemfarb Pvt. Ltd are casual workmen.

It is the case of the Petitioners /workmen that despite the workmen performed their job in the said premises for the interest of the management , but all of a sudden the management issued a notice of suspension of work and pasted in the notice board of the factory on a false pretext and with a malafide intention to deprive the concerned workmen . The matter was immediately challenged against the unilateral decision of the management disregarding the legal provision to be complied with by them before taking any stringent action and decision against the workmen.

From the Advocate's letter dated 04/10/2021 marked as EXBT- 2, I find that the workmen through the ld. Advocate of their representative, Secretary , Eastern Chemofarb Pvt. Limited , Permanent workers Union

*Sd/-
Judge*

ventilated their grievance against the suspension of work notice issued by the management of the Employer to one Rahit Sharma, the Director, Eastern Chemofarb Pvt. Ltd. requesting him to withdraw the so called alleged order of suspension of work within 15 days from the date of receipt of the notice .

It is found from the reply letter of the ld. Advocate on behalf of his client named Mr. Rahit Singhaniya marked EXBT. 3, the Employer has denied , disputed and refuted the each and every allegations of the document Exbt. 2 issued by the representative of the Permanent's worker Union by stating inter alia that the notice of suspension of work dated 09/07/2021 decalaring suspension of work was issued on various reasons as stated in the notice and it was also informed that the Secretary, Eastern Chemofarb Pvt. Ltd. , Permanent's workers Union has already made a representation before the Assistant Labour Commissioner, Purulia seeking therein his intervention into the matter and on the basis of the said representation , the Assistant Labour Commissioner/Conciliation Officer , Purulia was pleased to initiate a conciliation proceeding over the matter before inviting both the parties . That his client had participated in the said conciliation proceedings to settle the dispute and the said conciliation proceeding was still in session and sub-judice before the Assisatnt Labour Commissioner/Conciliation Officer , Purulia .That the Secretary, M/S Eastern Chemofarb Pvt. Ltd. , Permanent Worker's Union and his client participated in the said conciliation proceedings when fixed and called for by the Assistant Labour Commissioner/Conciliation Officer but his client had nothing to do in the above situation .

It was also informed from the part of Employer that they would contest the case before the court of law.

From the document Exbt. 4 i.e the letter dated 13/07/2021 , I find that the against said matter of suspension of work notice issued by the Employer of Eastern Chemofarb Pvt. Ltd. was informed by the President /Secretary, M/S Eastern Chemfarb Pvt. Ltd. Permanent Worker's Union to the Assistant Labour Commissioner, Purulia Sadar East, Amla Para , P.O & Dist. – Purulia (West Bengal) stating inter alia that the Empolyer or his Management has issued the Notice of suspension of Work on and from

*Sd/-
Judge*

13/07/2021 in the factory and during the suspension of work the workmen have been deprived of from receiving their wages/salary and requested him for withdrawing the notice of suspension of work from the Factory , to reopen the factory and resume the duty of workmen and get the wages/salary therefrom. The copy of the said letter dated 13/07/2021 was also forwarded to other authroities and dignitaries including Joint Labour Commissioner, Govt. of West Bengal, Asansol, Deputy Labour Commissioner, Govt. of West Bengal, Asansol and District Magistrate, Purulia.

From the document Exbt. 5, the letter dated 17/07/2021, I find that the President/Secretary, Eastern Chemofarb Pvt. Ltd. Permanent Workers Union has also informed the matter to the Director/Manager, Eastern Chemofarb Pvt. Ltd. , Village -Damda, P.O-Simulia, District -Purulia requesting him to withdraw the notice of Suspension of Work immediately and to reopen the factory unit for the workmen which was issued to take effect from 13/07/2021 12:00 pm in the night .

It was also disclosed in the said notice of Suspension of work that no labour, workman, staff or staffs shall be paid any monthly salary, allowance and other benefits save and except the Security Guard and other emergency staffs of the said Factory till the issuance of subsequent notification .

