
(1981) 11 CAL CK 0009
In the Calcutta High Court

Titaghur Paper Mills Co. Ltd.

APPELLANT

Vs

First Industrial Tribunal and Others

RESPONDENT

Date of Decision : 25-11-1981

Acts Referred:

Industrial Disputes Act, 1947 — Section 10, 12, 2

Citation : (1982) 2 LLJ 288

Hon'ble Judges : G.N. Ray, J

Bench : Single Bench

Judgement

G.N. Ray, J.—This Rule is directed against Order No. 84 dated 14th December, 1977 made by the learned Judge, First Industrial Tribunal. West Bengal in Case No. VIII-98/73.

2. The petitioner-company in the instant Rule challenges the validity of the said order disposing of the preliminary objections of the petitioner-company about the maintainability of the reference made by the Government of West Bengal to the said First Industrial Tribunal, for adjudication of a dispute as to whether or not the termination of services of seven workmen, viz., Ujjal Kumar Datta, Tara Sankar Lahiri, Ananda Nath Paul. Uma Sankar Pandey, Kishore Mohan Bhattacharjee, Indrani Banerjee and H.K. Bhattacharya were justified and to what relief, if any, they were entitled. The said persons at the time of dismissal, were employees of the petitioner-company M/s. Titaghur Paper Mills Company Limited. It is contended by the petitioner-company that all the said officers were members of the Supervisory Staff and they had been discharging supervisory and/ or managerial duties and functions of the petitioner-company at the relevant time and their terms of services were clearly governed by contracts made between the company and the said employees. The petitioner company contends that there is a class of employees whose terms and conditions are governed by a set of certified Standing Orders. But there is also another class of employees known as Supervisory Staff employed by the company who are broadly designated as Assistants and particularly designated as Supervisor/

Departmental-in charge, etc. and their service conditions are governed inter alia by their individual service agreements and/or terms contained in their letters of appointment-Such employees are required to accept the said terms of appointment before joining the post offered to them, The petitioner-company contends that the employees in respect of which the said reference was made to the Tribunal were members of the Supervisory Staff and their duties were to discharge functions mainly of supervisory, administrative and/or managerial nature. Although the said employees also had experience and/ or technical knowledge in the matter of production of paper but their technical knowledge and or service of technical nature rendered to the company was only incidental to their main work of supervision and/or managerial function. It is contended by the petitioner-company that the said employees were not required to do any manual work for the purpose of production as they were not allotted work for that purpose. The work of production used to be done by the workers under their supervision although on some occasions when the workers had required guidance, the said Supervisors had to solve the same The petitioner-company further contends that the said Supervisors, besides the duties aforesaid, had to direct the work or distribute the work to the workers and juniors under them and they had inter alia the power to initiate disciplinary proceedings, to recommend promotions, to allot overtime work, to make arrangements for filling up Badli vacancies and to recommend or grant leave to those subordinate to them and the said Supervisors had also participated in the planning of work for their respective sections. It is contended by the petitioner-company that in view of the nature of duties which were performed by the said employees, no one of the said supervisory employees was "workman" as defined in Section 2(s) of the Industrial Disputes Act even though in some cases the salary drawn by one may fall below Rs. 500 per month. The petitioner-company also contends that the said Supervisors were specifically chosen for their technical attainments suitable for the nature of business undertaken by the company and for the special type of services rendered by them they were allowed such service benefits as residential quarter, medical expenses travelling allowance, personal accident insurance, leave facilities, etc. The service agreement of the said employees have been annexed to the writ petition. It is contended by the petitioner-company that Clause 7 of the Service Agreement specifically provided for "Power to determine the Agreement" and Clause 9 provided for "Transfer of the service of the Supervisors to any other firm or body corporate on terms equivalent to the terms contained in the agreement." Clause 11 of the Service Agreement provided for "Arbitration" in case of any dispute during the continuance or after determination of the Agreement by the Bengal Chamber of Commerce. The petitioner-company further contends that the Industrial Employment (Standing Orders) Act, 1946 under which certified standing Orders were framed concerning the other class of workers had no manner of application in the case of Supervisors, Superintendents Departmental-in charge, etc. It is contended by the petitioner-company that sometime in early January, 1973 the company retired one Sri P.M.G. Nayar, Stores in-charge of the Company's Mill No. 3 in Orissa on his

