

GOVERNMENT OF WEST BENGAL
LABOUR DEPARTMENT
I.R. BRANCH
WRITERS' BUILDINGS, KOLKATA-700 001

No. 188-I.R.
IR/13L-04/05(Pt.)

Dated, Kolkata, the 1st March, 2013.

ORDER

WHEREAS under the Government of West Bengal, Labour Department Order No. 2158, dated 29-12-2003 the industrial Dispute between M/s. The Statesman Limited, 4, Chowringhee Square, Kolkata-700001 and their workman Smt. Rina Mukherjee, Flat No.602, 6th Floor, Kalimati Apartments, 24/4, Alipore Road, Kolkata-700027 regarding the issue mentioned in the said order, being a matter specified in the Second Schedule to the Industrial Disputes Act, 1947 (14 of 1947), was referred for adjudication to the Judge, Fourth Industrial Tribunal, West Bengal.

AND WHEREAS the Judge of the said Fourth Industrial Tribunal, West Bengal, has submitted to the State Government its award on the said industrial Dispute.

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

ANNEXURE
(Attached herewith)

By order of the Governor,

sd/
Deputy Secretary to the
Government of West Bengal.

No. 188/1(3)-I.R.

Dated, Kolkata, the 1st March, 2013.

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

1. M/s. The Statesman Limited, 4, Chowringhee Square, Kolkata-700001 .
- ✓ 2. Smt. Rina Mukherjee, Flat No.602, 6th Floor, Kalimati Apartments, 24/4, Alipore Road, Kolkata-700027.
3. The Assistant Labour Commissioner, West Bengal, in-charge, Labour Gazette.

Craker
Section Officer.

No. 188/2(2)-I.R.

Dated, Kolkata, the 25th February, 2013.

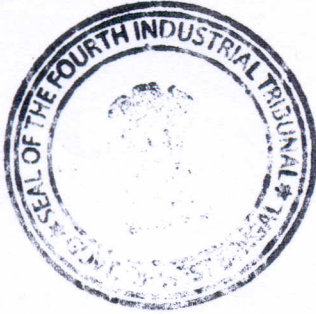
Copy forwarded for information to :

1. The Judge, 4th Industrial Tribunal, West Bengal with reference to his memo. No.160/L.T., dated 12-02-2013.
2. The Joint Labour Commissioner (Statistics), West Bengal, 6, Church Lane, Kolkata-700 001.

sd/r
Section Officer.

In the matter of an industrial dispute exists between M/s. The Statesman Limited, 4, Chowringhee Square, Kolkata – 700001 and their workman Smt. Rina Mukherjee, Flat no. 602, 6th floor, Kalimati apartments, 24/4, Alipore Road, Kolkata - 700027 as Referred to this Tribunal vide G.O.No 2158-I.R./IR/13L-1/2000 dt. 29.12.2003. Case No. VIII-01/2004 to this Tribunal for adjudication.

BEFORE THE 4TH INDUSTRIAL TRIBUNAL, :WEST BENGAL



Present

Shri Kundan Kr. Kumai

Judge, Fourth Industrial Tribunal.

AWARD

An industrial dispute exists between M/s. The Statesman Limited, 4, Chowringhee Square, Kolkata – 700001 and their workman Smt. Rina Mukherjee, Flat no. 602, 6th floor, Kalimati apartments, 24/4, Alipore Road, Kolkata - 700027 has been referred by the Govt. of West Bengal, Labour Department Vide order No. 2158-I.R./IR/13L-1/2000 dt. 29.12.2003 to this tribunal for adjudication of the following issues:-

(ISSUE)(S)

1. Whether the termination of service of Smt. Rina Mukherjee by the management with effect from 12.10.2002 is justified?
2. What relief, if any, is she entitled to?