From the document Exbt. 6, i.e letter under Ref. No. 5/2021 dated 12/07/2021, I find that the President, Eastern Chemofarb Pvt. Ltd. Permanent Workers Union had also informed the Director/Manager, Eastern Chemofarb Pvt. Ltd. for withdrawing the suspension of work notice and reopen the factory unit for the workmen.

Furhter from the document Exbt. 7 i.e the letter under Ref. no. 5/2021 dated 10/07/2021 issued by the President /Secretatry, Eastern Chemofarb Pvt. Ltd. Permanent Workers Union, to the Director/Manager, Eastern Chemofarb Pvt. Ltd. I find that he also requested the Manager of Factory to withdraw the suspensioin of work notice and reopen the Factory units for the workmen.

According to OP/Employer sometimes in the year 2019 they issued a

*Sd/-
Judge*

notice dated 26/09/2019 to its Union worker for acceptance of 15 days Pay for 15 days work concept and when the workers demanded the one month's wages and asked the OP withdrew the said lay off vide their letter dated 27/09/2019. Thereafter, vide letter dated 30/09/2019, the Assistant Labour Commissioner, Purulia Sadar East RLO asked the Management of the OP as well as the petitioners to remain present and appear before him for a discussion on 18/10/2019.

On the date of meeting the OP vide his letter dated 18/10/2019 informed the Assistant Labour Commissioner, Purulia Sadar, East RLO that as a result of lack of orders, the production had diminished and was almost zero in the last six (6) months. There was non availability of raw materials which was vital for any production and the OP was facing severe financial crunch. Despite that the OP had thought of continuing its operation of Factory units with its workers for the "concept of 15 days pay for 15 days work" from 1st October, 2019 and OP had further stated that no lay off was declared as alleged by the Union being the petitioners herein.

From the document Exbt. B, I find that one Rahit Singhanian issued a notice dated 26/09/2019 to the Workmen of Eastern Chemofarb Pvt. Ltd. for adopting the concept of the 15 days Pay for 15 days work.

Thereafter, vide letter dated 13/11/2019, the ld. Assistant Labour Commissioner, Purulia Sadar (East), Purulia called upon the petitioner and the OP herein for a discussion on 29/11/2019 in the chamber of the Deputy Labour Commissioner, Asansol to which the OP replied vide letter dated 29/11/2019 wherein the OP informed the competent authority about the fact that although so far the OP had made full payments to all its workers along with other benefits, it will not be able to do such any further as there was no progress in the production at the factory and the financial condition was getting worse with each passing day. Thus, on 29/11/2019, it was agreed and /or recorded in the meeting that the OP will deploy its employees rotationally for the next three months from 1st December, 2019 and that after three months the situation will be reviewed and that both the parties had agreed to run the factory smoothly.

*Sd/-
Judge*

Thereafter, in the year, 2021, on 16/05/2021, OP declared suspension of work from 01/06/2021 onwards due to lack of orders, recessions in the market, excess employees of more than 30 workmen who were idle without any job, paucity of funds and severe financial crisis. Thus, management of the OP found it extremely difficult and /or was absolutely unable to continue and keep the factory unit open. Thereafter, the OP vide letter dated 10/06/2021 informed the learned Assistant Labour Commissioner, Purulia Sadar Para East RLO about their state of affairs and how it was becoming the extremely difficult for the OP to run the factory with severe financial crunch. However, in the joint meeting held on 23/06/2021, it was submitted by the management of the OP that they had not given effect to the Suspension of work Notice dated 15/05/2021 and therefore it was concluded that the dispute between the Management of the OP and the Union being the Petitioners was settled .

That the OP again declared a suspension of work notice on 09/07/2021 with effect from 13/07/2021 and declared “No work and no Pay” .Petitioners being the union did not agree and notify the same vide their letter dated 10/07/2021 and OP asked the Union being the Petitioners herein to stop forceful entry of labourers into the factory premises as Suspension of Work was declared from 13/07/2021 and informed the situation to the Assistant Labour Commissioner, Purulia Sadar Para (East) and on being joint meeting called on by the Assistant Labour Commissioner and asking the petitioners to submit their comments and another joint meeting was held on 02/09/2021 but no settlement was reached between the parties. Finally, on 05/10/2021 the ld. Assistant Labour Commissioner decided in the joint meeting that the matter be referred to labour Tribunal for adjudication.