attaining the age of superannuation in terms of the service contract and the company also passed an order of transfer of Mr. H.K. Bhattacharya who at the material time, was the Pulp Mill Incharge of No. 2 Mill of the Company. The said Sri Bhattacharya, however, did not want to comply with the directive of the management on one plea or other. On 11th January, 1973, three Supervisors viz., Sri K M Bhattacharya, Sri I. Banerjee and Sri U.K. Dutta led a deputation leaving their duties during the working hours with the Supervisors before the Manager of the Company's Mill No. 2 and threatened the Manager with dire consequence. They had also obstructed the day to day activities of the Mill including stoppage of production and also threatened to damage the Plant and Machinery unless the Management would concede to their demands for cancellation of the retirement order of the said Sri Nair and the transfer order of Sri Bhattacharya. On receipt of a complaint from the Manager, Mill No. 2, the company had directed the said three Supervisors to report to the Head office on the following day to explain their unruly conduct. The said Supervisors, however, reiterated their demands and further stated that the order of retirement of Sri Nair was a case of victimisation, as he happened to be the President of their Association at No. 3 Mill in Orissa. As the explanation of the said three Supervisors was not found satisfactory the management after giving them hearing terminated their services. The petitioner-company states that on the same day, three other Supervisors, viz., Sri Tara Sankar Lahiri, Uma Sankar Pandey and Ananda Nath Paul of Company's Mill No. 1 similarly led a deputation of about 50/60 supervisors before Sri D.K. Kundu, the Chief Engineer and staged ugly demonstrations during the working hours leaving their respective works. The management of the company also gave them an opportunity to explain their conduct and their explanations were of the same nature as in the case stated hereinbefore. The services of the said three other Supervisors were also terminated for the same reason. The petitioner-company states that the termination of services of the said Supervisors was taken up by Sri Bishnu Banerjee, the then President of Bengal Provincial National Trade Union Congress with the then Labour Minister and the management was pressurised to attend the said meeting held in the chamber of the Hon'ble Labour Minister. But in the discussion the question of retirement of the said Sri Nair was never taken up. The Additional Labour Commissioner, West Bengal addressed a letter dated March 12, 1973 to the petitioner-company forwarding a recommendation as desired by the Labour Minister to the management of the company to the effect that the cases of six Supervisors whose services had been terminated would be referred to the adjudication by the Industrial Tribunal and endeavour would be made by the parties to reach an amicable settlement out of Court. It was also recommended that during the pendency of the adjudication proceeding, the said six employees would be paid 50 per cent of basic and D.A. as a special case to mitigate hardship of those employees at the request of the Labour Minister. As the said recommendation came from the Hon'ble Minister, Labour Department of the State Government the management had to reluctantly accept the same. According to the petitioner-company, at the time of termination of services the

posting of the said employees were as follows;

(a) Ujjal Kumar Dutta,

Designation - Pulp Mill Supervisor, Mill No. 2 Salary Rs. 668.73 Pulp Mill Section, having several workmen under him He was sponsored for higher studies.

(b) Tara Sankar Lahiri,

Designation-Asstt Electrical Engineer, Mill No. I, Salary Rs. 1,037.47- was in charge of Electrical and Maintenance and was to supervise the working of several workers under him.

(c) Ananda Nath Paul, of Mill No. 1. Designation Chemist Supervisor-Salary Rs. 484.68 - entrusted with jobs of collecting samples of raw materials and testing the same, etc., having supervisory duties over workmen under him and doing administrative - managerial work.

(d) Uma Shankar Pandey

Designation- Junior Beater Supervisor, Mill No. 1. Salary Rs. 434.68- entrusted with supervisory work like bringing sample from machine department for the purpose of size testing and shade matching, besides doing administrative/ managerial jobs.

(e) Kishori Mohan Bhattacharjee,

Designation- Senior Assistant/Supervisor, Mill No. 2 (Machine House) being second in rank to Paper Making Superintendent having Supervisory and various administrative and managerial functions, Salary being Rs. 1,437.48.