The brief facts of the workman is that the lady workman was appointed as a member of the editorial staff vide letter of appointment dated June 03, 2002 and joined her duty on 10th June, 2002 and worked in that capacity till her services were terminated by the company on 12.10.2002. During her employment she had to report to the Chief Reporter for all her works and also with the News Coordinator, Sri Ishan Joshi. Her stories and articles were published by the Newspaper authority on the regular basis and during the said span during June 10, 2002 to October 12, 2002 she also submitted eight breaking news stories apart from several reports and features. In fact one of her articles was published in the newspaper even after her services were terminated. Though, she worked with diligence and to the satisfaction of The Statesman authority, she was often subjected to harassment by her senior colleague, Mr. Ishan Joshi, the News coordinator. The lady workman had repeatedly lodged verbal complaint before the higher authority and even to Sri Ravindra Kumar, Managing Director. But no cognizance of the same had been taken. Instead of making any investigation, the management chose to terminate the services of the lady workman on flimsy grounds. The termination order was passed without holding a regular enquiry or even without an opportunity of hearing, to the lady workman. It became evident that the workman incurred the displeasure of the management in view of the above mentioned complaint and in an attempt to stifle her voice her services had been terminated. After the services had been terminated, the lady workman wrote a complaint to Mr. C.R. Irani, the then Editor-in-chief of the Statesman informing what had incurred during the

period of her employment. In reply to the workman's letter Mr. C.R. Irani shrugged off all the responsibilities and labelled the complaint as an after thought. Thereafter, the workman made a representation before the appropriate authority of the Labour Department, Govt. of West Bengal and even after a series of conciliation meetings no result was forthcoming, for which reason the matter was referred to this Tribunal for adjudication, by the Govt. of West Bengal.

The company has challenged the contentions of the lady workman in a two fold manner. Firstly, it has challenged the legality of the Tribunal to adjudicate the instant reference and secondly, on the factual matters. Firstly, it has been pointed out that as the lady workman had been discharged in terms of Clause-15 of the appointment letter, question of industrial dispute did not arise. Secondly, since the lady workman had not completed services of one year, question of retrenchment also did not arise. Moreover, as the lady workman was working as a Senior Reporter, in the capacity of the Executive level 2(EL2), she was not entitled to the definition of the workman under the Industrial Disputes Act.

As regards the factual aspect, the quality of the work of the lady workman with regard to the reports submitted by her was not only tardy but lacking in quantity as well. As a reason for which, the Chief Reporter had submitted a report dated 25th September, 2002 that the work of the lady workman was not up to the mark. Under the circumstance, there being no option left with the management, the services of the lady workman had been terminated. Moreover, after her termination, when the lady workman had sought to raise the dispute vide her letter dated 30.1.2003, that she failed to raise the allegation sexual harassment during her employment and at best her contention could be an afterthought. Thereafter, the company had denied the reasons for the ouster made by the lady workman.

Issues : (1) Whether termination of service of Smt. Rina Mukherjee by the management with effect from 12.10.2002 is justified? (2) What relief, if any, is she entitled to ?

In this respect, the lady workman had examined herself and two other witnesses as PW-1, 2 and 3, on her behalf and furnished several documents which have been marked Exts. 1 to 20. On the other hand, the company has examined four witnesses as O.P.W.1, O.P.W.2, O.P.W.3 & O.P.W.4 and furnished two documents which have been marked Exts. A & B.

DECISIONS WITH REASONS

Written arguments have been filed on behalf of both the sides.

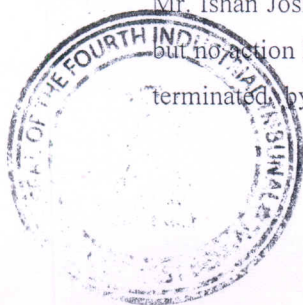
The Ld. Lawyer for the lady workman has also submitted that the termination of the workman before the expiry of the probation period cannot be held to be legal if the same carries stigma or is a measure of punishment. He has relied on the judgement passed in The Management of Express Newspaper Pvt. Ltd., Madhurai -vs- The Presiding Officer, Labour Court, Madhurai & Anr. reported in AIR 1964 SC 806 ; Shikshan Prasarak Mandal, Wani -vs- Presiding Officer & Ors. reported in (1995) LLJ 167 Bom and Mangement of Continental Construction Ltd. -Vs- Workmen of Continental Construction Ltd. reported in (2003) III LLJ