OP on being received a legal notice from Mr. Saradindu Kr. Panda regarding the withdrawl of the Suspension of Work , the OP vide his letter dated 03/01/2022 sent through its ld. Advocate Mr. Tarak Dutta informed the petitioners their disagreement pertaining to withdrawal of the said notice of Suspension of Work. That the OP has left with no other option save and

*Sd/-
Judge*

except the issuance of Suspension of Work as because for a long time it was facing huge financial crisis.

It is found from the document Exbt. M i.e the “Notice for Suspension of work” issued by one Rohit Singhaniya, authorised signatory of Eastern Chemofarb Pvt. Ltd. it is found that – “As the production of the Unit was diminishing day by day due to lack of orders , recession of market , excess employees more than 30 workmen were sitting idle without any job due to paucity of fund and severe financial crunch amongst other reasons and the inability of management of Company to continue to bear the wages of the excess workmen/employees /staffs month by month without any work and other incidental expenses in running the factory and to keep the factory open any longer, the company finding no other alternative way than to suspend working of the factory/unit and the Management therefore, declares the temporary “suspension of work ” of the factory/Unit with effect from midnight 00:00 am on this the 13-07-2021 and to put off all the workmen /employees /staff of the factory/Unit except the watch and ward staff and staffs of essential services from their employment for the time being until further notice as from the aforesaid date and time. None of the employee put off from employment shall be entitled to or be paid any wages or other allowances for so long as they will be under suspension of work and this period will be always treated on the principles of ‘No work and no Pay ’ basis”

That the contents of the Notice of suspension of work issued by the management of the employer, Eastern Chemofarb Pvt. Ltd. does not amount to lay off, but if an employer closes the place of employment or suspends work on his premises, a lock- out would come into existence.

If the employer shuts down his place of business as a means of reprisal or as an instrument of coercion or as a mode of exerting pressure on the employees or generally speaking when his act is what may be called an act of belligerency there would be a lock - out.

It is pertinent to mention herein the definition of ‘Lock-out’ under the provision of section – 2 (L) of The Industrial Dispute Act, 1947 –

*Sd/-
Judge*

Section – 2(L) of the Act, 1947 : -

Section 2(l) in The Industrial Disputes Act, 1947

(l) “lock-out” means the 48[temporary closing of a place of employment] or the suspension of work, or the refusal by an employer to continue to employ any number of persons employed by him;

49[(l-a) “major port” means a major port as defined in clause (8) of Section 3 of the Indian Ports Act, 1908 (15 of 1908);

(l-b) “mine” means a mine as defined in clause (j) of sub-section (1) of Section 2 of the Mines Act, 1952 (35 of 1952);].

There are four ingredients of Lock -out :

- 1) i) temporary closing of a place of employment ; or*
 - ii) suspension of work by the employer; or*
 - iii) refusal by an employer to continue to employ any number of persons employed by him.*
- 2) The above mentioned acts of the employer should be motivated by coercion;*
- 3) An Industry as defined in the Act; and*
- 4) A dispute in such industry.*

*This court relies upon para – 12 & 1st part of the para- 19 of the judgement reported in **Sri Ramachandra Spinning Mills v. Province of Madras, 1955 SCC OnLine Mad 169 : AIR 1956 Mad 241 : (1957) 1 LLJ 90 : (1957-58) 12 FJR 390 at page 242***

12. Issue 4-A: Section 2(1) of the Industrial Disputes Act defines the expression “lockout” in the following manner:

“‘Lockout’ means the closing of a place of employment, or the suspension of work, or the refusal by an employer to continue to employ any number of persons employed by him.”