(f) Indrani Banerjee,

Designation - Senior Assistant/Supervisor (Machine House), Salary Rs. 1,719.98 entrusted with almost similar jobs, like that of Sri K.M. Bhattacharjee.

(g) H.K. Bhattacharjee.

Designation - Pulp Mill In-charge, Salary Rs. 1,519.98-was doing Managerial/ administrative duties including supervising the work of even Supervisors. He was sent abroad for higher training.

2. It is contended by the petitioner-company that the Deputy Labour Commissioner and Conciliation Officer did not send any failure report u/s 12(4) of the Industrial Disputes Act for the purpose of making a reference u/s 10 of the Industrial Disputes Act and the State Government made the said reference to the First Industrial Tribunal West Bangal, for adjudication of the issues referred to hereinbefore The petitioner-company after receipt of the notice from the said Tribunal filed a written statement inter alia raising preliminary objections challenging the jurisdiction of the Tribunal to adjudicate upon the issues referred to it and prayed for disposal of the said preliminary objection at the first

instance. It was contended by the petitioner-company that the order of reference was ex-facie illegal, bad and inoperative because the said employees were Supervisors of the company and had been acting in the Supervisory, administrative and managerial position. It was also contended that the State of West Bengal had no jurisdiction to decide as to who was workman or not within the meaning of the Industrial Disputes Act and even by consent of the parties jurisdiction for determination of the status of a workman could not be conferred on the Industrial Tribunal. The case of Sri H.K. Bhattacharya was never discussed and agitated with the petitioner-company before reference to the Tribunal and as such the reference of the case of Sri H.K. Bhattacharya was illegal. It was also contended that the Association had no locus standi to espouse the cause of the said seven Supervisors and in any event Sri H.K. Bhattacharya having proceeded against the employer in a civil suit before the City Civil Court for a declaration, he was not entitled to raise the dispute before the Industrial Tribunal and for the same cause of action he was not entitled to proceed in two forums. The petitioner-company also contended that in merits also, the orders of dismissal passed against the said Supervisory staff were quite reasonable and justified and no exception should be taken against the said orders of dismissal.

3. The respondent No. 3, viz., The Titaghur Paper Mills Staff (Technical and Administrative) Association, however, contended in its writ n statement that the company had been persistently following an anti-labour policy and had been indulging in unfair labour practice and the said orders of termination were passed only for the purpose of victimising the said employees who had protested against the unfair labour practice of the company. In a rejoinder to the preliminary objections made by the company the said Association also contended that there was no error or irregularity in the order of reference and the dispute with regard to Sri H.K. Bhattacharya was also raised by the Association and the Government being satisfied, his name was also included in the order of reference. On the said contentions of the company to decide at the first instance the said preliminary objections raised by the company, the learned Tribunal framed the preliminary issues, viz .

- (i) Whether the persons are workmen or supervisory staff?
- (ii) Whether the dispute which has been raised is an industrial dispute in the eye of law?
- (iii) There has been no conciliation proceeding in the reference. In that context the agreement to make this reference is bad and invalid.
- (iv) No demand was made on behalf of the workman ri H.K. Bhattacharya whose name was not there in ; the agreement.
- (v) Locus standi of the Association to represent the persons concerned.
- (vi) Binding character of the contractual agreement in that reference How the reference is tenable in view of that?

It appears that eight employees of the company were examined in support of the contention of the petitioner-company. The company also produced several documents as stated in paragraph 40 of the writ petition. The said Association also referred to a number of documents and exhibits as referred to in paragraph 42 of the writ petition. The learned Industrial Tribunal by the said impugned order dated 14th December, 1977 has held that the company having admitted that all the said employees except Sri H.K. Bhattacharya were workmen under it the company cannot be permitted to agitate that they are not workmen. It has also been held by the learned Judge of the Industrial Tribunal that the main jobs of the concerned workmen were both technical and manual and although some of them had drawn a salary of more than Rs. 500 per month and were designated as Supervisors or had been differently designated, they were in fact workmen in term of the definition of "workmen" in the Industrial Disputes Act. It has also been held by the learned Judge that the Industrial Disputes were raised for the said termination It has been further held by learned Judge that the order of reference is not invalid even assuming that the conciliation was not properly held. The learned Judge has also held that the said union had locus standi the espouse the case of the said employees and the Government was quite competent to refer the industrial dispute for adjudication even in the case of Sri H.K. Bhattacharya. The learned judge has further held that the even assuming that the services of the said employees had been terminated in terms of the service agreement the Tribunal has jurisdiction to decide as to whether or not the authority conferred by the agreement has been rightly exercised and there was no colourable exercise of power.