612 Kant. It has further been mentioned that since, there was no committee for complaints redressal in the Statesman as laid down by the Hon'ble Apex Court in Vishakha-vs- The State of Rajasthan judgement, the lady workman could not seek her redressal at the time of occurrence. Moreover, she had managed to make verbal complaints to Mr. Rabindra Kumar, the Managing Editor and had even lodged a written complaint, but she did not keep a copy for future reference in the hope that her complaint would be redressed. Furthermore, when her complaints were not redressed and when her services were also terminated, inspite of being the victim of sexual harassment, the lady workman suffered depression and with the help and support of a non-governmental organisation she was able to lodge a complaint before the Editor of the Statesman, but no importance was given to her complaint. During the conciliation proceedings also the same attitude was shown by the company. Despite that, the lady workman had lodge a complaint before the Bowbazar Police Station, but the same could not yield any fruitful result because of the tremendous influence of the company over its employees. That apart, the lady workman had submitted series of articles and breaking stories which had been published in her name showing her efficiency in her work. But still, the management cited that her work was not up to the mark and had dismissed her from the service.

By the written argument, the company has submitted that the termination of the workman was not illegal, as the clause-15 of her appointment letter clearly states that her services could be terminated, even before the expiry of the probationary period of six months. The company has relied on the judgement passed in Muir Mills Unit of NTC (U.P) Ltd. -Vs- Swayam Prakash Srivastav reported in 2007(1) SCC 491; Rajajinagar Cooperative Bank -vs- K. Gururaj & Another reported in 2001 (10) SCC 681; Rajesh Kohli -Vs- High Court of Jammu and Kashmir reported in 2010 (12) SCC 783; Progressive Education Society -Vs- Rajendra reported in 2008 (3) SCC 310 and Abhijit Gupta-vs- S.N.B. National Centre, Basic Science reported in 2006 (4) SCC 469. It has also been argued that the lady workman was not competent to work for the company as many complaints had been made against her work, for which reason she had been terminated. As regards the contentions of the workman that she was sexually harassed it has been argued that the matter was not raised by the workman prior to her termination, but long after her termination and therefore, the same had to be termed as an afterthought.

P.W.1, the lady workman has stated that on 3rd June, 2002 she had been appointed as Senior Reporter and as a Senior Reporter she used to perform her duties by covering the health and environment beat, reporting on news relating to these issues. During the span of her service, she had prepared more than 40 stories and she had never been informed that her performance was not up to the mark. Towards the end of the first month she had been subjected to sexual harassment. According to her estimation the stories which had been good were not published by the authority concerned and she was subjected to sexual harassment by the News Coordinator, Mr. Ishan Joshi. She had lodged a complaint before the Managing Director, Mr. Ravindra Kumar but no action had been taken on her verbal complaint. On October 12, 2002 her service had been terminated by the company and thereafter, she had lodged a complaint vide letter dated



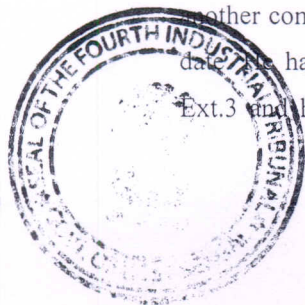
30.01.2003 and during her tenure twenty stories got her byline out of which eight were breaking news stories. Mr. Ishan Joshi was in the habit of physically misbehaving by touching as and when she would pass the corridor or whenever he was standing near her or when she had to meet him in his chamber. Professional harassment took the form of stopping her stories from getting published. She had further stated that she had complained to Mr. Ravindra Kumar, because she had been professionally and sexually harassed by Ishan Joshi, but no step had been taken by Sri Ravindra Kumar. She had never been informed by The Statesman authority that her services was not at all satisfactory. She had not been provided with any opportunity of hearing prior to her services being terminated. After termination she had lodged a complaint before Sri Ravindra Kumar and Mr. C.R. Irani and also before the West Bengal Commission for Women. She firmly believed that her service was terminated because of having complained to Ravindra Kumar. She had prayed for reinstatement in service with full back wages and other consequential benefits.