19. The lockout is the corresponding weapon in the armoury of the employer. If an employer shuts down his place of business as a means of reprisal or as an instrument of coercion or as a mode of exerting pressure on the employees, or, generally speaking, when his act is what

***Sd/-
Judge***

may be called an act of belligerency there would be a lockout. If, on the other hand, he shuts down his work because he cannot for instance get the raw materials or the fuel or the power necessary to carry on his undertaking or because he is unable to sell the goods he has made or because his credit is exhausted or because he is losing money, that would not be a lockout.

That the notice of suspension of work of the factory was issued by the Management of the Employer on 09/07/2021 in order to bring the suspension of the work of factory become effective on and from midnight of 00.00 A.M on 13/07/2021 on the ground that the production of the Unit was diminishing day by day due to lack of orders , recession of market , excess employees more than 30 workmen were sitting idle without any job due to paucity of fund and severe financial crunch amongst other reasons and the inability of management of Company to continue to bear the wages of the excess workmen/employees /staffs month by month without any work and other incidental expenses in running the factory and to keep the factory open any longer.

That the onus lies upon the Employer/Eastern Chemofarb Pvt. Ltd. to prove the fact that “the production of the factory was diminishing , lack of order of goods from customers, recision of market, excess of employees more than 30 workmen were sitting idle without any job and inability of management to continue to bear the wages of the excess workmen/employees/staff month by month without any work and other incidental expenses in running the factory” by adducing sufficient oral evidence .

But the Employer, M/s Eastern Chemofarb Pvt. Ltd. and its Management has not examined no other witness in order to support and corroborate the statement of the witness OPW-1.

That the statement of the witness made out in the examination in chief of witness OPW-1 cannot be accepted as gospel truth unless his statement is corroborated by examining any other reliable witness of the Factory.

Witness O.P.W-1, Samirendra Narayan Chatterjee has stated in his

*Sd/-
Judge*

cross - examination that prior to the issuance of suspension of work notice of their establishment they did not take any permission from the concerned Labour Commissioner of Govt. of West Bengal.

This witness OPW-1 has further stated in his cross examination that after two months from the date of issuance of suspension of work notice their establishment started manufacturing process of products as they received the bulk order of goods. Their establishment at Purulia is closed since more than two and half years . They do not have any other branch of their establishment . They never issued any termination letter to their workers.

Therefore, it is very much clear from the cross examination of witness OPW-1 that the company has received bulk order of goods after the issuance of suspension of work notice . Therefore, it cannot be said that the production of the company was diminishing and there was a recession of market and the company was suffering from financial crunch to keep the factory unit open for workmen.

That prior to the issuance of the notice of suspension of work dated 09/07/2021 declaring suspension of work with effect from 00.00 am on this 13 th day of July, 2021, the Employer and its Management of Eastern Chemofarb Pvt. Ltd. had issued a notice on 16/05/2021 declaring suspension of work from 01/06/2021 onwards on the similar grounds. Therefore, it goes to suggest that there is a malafide intention on the part of the Employer and its management for suspension of work of the workmen in the factory which amounts to 'Lock – Out' under the provision of section -2 (L) of the Industrial Dispute Act, 1947.

Therefore, in view of the contents of Notice of Suspension of Work issued by the authorised signatory of the Eastern Chemofarb Pvt. Ltd. as well as discussion made herein above on the basis of the oral evidence of witness OPW-1 it amounts to 'Lock- Out' as defined under section – 2(L) of the Industrial Dispute Act, 1947.

Now, let us come to decide as to whether the declaration of 'lock -out' including the issuance of suspension of work notice by the Employer/Eastern Chemofarb Pvt. Ltd. is illegal or not ?