4. Mr. Chakraborty followed by Mr. Ganguli appearing for the petitioner-company has submitted that although apparently the findings made by the learned Tribunal may appear to be findings of fact on analysis of the evidences adduced by the parties, both oral and documentary, but in reality such findings are not pure findings of fact, but findings made on misconception of both facts and law. The learned Counsel for the petitioner-company further submits that the learned Tribunal has, on entire misconception of the evidences on record and also without considering material evidences, came to the finding that the employees were not purely supervisors and/or administrative officers as contended by the petitioner company, but they were "workmen" within the meaning of the Industrial Disputes Act The learned Counsel also submits that the said employees were never treated as the work men and in the muster roll of the workmen, their names were also not borne. It is also contended by the learned Counsel of the petitioner-company that the salary and other emoluments of the said employees were not paid in the manner, such payments were made to the other class of employees, viz , the workmen In the case of the "workmen" of the petitioner-company, the workmen were allotted their respective token number, but in respect of the employees in question they were not given any token number because they belonged to the Supervisory and managerial staff of the company and they were never treated as workmen. It was precisely for the said purpose a

separate form of agreement was entered into between the said company and the said employees fixing their terms and conditions of service. The learned Counsel for the petitioner-company submits that all these things taken together unmistakably point out that the said employees were never treated as workmen and they also knew it. But on an entire misreading of the evidences on record, an erroneous finding was made by the learned Tribunal. The learned Counsel for the petitioner-company also submits that as the decision of the learned Tribunal touches the question of jurisdiction of the Tribunal to adjudicate the reference this Court can go into the questions of fact for the purpose of appreciating as to whether or not the learned Tribunal has acted within jurisdiction. For this contention a reference is made to a Bench decision of this Court made In the case of R.N. Deb v. 8th Industrial Tribunal (1975) Lab. Ind. Cases 94 Following the decision of the Supreme Court reported in Lloyds Bank Ltd., New Delhi Vs. Panna Lal Gupta and Others, and also another decision of the Supreme Court reported in AIR 1968 S.C 1186, it has been held in the said Bench decision of this Court that where jurisdiction of a Tribunal depends upon a preliminary finding of fact, the High Court in exercise of writ jurisdiction is entitled to determine the correctness or otherwise of the finding made by the Tribunal upon its independent judgment. The learned Counsel, therefore, submits that as the findings made by the learned Tribunal are basic findings touching the question of jurisdiction, this Court will be quite free to assess the said findings for the purpose of determining as to whether or not such basic findings of fact conferring jurisdiction upon the Tribunal were correctly made. The learned Counsel for the petitioner company also submits that for the purpose of appreciating as to the real nature of work rendered by the said employees, the basic purpose for their appointment and the principal nature of work done by the said employees should be carefully scrutinised. The learned Counsel submits that the principal nature of the work of the said employees can be well determined from the letters of appointment and other attending circumstances as indicated hereinbefore. It is contended by the learned Counsel for the petitioner-company that the supervisors are also employees of the company but for the purpose of deciding the applicability of the Industrial Disputes Act, the salary of the supervisors and the exact nature of work mainly performed by them are to be noted. The learned Counsel also submits that the word "supervise" and its derivatives are not of precise import and the said expression must be construed in its proper perspective. The learned Counsel also submits that simply because the concerned employees had technical expertise and they had rendered services of technical nature, they cannot be held to be workmen. It is contended by the learned Counsel for the petitioner-company that in practice, quite a large number of employees are employed in various industries to do works of more than one of the kinds mentioned in the definition. In such cases, it will be necessary to determine under which classification an employee will fall for the purpose of finding out as to whether or not he goes out of definition of "workman." For that purpose a workman must be held to be employed to that work which is the main work he is required to do even though he may be incidentally doing other type of