During cross-examination she had stated that since she had made a verbal complaint before Mr. Ravindra Kumar, she felt it was not necessary to make written complaint and also that he would take proper action against Mr. Ishan Joshi. She had further stated that it was difficult to enumerate that the said incident occurred while she was working and once in September 2002 she had made a complaint before Mr. Ravindra Kumar.

P.W.2 is merely the bearer of the letter marked Ext. 19.

P.W.3 is also the bearer of the document marked Ext. 20.

O.P.W.1 is Mr. Ishan Joshi who has stated that he was the Deputy Editor of M/s. The Statesman Ltd. and was connected with the company for the last 13 years. He has also stated that while Smt. Rina Mukherjee was posted in The Statesman, he was In-charge of the Editorial Department overall. He has also stated that the nature of duties of Smt. Rina Mukherjee was to file news report, to monitor junior reporters news reports, in the absence of the chief reporter, as well as other senior reporters was to take some administrative function like marking of attendance register and duty for the day. He has also stated that night shift was from 7.30 p.m. till 1.30 a.m. and the company provided cars to the entire editorial journalist for their respective residences. He has also identified the appointment letter as Ext.1 and has stated that the same had been signed by the Director and Managing Editor of The Statesman Ltd., Sri Ravindra Kumar. He has also stated that the Ext. 1/a was addressed to Mr. Ravindra Kumar by the Chief Reporter, Mr. Tanmay Chatterjee. The copy of the Ext. 1/a had been sent to the then News Coordinator and the Ext. 2 was issued by the Director and Managing Editor, The Statesman. He has also stated that on or about 3rd December, 2002 her probationary period would have expired. He has also stated that Smt. Rina Mukherjee had made certain allegation regarding sexual harassment and no specific date has been mentioned in her complaint and near about four months later she made another complaint before the authority concerned of The Statesman ltd., where she made a false date. She has identified the letter written by Mr. Ravindra Kumar to Smt. Rina Mukherjee as Ext.3 and has stated that since her joining Smt. Mukherjee had never lodged a complaint of



sexual harassment before the authority concerned. He has also stated that the head of the department referred to him those reports where they had a doubt about the standard of the story or news report. Her Head of Department had referred Mrs. Mukherjee's news report to him on numerous occasions. The news reports were not up to the standard expected of a Senior Reporter with considerable experience. He has also stated that if news report filed were not up to the mark they had to be corrected and edited and sometimes scrapped. He has also stated that these impacted both in terms of the output and quality. He has also stated that 3 months and 18 days later, after Mukherjee's termination of probationary service, she had made a false allegation of sexual harassment. He has also identified the letter dated 31st March, 2003 written by Mrs. Rina Mukherjee to the Labour Commissioner as Ext.A. He has also stated that in Ext. A, the lady workman had mentioned a false date i.e. 3rd July, 2002 stating that it was Saturday whereas, 3rd July, 2002 was Wednesday and on 3rd July, 2002 Smt. Rina Mukherjee was not in night duty, whereas, Miss Kamboj was on night duty on 03.7.2002. He has also identified the letter written by the signatories expressing the fact that the petitioner was present in the dinner party hosted by him and his wife and she also had enjoyed the same as Ext.5. He has also identified the letter dated 15.7.2003 to the Deputy Personnel Manager as Ext.6. He has also identified the letter dated 18th August, 2003 to the Deputy Labour Commissioner as Ext. 9. He has also identified the letter dated 21st January, 2004 written by the Officer-In-Charge, Bowbazar P.S. as Ext. 14 and his reply to the letter dated 4th February, 2004, Ext. 16 and the apology letter dated 13.02.2004, Ext.17. He has also identified the letter written by the lady workman to the Chief Editor dated 30.1.2003 as Ext.B and has stated that the letter was written 6(six) months 27 days after the alleged date of incident.