*Sd/-
Judge*

It is provided under section – 25(O) of the Act, 1947 that –

[25-O. Procedure for closing down an undertaking.—(1) An employer who intends to close down an undertaking of an industrial establishment to which this Chapter applies shall, in the prescribed manner, apply, for prior permission at least ninety days before the date on which the intended closure is to become effective, to the appropriate Government, stating clearly the reasons for the intended closure of the undertaking and a copy of such application shall also be served simultaneously on the representatives of the workmen in the prescribed manner: Provided that nothing in this sub-section shall apply to an undertaking set up for the construction of buildings, bridges, roads, canals, dams or for other construction work.

(2) Where an application for permission has been made under sub section (1), the appropriate Government, after making such enquiry as it thinks fit and after giving a reasonable opportunity of being heard to the employer, the workmen and persons interested in such closure may, having regard to the genuineness and adequacy of the reasons stated by the employer, the interests of the general public and all other relevant factors, by order and for reasons to be recorded in writing, grant or refuse to grant such permission and a copy of such order shall be communicated to the employer and the workmen.

(3) Where an application has been made under sub-section (1) and the appropriate Government does not communicate the order granting or refusing to grant permission to the employer within a period of sixty days from the date on which such application is made, the permission applied for shall, be deemed to have been granted on the expiration of the said period of sixty days.

(4) An order of the appropriate Government granting or refusing to grant permission shall, subject to the provisions of sub-section (5), be final and binding on all the parties and shall remain in force for one year from the date of such order.

(5) The appropriate Government may, either on its own motion or on the application made by the employer or any workman, review its order

*Sd/-
Judge*

granting or refusing to grant permission under sub-section (2) or refer the matter to a Tribunal for adjudication: Provided that where a reference has been made to a Tribunal under this sub-section, it shall pass an award within a period of thirty days from the date of such reference.

(6) Where no application for permission under sub-section (1) is made within the period specified therein, or where the permission for closure has been refused, the closure of the undertaking shall be deemed to be illegal from the date of closure and the workmen shall be entitled to all the benefits under any law for the time being in force as if the undertaking had not been closed down.

(7) Notwithstanding anything contained in the foregoing provisions of this section, the appropriate Government may, if it is satisfied that owing to such exceptional circumstances as accident in the undertaking or death of the employer or the like it is necessary so to do, by order, direct that the provisions of sub-section (1) shall not apply in relation to such undertaking for such period as may be specified in the order.

(8) Where an undertaking is permitted to be closed down under sub-section (2) or where permission for closure is deemed to be granted under sub-section (3), every workman who is employed in that undertaking immediately before the date of application for permission under this section, shall be entitled to receive compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months.]

That the section – 25(O) of the Industrial Dispute Act, 1947 hereinafter referred to as Act, 1947 has been amended by the State of West Bengal –

In Section 25-O of the principal Act,— (a) in sub-section (1), after the first proviso, the following proviso shall be inserted:— “Provided further that every application for permission to close down an undertaking shall, having regard to the first proviso to Section 25-FFF, contain the particulars of the quantum, mode, manner and time of payment of compensation to the workmen, in the manner prescribed, and such employer shall furnish such

*Sd/-
Judge*

guarantee as may be required by the appropriate Government to discharge his liability for payment of compensation and other statutory dues to the workmen in the event of such permission being granted under sub-section (2) or deemed to have been granted under sub-section (3).”;

(b) after sub-section (1), the following sub-section shall be inserted:— “(1-A) Where an application for permission has been made under sub-section (1), the appropriate Government may, having regard to the reasons adduced in such application and the interests of the undertaking and the concerned workmen, issue such directions as may be necessary for maintaining normalcy and continuity of work during the notice period.”;

(c) to sub-section (6), the following explanation shall be added:— “Explanation.—‘Benefits under any law’ shall include benefits under any contract, agreement, award or settlement under any law”;

(d) after sub-section (7), the following sub-section shall be inserted:— “(7-A) Every order of the appropriate Government under sub section (7) shall indicate for reasons to be recorded, the extent to which compensation computed under sub-section (8) shall be payable in the case, having regard to the facts and circumstances of the same and for securing such payment, the appropriate Government may obtain such information and guarantee specified in the second proviso to sub-section (1) as may be considered necessary.”