work. A person with technical qualification may well be employed in a supervisory capacity and he must be held to do supervisory work. The learned Counsel for the petitioner-company submits that it is a common experience of all that the administrative control and supervision of factories or sections thereof are exercised by persons having high technical qualifications. It is only because of such expertise and technical qualification that they are in a position to render effective supervisory and administrative control of the factory and/or the sections. It will be an incorrect proposition of law if such employees are treated as ordinary workmen simply on the footing that they also render technical labour in the process of manufacture and/or production. In this connection, the learned Counsel for the petitioner-company refers to a decision of the Supreme Court made in the case of *Burmah Shell Oil Storage and Distribution Company of India Ltd. Vs. The Burma Shell Management Staff Association and Others*, . The learned Counsel for the petitioner-company has submitted that on behalf of the company, senior officials of the company were examined and it was specifically stated by such officials that the said employees had rendered purely supervisory and administrative functions. Even documentary evidences in support of such contention were produced. The learned Counsel for the petitioner-company also submits that in the instant case there has not been any independent conciliation by the conciliation officer and the Hon"ble Minister for Labour Government of West Bengal, for all practical purposes hand superimposed the decision on the company to have the disputes referred to an Industrial Tribunal although the company was of the firm view that the said employees being Supervisors and/or Managers there could not have been any occasion for referring their dispute as industrial disputes. It is also contended by the learned Counsel for the petitioner-company that the conciliation officer had failed to perform his statutory duties and functions properly and even in the absence of a failure report by the conciliation officer the alleged industrial dispute was referred by the State Government. The learned Counsel has also contended that so far as Mr. H.K. Bhattacharjee is concerned, his case was also not discussed either with the conciliation officer or with the Hon"ble Minister for Labour, but simply on the basis of the letter of Sri Bishnu Banerjee, the President of the Union, the case of Mr. Bhattacharjee was also referred to the Tribunal. The learned Counsel for the petitioner-company therefore, submits that there has been a gross failure of justice so far as the petitioner-company is concerned and said preliminary objections as to the maintainability of the reference to learned Tribunal require a fresh adjudication. The learned Counsel for the petitioner-company after analysing both oral and documentary evidences at length has submitted that the evidences of the company have not been considered in its proper perspective and some of the evidences have also been overlooked and an erroneous finding has been made by the learned Tribunal.

5. Mr. Dasgupta, the learned Counsel appearing for the respondent No. 3, has, however, submitted that in an appropriate case, the correctness of the finding on the question of jurisdiction of the Tribunal may be looked into by this Court, but