O.P.W.2 has stated that she is a special representative in 'The Statesman' and she was working there for past 16 years. She had stated that she knew Mr. Ishan Joshi and she had been having daily interaction with Mr. Ishan Joshi since 2001 because of her job and she found him a nice, courteous and professional gentleman. She had identified her signatures on Ext.5 as Ext.5/1 and Ext.11 as Ext.11/1, *respectively*.

O.P.W.3 is the City Editor of 'The Statesman' and he was posted as Special Representative. He has stated that he used to check the stories after they were filed by the Reporters and then they were sent to the news section for heading and final publication. He has also stated that since, he was the Senior Special Representative he had the occasion to check the stories filed by Smt. Rina Mukherjee. On checking her stories, he had found them they were featurish. In reporting most of the stories hard facts were filed whereas in features the same were more elaborate. He has also stated that he often told that she was not fit for reporting. He has also stated that she knew Mr. Ishan Joshi since last 13 years when he came to join as News Coordinator.

During cross-examination, he has stated that Mrs. Rina Mukherjee never reported before him, as his job included filing his own stories and assessing stories of other reporters on Calcutta and at present he could not file any report of Smt. Rina Mukherjee pertaining to education, but



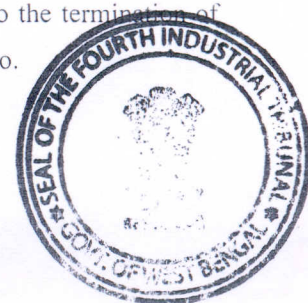
from the archive he would be able to produce it. He never made anything in writing indicating the unsuitability of Smt. Rina Mukherjee to Mr. Joshi.

O.P.W.4 is Sri Ravindra Kumar the Editor and Managing Director of 'The Statesman'. He has stated that during probationary period of Smt. Mukherjee her performance was not up to their expectation. He has identified the letter addressed to her by Mr. Tanmay Chatterjee, the Chief Reporter of the Statesman as Ext. 1/a. He has further stated that during probation, she was told of her shortcomings from time to time. He has also stated that she had been appointed as Senior Reporter on the basis of her experience and was expected to file reports of a certain quality. She was also expected, sufficient number of breaking news stories but Smt. Mukherjee was unable to deliver either number of stories or quality of stories, that the newspaper expected from the Senior Reporter. He has identified the letter dated 01.2.2003 which had been signed and addressed to Mrs. Rina Mukherjee. He has stated that to his knowledge the allegation of sexual harassment against Mr. Ishan Joshi was completely baseless and false.

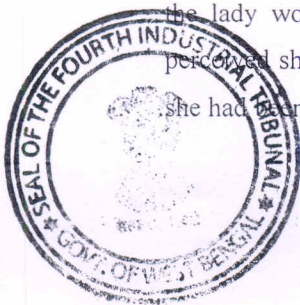
During his cross-examination he has stated that no written notice was sent to Mrs. Rina Mukherjee regarding her per performance. He has also stated that Smt. Mukherjee had written a letter to the then Editor In-Chief, Shri C.R. Irani with a copy to him dated 30.1.2003, alleging sexual harassment. He had replied to Smt. Mukherjee vide Ext.3 wherein, he had mentioned in details regarding her talks with her during September, 2002 and also pointed out that she had not mentioned about sexual harassment or harassment of any other kind at that time. He had also pointed out that letter dated 30.1.2003 that had many factual inconsistencies and she had never made any complaint of sexual harassment and had complained after 3 months and 18 days seemed to have been an afterthought.