(e) in sub-section (8), after the words “shall be entitled to receive” the words and brackets, “in addition to all legal dues (including gratuity)”, shall be inserted.—W.B. Act 33 of 1989, S. 5 (8-12 1989).

In view of the aforesaid definition of the Section -25(O)(1) of the Act, 1947, I am of the considered view that the Employer/Eastern Chemofarb Pvt. Ltd. or it’s Management has not produced any application of prior permission from the appropriate Government before this Industrial Tribunal before the closure of the factory and issuance of notice of suspension of work that the Employer had made an application in the prescribed format to the appropriate Government for prior permission at least ninety days before the date on which the intended closure i.e 13-07-2021 is to become effective, to

*Sd/-
Judge*

the appropriate Government, stating clearly the reasons for the intended closure of the undertaking and service of a copy of such application simultaneously on the representatives of the workmen in the prescribed manner.

It is also found from the cross -examination of witness OPW-1 that he has stated that prior to the issuance of suspension of work notice their establishment did not take any permission form the concerned Labour Commissioner of Government of West Bengal.

As the Employer, Eastern Chemofarb Pvt. Ltd. has not taken written permission from the appropriate Government for closure of the factory and even without causing the service of a copy of such application upon the workmen of the Eastern Chemofarb Pvt. Ltd. as such in the event of submission of no application for permission under sub section (1) of section -25(O) of the Act, 1947 by the Employer/Eastern Chemofarb Pvt. Ltd. the aforesaid closure of place of employment or declaration of 'Lock -out' of the factory by the Management of the Employer, Eastern Chemofarb Pvt. Ltd. is held to be illegal from the date of closure and the workmen shall be entitled to all the benefits under any law for the time being in force as if the undertaking had not been closed down in view of sub- section (6) of section- 25(o) of Act, 1947.

Therefore, since the closure of the place of employment of the Eastern Chemofarb Pvt. Ltd. is held to be illegal from the date of closure as such the workmen are entitled to get the all the benefits under law for the time being in force as if the undertaking had not been closed down.

That the submission advanced by the Management of the Employer, Eastern Chemofarb Pvt. Ltd. to the effect that "As the production of the Unit was diminishing day by day due to lack of orders , recession of market , excess employees more than 30 workmen were sitting idle without any job due to paucity of fund and severe financial crunch amongst other reasons and the inability of management of Company to continue to bear the wages of the excess workmen/employees /staffs month by month without any work and other incidental expenses in running the factory

*Sd/-
Judge*

and to keep the factory open any longer, the company finding no other alternative way than to suspend working of the factory/unit and the Management therefore, declares the temporary “suspension of work ” of the factory/Unit with effect from midnight 00:00 am on this the 13-07-2021 and to put off all the workmen /employees /staff of the factory/Unit except the watch and ward staff and staffs of essential services from their employment for the time being until further notice as from the aforesaid date and time. None of the employee put off from employment shall be entitled to or be paid any wages or other allowances for so long as they will be under suspension of work and this period will be always treated on the principles of ‘No work and no Pay ’ basis” is found to be devoid of any merit in the eye of law and the same is not tenable in the eye of law.

The Employer/Eastern Chemofarb Pvt. Ltd. has failed to prove the fact before this Industrial Tribunal that the notice of suspension of work was issued by the Management of Employer that due to recession of market, diminishing the production of goods, excessive employees sitting in idle and suffering from financial crunch by the employer in running the factory open month by month and year after year by adducing sufficient and cogent evidence.

Therefore, the grounds mentioned in the notice of suspension of work of the Employer, M/S Eastern Chemofarb Pvt. Ltd. for declaring the suspension of work of the workmen or the lock out in the factory is found to be illegal and contrary to the provisions of Industrial Dispute Act, 1947 and the same is held to be a lock-out of the factory . It cannot be taken into consideration to come to finding that the there was no lock-out in the factory.