normally the writ Court should not interfere with the findings of fact unless such findings are patently unjust and incorrect. He submits that in the instant case, the Tribunal has analysed the evidences at length and has given good reasons as to why the contention of the petitioner-company that the said employees were supervisors and/or administrative officers was not accepted by the learned Tribunal. In such circumstances, re-appreciation of evidences by the writ Court is not called for. Mr. Dasgupta submits that from the evidences adduced on behalf of the petitioner-company it transpires that job evaluation in respect of each of the employees had been done, but no such evaluation in respect of concerned employees was produced before the learned Tribunal in support of the company's contention. The learned Tribunal has, therefore, rightly drawn an adverse inference against the company for non-production of the alleged job evaluation of the concerned employees and no exception can be taken against the learned Tribunal for drawing the said adverse inference. The learned Counsel for the said respondent No. 3 also submits that it has been stated in evidence adduced on behalf of the petitioner-company that job instructions were also issued to the concerned employees, but such instructions have not been produced before the Tribunal for the purpose of appreciating the real nature of work of the said employees. He submits that mere emphasis and/or a bald statement that the said employees were supervisors and/or administrative officers will not prove the said contention of the petitioner - company. Mr. Dasgupta also submits that the learned Counsel for the petitioner - company has criticised the learned Tribunal for analysing the evidences of the company at the first instance. He submits that no injustice has been done by such analysis of the evidence. In the instant case, both the parties have led their evidences and evidences adduced on behalf of both the parties have been assessed and/or analysed at length and it is immaterial if the evidences adduced on behalf of the company were analysed first. Mr. Dasgupta also submits that the State Government can always make a reference even in the absence of a conciliation proceeding if the State Government is of the opinion that there is an industrial dispute which requires adjudication. He submits that power u/s 10 is very wide and such power can be exercised irrespective of the fact that conciliation proceeding has been undertaken and or the conciliation proceeding is pending. The learned Counsel for the said respondent No. 3 also submits that definite dispute was raised by the union against the said illegal termination of services of the said employees and coming to know about the existence of such dispute a valid reference u/s 10 can always be made by the State Government. The learned Counsel also submits that reference u/s 10 is an administrative function of the Government and even at a later date on the same facts a reference to the Industrial Tribunal can be made by the State Government although on earlier occasion the State Government declined to make such reference. For this contention the learned Counsel has referred to a Supreme Court decision made in the case of Avon Services Production Agencies (P) Ltd. Vs. Industrial Tribunal, Haryana and Others, . The learned Counsel also refers to another decision of the Supreme Court made in the case of Shambu Nath Goyal Vs. Bank of Baroda,].

The Supreme Court has laid down in the said case that the industrial disputes referred to in Section 2(k) of the Industrial Disputes Act are disputes or differences which are real and substantial in nature having some element or persistency and continuity till resolved and likely, if not adjusted, to endanger the industrial peace of the undertaking or the community. The learned Counsel for the respondent No. 3 submits that in the instant case over the termination of services of the said employees, there was a continuous unrest in the factory of the petitioner-company and the employees resorted to strike protesting against such victimisation and anti-labour policy of the management.

In the circumstances there is no manner of doubt that there was a dispute or differences, substantial in nature endangering the industrial peace of the undertaking. It may be noted in this connection that the petitioner-company had agreed to the Government's proposal to have the dispute referred to the Tribunal. The learned Tribunal has therefore, held that having agreed for such reference, the petitioner-company is precluded from denying the status of the said employees as "workmen." The learned Counsel for the petitioner-company has submitted that the said finding of the learned Tribunal is completely misconceived. The Hon"ble Minister for Labour had clearly expressed his desire for making such reference and the petitioner-company only acceded to such proposal of reference coming from a high authority but simply because of acceptance of such proposal for reference, it cannot be contended that reference is quite legal and valid and/or the petitioner-company cannot raise the dispute as to the status of the said employees. In my view, the contention of the petitioner-company is justified. In the facts of the case, it appears that the petitioner-company had agreed to the proposal of the Government for a reference but it cannot be contended that such agreement was made by the petitioner company after accepting the status of the employees and the petitioner-company is, therefore, entitled to raise the said dispute as to the status of the employees. The learned Counsel for the respondent has, however, submitted that the decision of the Tribunal was not based on the said finding that the petitioner-company was precluded from challenging the status of the employees in view of its acceptance for reference to the Tribunal. The Tribunal in the instant case has also taken pains in analysing the evidences both oral and documentary at length and has come to a positive finding that the petitioner-company has failed to establish that the said employees were not workmen. It has also come to the finding that the evidences have established that the said workmen did not discharge purely supervisory and/or administrative functions and as such they were workmen within the meaning of Section 2(s) of the Industrial Disputes Act. Mr. Dasgupta also submits that the dismissed employees examined themselves and they categorically stated that they did not exercise supervisory and/or administrative functions as contended by the company but they had to render their technical expertise in bringing production and for that purpose they had also to render manual labour as and when necessary. Mr. Dasgupta also submits that what functions had actually been performed by the employees are matters