Therefore, from the above evidence on record, the undisputed position that transpires is that, the lady workman had been appointed vide Ext.1 dated 03.6.2002 for 6 months probation and thereafter, she had been terminated vide letter dated 12th October, 2002, Ext.2. The question that now requires to be answered is, whether the termination was over the consequence of her inefficiency in her job as stated by the company or whether the termination was in consequence of raising of allegation of sexual and professional harassment, by the lady workman. Prior to deciding the above, it needs to be put on record that the legality of the reference was challenged in the written statement. But at the time of argument the legality of the reference was not challenged. Moreover, the preliminary issue that, whether the lady workman was a workman within the meaning of Sec. 2(s) of the Industrial Disputes Act, had been replied in affirmative vide order No. 70 dated 26.09.2008. Since the said order was not challenged before any higher forum, the order stands and there being nothing on record to state that the reference was otherwise illegal the reference has to be held to be legal and valid.

Since the case of each side is distinct from each other with regard to the termination of service of the lady workman, the case of both the sides needs to be looked into.



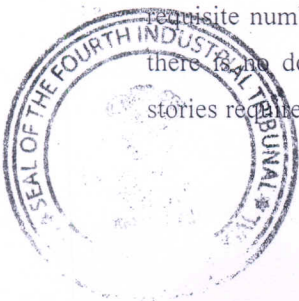
Therefore, let the case of each side be discussed. Let us start with the case of the lady workman who has challenged her termination from the company as illegal and motivated, the onus is upon her to establish her case against the termination. The lady workman as P.W.1 has stated during her examination-in-chief, that from the end of the month of June 2002 itself, sexual harassment had been perpetrated upon her by Mr. Ishan Joshi, O.P.W.1, and her refusal to cooperate with him had resulted in professional harassment as well. She had then lodged a verbal complaint before O.P.W.4, Shri Ravindra Kumar, the then Managing Editor and Director of The Statesman, in the belief that her complaint would be redressed. But instead of any redressal, the services of the lady workman had been terminated vide letter dated 12.10.2002, Ext.2. Thereafter, the lady workman had submitted a complaint before the then Editor In-charge, Mr. C.R. Irani vide letter dated 30.01.2003 Ext.B. Then also, her allegation was treated as an afterthought, vide letter dated 01.02.2003, Ext.3, issued by Sri Ravindra Kumar, O.P.W.4. In that letter dated 01.02.2003, Ext.3, Sri Ravindra Kumar had inter alia stated that he had an interaction with the lady workman sometimes in September 2002. It was also mentioned that she had complained that the Chief Reporter and the News Coordinator had not been appreciative towards her works. It is the lady workman's case that she had been sexually harassed by Mr. Ishan Joshi and when she did not cooperate with him, the professional harassment had started. She had also made a verbal complaint before the then Director and Managing Editor, Sri Ravindra Kumar and had apprised him verbally, regarding such harassment. Therefore, from the statement made by Sri Ravindra Kumar in the letter dated 01.02.2003, Ext.3, she had also complained against the Chief Reporter and the News Coordinator that they were inappreciative of her work, tantamounts to admission of the lady workman's case, of verbal complaint against the then News Coordinator, Shri Ishan Joshi before OPW4. In the light of such findings, it becomes established that at least the lady workman had made a verbal approach regarding the professional harassment made out to her by Mr. Ishan Joshi and another. Although, Shri Ravindra Kumar, O.P.W.4 has denied that the lady workman had made any reference to him regarding the sexual harassment, undergone by her at the hands of Sri Ishan Joshi, even though the lady workman has claimed to have apprised him regarding sexual harassment by Ishan Joshi during that meeting. It is quite understandable that OPW4, would never have admitted to it. This is vindicated by the fact that OPW4, never undertook any action to go to the root of the problem, as to why the lady workman was making such allegation even after receipt of complaint, dated 30/01/03, Ext.B. He never started any enquiry however discreet it may have been. Fairplay, demanded at least an explanation from the senior executives as to why there was an allegation of professional harassment against them. Rather he has gone hammer and tongs over the delay, made in making the sexual harassment public, in writing. What else could she have done, she made a verbal complaint of sexual harassment and professional harassment and she was dismissed from her service even without completion of her probation period. Therefore it is quite understandable if the lady workman states that she underwent severe depression, after all the lady workman perceived she had been wronged by way of sexual harassment and professional harassment and she had been shown the door for protesting the same. It should also not be forgotten that the lady