Consequently, it cannot be arrived that the Employer was facing financial crunch , diminishing of production of goods in the factory and the non -avialability of raw materials . That the company has not submitted any statement of financial loss and profit of the company to come to a finding that the company was suffering from financial crunch in running the factory or the intendment of the employer is to take the factory to closing down of the factory.

*Sd/-
Judge*

That the notice of suspension of work dated 09/07/2021 issued by the authorised dignitary of Eastern Chemofarb Pvt. Ltd. for declaration of temporary suspension of work of the factory with effect from midnight 00.00 A.M on 13th day of July, 2021 is wholly illegal and bad in the eye of law and the said notice of suspension of work of the factory is liable to be set aside.

That the statement made in the notice of suspension of work by the management of the Employer , Eastern Chemofarb Pvt. Ltd. that none of the workmen/employees/staff so put off from employment will be entitled to or be paid any wages or other Allowances for so long as they will be under suspension of work and this period will be treated always on the principle of “no work no pay” is contrary to the provision of sub-section – 6 of section – 25(O) of Industrial Dispute Act, 1947.

Consequently, the suspension of work in M/S Eastern Chemofarb Pvt. Ltd. with effect from 13/07/2021 is unjustified and the same is contrary to the provision of sub-section (1) of section 25(O) of the Industrial Dispute Act, 1947.

Issue No.2 :-

That as this Industrial Tribunal has already come to a finding that the after analysing the forgoing issue no. 1 that the suspension of work in M/S Eastern Chemofarb Pvt. Ltd. , village – Damda, P.O – Simulia, District - Purulia with effect from 13/07/2021 is un - justified .

Therefore, since the closure of the place of employment or the lock - out of of the Eastern Chemofarb Pvt. Ltd. is held to be illegal from the date of closure being contrary to the provision of sub-section-6 of section – 25(O) of Act, 1947 as such the workman are entitled to resume their duty along with all the benefits under law for the time being in force as if the undertaking had not been closed down.

Thus, the issue nos. 1 and 2 hereby stands disposed of .

*Sd/-
Judge*

Considering the above, this referred case under section- 10 of Industrial Dispute Act, 1947 framing the issues therein forwarded to this Industrial Tribunal under Letter No. Labr/647/(LC-IR)/22015(16)/29/2022 dated 29/06/2022 issued by the Joint Secretary to the Government of West Bengal , Labour Department is adjudicated by passing the following order contained in Judgement/Award.

Hence, it is

ORDERED

that the instant referred case under section- 10 of Industrial Dispute Act, 1947 framing the issues therein forwarded to this Industrial Tribunal under Letter No. Labr/647/(LC-IR)/22015(16)/29/2022 dated 29/06/2022 issued by the Joint Secretary to the Government of West Bengal , Labour Department be and the same is considered, adjudicated and allowed on contest against the M/S Eastern Chemofarb Pvt. Ltd. and it's Management and without any cost and/or costs.

Accordingly, it is declared that the Suspension of work in M/S Eastern Chemofarb Pvt. Ltd. , Village – Damda, P.O-Simulia , Dist.- Purulia with effect from 13/07/2021 issued by the notice of suspension of work by the Management and its Employer, M/S Eastern Chemofarb Pvt. Ltd. is unjustified .

It is further directed the M/S Eastern Chemofarb Pvt. Ltd. and it's Management to allow the workmen to resume their duty with effect from 13/07/2021 along with all their service benefits which they are entitled to receive in accordance with law.

The Employer, M/S Eastern Chemofarb Pvt. Ltd. and it's Management are directed to release all the service benefits of the workmen form 13/07/2021 till the date/dates of their respective joining in the factory immediately within 1 (one) month from the date of communication of the award to Employer by the appropriate Government.

*Sd/-
Judge*

*A copy of this award be sent to the Secretary, Labour Department ,
Government of West Bengal for their information and taking necessary
action in accordance with law.*

Thus, this case hereby stands disposed of .

*D/C by me
Sd/-
Judge*

*sd/-

(Nandadulal Kalapahar)
Judge, 9th Industrial Tribunal,
Durgapur.*