of fact and even if the Tribunal on consideration of the evidences has come to a finding by taking one view or the other that the concerned employees are workmen, the High Court, in the exercise of its constitutional writ jurisdiction, should not interfere unless there is error apparent on the face of the record. For this contention, Mr. Dasgupta refers to a decision of the Supreme Court made in the case of Andhra Scientific Co. Ltd. Vs. A. Seshagiri Rao and Another, Mr. Dasgupta also submits that the agreements of service of the said employees were very much highlighted by the petitioner-company before the learned Tribunal and the same have also been high-lighted before this Court for the purpose of establishing that the said employees were principally Supervisors and/or Administrative Officers, but the said agreements of service only indicate that the concerned employees were employees of the company and the same do not indicate the nature of work to be performed by them. Hence, the said service agreements are of no assistance whatsoever to prove the nature work performed by the said employees and the company was required to prove the nature of work by leading a positive evidence to that effect. Mr. Dasgupta also contends that although in the writ petition and also in the written statements filed before the learned Tribunal, it was stated by the petitioner-company that the said employees had performed mainly Supervisory works and they had also performed some administrative functions, but no document whatsoever was filed to show that the said employees had been discharging supervisory works mainly. Some documents were, however, submitted to show that one or two such employees had at some time exercised some administrative functions but the said employees had explained the said actions in their evidences and had said that such function was purely occasional and was done at the direction of other superior officer. Mr. Dasgupta submits that the company was under an obligation to lead direct evidence as to the nature of work being performed by each of the said employees but such evidence, for reasons best known to the company, was not led. He submits that there is no scope for making any interference in this respect. He also submits that mere supervision of the machine and men handling the machine does not make an employee a supervisor so as to exclude him from the definition of "workman." The essence of supervisory work as contemplated u/s 2(s) for excluding the employee to be a workman is the supervision of one person over the work of others and not supervision of the man or machine so that the production as desired is made. For this contention, Mr. Dasgupta refers to a decision of the Delhi High Court made in the case of Blue Star Ltd. v. N.R. Sharma 1925 II L.L.J. 300. In the said case, the concerned workmen supervised the functioning of air-conditioning plant. It has been held in the said decision that the supervision in Section 2(s) does not mean supervision of an automatic plant. The running of an automatic plant of machinery is to be watched and repaired in case of anything going wrong. The person who attends may do either technical or manual work within the meaning of Section 2(s). In such circumstances, such person importing technical or manual labour in repairing and/or keeping the plant and machinery in running condition cannot be held to be supervisor. Mr. Dasgupta also submits that positive evidence of the power of

supervision by an employee as understood in Section 2(s) is required to be given by the company. In this connection, he refers to a decision of the Supreme Court made in the *Ananda Bazar Patrika (P) Ltd. Vs. The Workmen*, . The Supreme Court in the said decision has laid emphasis on the requirement of a positive evidence as to power of supervision and giving direction to others in performing the duties of other employees. In that case some evidence was led stating that one Mr. Gupta used to supervise the works of other clerks, but such evidence was not accepted by the Supreme Court for want of clear and positive assertion. Mr. Dasgupta submits that excepting leading an omnibus evidence that the said employees had exercised supervisory and/or administrative functions, no direct evidence in respect of each of the concerned employees was led to show the actual nature of work performed by them. Mr. Dasgupta also submits that on one or two occasions if an employee had exercised some administrative functions. Such occasional exercise of administrative functions will also not make the employee an administrative officer. For this contention, Mr. Dasgupta refers to a decision of the Supreme Court made in the case. *South Indian Bank Ltd. Vs. A.R. Chacko*, , It has been held in the said decision that if occasionally a workman has acted in the place of an agent when the agent was absent, the workman cannot be held to be discharging administrative or supervisory work principally and if the Tribunal has made such a finding, no interference is called for.