workman was not only well educated but had about ten years of journalism, with other well known publications, behind her and not a novice or a rookie journalist, at that relevant time. Moreover from the testimonies of the OPW's themselves, it becomes clear that there was no Committee on sexual harassment, as per the Honb'le Supreme Court's direction in Vishaka vs State of Rajasthan, existing in The Statesman, at that relevant time. Therefore to expect the lady workman to file a written complaint and not to believe the same, when it has been filed at a later date is sheer biasedness. Throughout the hearing of the case, it has been sought to be made out, that the lady workman, out of anguish of losing her service, had resorted to the allegation as made out. In other words, without subscribing to the sexist implication, "Hell hath known no fury than a woman scorned". In this regard, even in criminal proceedings delay is not fatal to the merit of the case, is the changed position of law. This case being a pure civil litigation, delay becomes immaterial if the case is otherwise proved. In any case the lady workman would have to prove her version and the company is required to prove its version. Moreover, the haste in which Shri Ravindra Kumar acted on the basis of the letter dated 25.09.2002 sent by the Chief Reporter, Sri Tanmay Chatterjee marked Ext.1/a, culminating in the issuance of the letter dated 12.10.2002 Ext.2, terminating the services of the lady workman is astounding to say the least. This is more so, because of the fact that the wording of the letter dated 25.9.2002 Ext. 1/a did not demand the urgency which was undertaken in its aftermath. In fact, from the wording of the letter it transpires that the performance of the lady workman was not a major concern but something that was needed to be attended to. It never subscribed the consequence of terminating the job of the lady workman, but the company on the basis of that letter terminated the job of the lady workman. The timing of the issuance of the letter Ext.1/a, indicates that the same was issued immediately after the meeting between the lady workman and the OPW4, i.e. sometime in September, 2002. Within 15 days the services of the ladyworkman had been terminated vide letter, Ext.2.

Therefore, from the above findings it becomes apparent that the lady workman had been penalized with the termination of the service for making complaints against her senior officers. To this extent the lady workman had been able to prove that the termination of her job prior to the expiry of the probationary period was a result of the complaint against the News Coordinator, Mr. Ishan Joshi and Chief Reporter, Mr. Tanmay Chatterjee.

Now with regard to the company's version of the termination of the job, the company has always maintained by virtue of the arguments and the evidence on record, that quantity and quality of the work of the lady workman did not match the expectation of the company. The company has mentioned that the articles submitted by the lady workman were not fit for reporting but were featurish. Moreover, her articles were also not up to the standard of Senior Reporter with considerable experience. That apart, the lady workman also did not file the requisite number of stories as was expected of her. But apart, from the vague oral submission there is no document forthcoming from the company's side to actually show the number of stories required to be filed by the lady workman. On the contrary, the company's own document

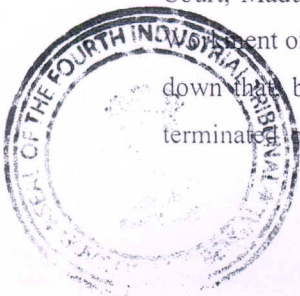


Ext.1/a, clearly shows that the quantity was not a factor and only the quality was under the cloud. There is no suggestion even in that document, Ext.1/a, that the same could not be rectified. Moreover, why the author of the letter Ext.1/a, was not examined as witness, is something astonishing. He would have been the ideal witness to have the authority to comment on the quality of the work of the lady workman, especially in view of the ambiguity created by his letter, Ext.1/a. Moreover, the letter dated 25.09.2002 Ext.1/a, nowhere suggests that the penal action against the lady workman needed to be taken immediately. On the other hand, the Ext. 1/a, letter dated 25.9.2002, is clearly a motivating type of letter which the company ought to have forwarded to the lady workman for apprising her weakness so that she could correct herself in future assignments. Furthermore, even though the lady workman had considerable experience prior to joining the company, it should not be forgotten that she was a mere probationer and needed to be guided by the company so that she could hone her skills for the benefit of the company. But surprisingly, ~~no~~ such thing appears to have been done with the lady workman during her tenure in ^{the} company. Rather the image emanating from the actions of the company is that, the company accepted the half opportunity provided by the letter Ext.1/a, to sack the lady workman. On the other hand, P.W.1 the lady workman has stated that 20 of her stories got byline out of which 8 of them were breaking news stories.

It is interesting to note that a complaint had been filed before the Bowbazar PS., by the lady workman. But the company forwarded to the investigation officer a statement Ext.12, signed by practically all the editorial staffs and journalists. What was the purpose of such an exercise is not understood. Whether it was an attempt to preempt the investigation officer by sending the copy of the likely statements of the witnesses, from proceeding any further or whether it was an attempt to influence the investigation itself, is not clear. What is baffling is, what kind of institution would bind its own employees to the extent of gagging them. More so when the institution is engaged in the business of publishing and thereby the upholder of the freedom of speech and expression. This kind of eagerness, in the face of routine police investigation, on the part of the company, not only questions the role of the company but also raises suspicion regarding the veracity of the statement, Ext.12. In other words, it reflects very poorly on the company's stand vis a vis the allegation of sexual harassment.

Under this circumstances, in view of the above findings, it appears that the company's contention that the termination of the service of the lady workman was simply on the ground of her incompetence does not appear to be tenable.

That apart, the legal aspect of the termination also does not appear to be inconsonance with the law provided by the Hon'ble Apex Court in the judgement relied by the workman i.e. The Management of Express Newspaper Pvt. Ltd., Madurai -vs- The Presiding Officer, Labour Court, Madurai & Anr. (SUPRA) and the Management of Continental Construction Ltd. -vs- Management of Continental Construction Ltd. (SUPRA), wherein, the Hon'ble Apex Court has laid down that before the expiry of the probationary period, the services of the employee can be terminated only on the ground of misconduct or other reason in which cases the services of



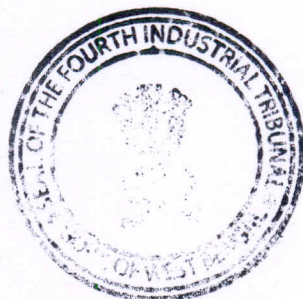
permanent employee could also be terminated. In the instant case, it is not the case of the company that the lady workman had been terminated on the ground of misconduct or any other reason. Therefore, the termination of service of the lady workman also suffers from the legal aspect. As regards the rulings relied on by the Id. Lawyer on behalf of the company, is that the rulings are inapplicable to the instant case as in the above rulings the principle has been enunciated after the expiry of the probationary period. Whereas, in the instant case, the expiry of the probationary period is yet to take place and the services had been terminated prior to the expiry of the probationary period.

Hence, in view of the above findings and observation it becomes clear that the termination of the workman was motivated and illegal and therefore, the same has to be termed as illegal and cannot be justified. With the issue No. 1 being decided in favour of the workman, the workman is entitled to reinstatement in service and full back wages from 12.10.2002 onwards.

This is my Award.

Dictated and Corrected by me.

Sd/ K. K. Kumai
Judge
06.02.2013



Sd/ K. K. Kumai
(Kundan Kr. Kumai)
Judge,
Fourth Industrial Tribunal,
06.02.2013