6. After considering the respective submissions of the learned Counsel appearing for the parties, it appears to me that the company has failed to lead any precise and positive evidence in respect of each of the said employees excepting Mr. H.K. Bhattacharya to prove the exact nature of work which had been performed by them. The concerned employees had stated in their evidence that they were required to work for the production in different plants and to render their technical knowledge in the matter of production. They had also to maintain and plants and repair the machine, and plants and had to work at different stages of production. It was also stated by the said employees that they were not allowed to take any independent decision as to how the other workers will have to work in the section or shop to which they were attached. They had no control over the said workmen and their jobs were not to supervise the works of the workmen simply as supervisors. It may be noted that in the matter of production and running sophisticated machines, persons having technical expertise are often required to guide the labourers as to how the machine will be run and how the technical process of production to be carried out. Such technicians render their technical expertise along with other workers. In such circumstances it cannot be said that simply because they did not run the machines themselves but stood by and guided ordinary workmen in the matter of running the machine and / or carrying out the phases of production, they were purely administrators and / or supervisors and their only job is to supervise the men and not the machine and / or technical works of production. Supervisor as understood in Section 2(s) really means that the person exercising supervisory works is required to control the men and not the machines. His duty is to see how the employees will be engaged

in different works ! of production and maintenance. For exercising such power, it may often be necessary that the supervisor himself must have technical expertise, otherwise he may not be in a position to exercise proper supervision of the workmen handling sophisticated plants and machineries. But if a person is required to render his technical knowledge in the matter of production along with other workmen as directed by other superiors, then he cannot be said to be exercising supervisory works and/or administrative works. In the instant case, the Tribunal has analysed the evidence and has given good reasons for its finding that there is no positive evidence to show that the said employees had been rendering supervisory and/or administrative works and as such they were not workmen within the meaning of Section 2(s), In the circumstances, Mr. Dasgupta is justified in his contention that there is no error apparent on the face of the record in the said finding of fact made by the learned Tribunal, for which any interference by the writ Court is called for. It may also be noted in this connection that two of the employees. Mr. U.S. Pandey and Mr. A.N. Pal had been drawing less than Rs. 500 as their salaries. Accordingly even assuming that the said two employees had exercised some powers as supervisors they must be held to be workmen until it can also be shown that their functions were mainly of managerial nature. But in the facts of this case, the company has clearly failed to establish that the said two employees had exercised functions mainly of managerial nature. It, however, appears that Sri H.K. Bhattacharjee was a Pulp Mill Incharge at the relevant time and the evidences indicate that he had really exercised supervisory and administrative functions and he had also drawn a salary above Rs. 1,000 per month. In my view, the company is justified in its contention that the Tribunal has misconstrued and/or overlooked the evidences so far as Mr. H.K. Bhattacharjee is concerned and it appears that the said Sri Bhattacharjee was really discharging his duties and functions as a senior officer of the company and as a supervisor and not as workman within the meaning of Section 2(s) of the Act. So far as Sri T.S. Lahiri is concerned, it appears that the said Sri Lahiri had resigned from service and such resignation was accepted by the company in supersession of the order of termination. Accordingly there cannot be any question of dismissal in respect of a person who had resigned from service. The learned Counsel for the petitioner-company is in my view justified in his submission that the Tribunal has failed to note the said basic fact so far as Sri Lahiri is concerned. I, therefore, agree with the submission of the learned Counsel for the petitioner of company that there was no occasion to adjudicate the case of Sri T.S. Lahiri who had resigned from service and the Tribunal should have made a finding to that effect. In the circumstances, it appears that excepting in the cases of Sri H.K. Bhattacharjee and Sri T.S. Lahiri, there had been a valid reference to the learned Tribunal for adjudication of the said disputes, and the preliminary finding of the learned Tribunal in respect of the said other employees is justified and upheld-In my view, Mr. Dasgupta is justified in his contention that the State Government had the authority to make a reference to the learned Tribunal when it was satisfied about the existence of a dispute even in the absence of a conciliation proceeding and the Union could also

espouse the cause of the said employees. The Tribunal is, therefore, directed to decide the said reference in respect of Messrs. U.S. Pandey, A.N. Pal, K.M. Bhattacharjee, I. Benerjee and U.K. Datta. But the reference made in favour of Messrs, T.S. Lahiri and H.K Bhattacharjee must fail because they were not workmen at the relevant time for the reasons indicated herein before. The Rule is accordingly disposed of. There will be no order as to costs.

7. The learned Counsel for the petitioner prays for stay of operation of this judgment for a period of six weeks from today. Considering the facts and circumstances of the case, the operation of this judgment will remain stayed for a period of four weeks from today.