

**BEFORE THE CENTRAL GOVT. INDUSTRIAL TRIBUNAL -CUM- LABOUR COURT,  
ASANSOL.**

**PRESENT:** Shri Ananda Kumar Mukherjee,  
Presiding Officer,  
C.G.I.T-cum-L.C., Asansol.

**REFERENCE CASE NO. 23 OF 2023**

**PARTIES:** Siuli Chatterjee  
**Vs.**  
Management of SAIL-RITES Bengal Wagon Industry Pvt. Ltd.

**REPRESENTATIVES:**

For the Employee : Mr. Debashis Mondal, Advocate.  
Mr. Tuhin Mitra, Advocate.

For the Management : Mr. Ayan Ranjan Mukherjee, Advocate.  
Mr. Deep Narayan Dan, Advocate.

**INDUSTRY:** Steel-Railways.

**STATE:** West Bengal.

**Dated:** 27.08.2024

(Contd. Page – 2)

**A W A R D**

In exercise of powers conferred under clause (d) of sub-section (1) and sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947), the Ministry of Labour, Government of India through the Office of the Deputy Chief Labour Commissioner (Central), Asansol, vide its Order **No. 1(4)/2023/E** dated 13.04.2023 has been pleased to refer the following dispute between the employer, that is the Management of SAIL-RITES Bengal Wagon Industry Private Limited and their employee for adjudication by this Tribunal.

**S C H E D U L E**

*“ Whether the action of the management of SAIL-RITES Bengal Wagon Industry Pvt Ltd in termination the service of Mrs Siuli Chatterjee, Senior Assistant (QA) vide termination letter dated 09/11/2020 is legal and justified? If not, to what relief Mrs Siuli Chatterjee is entitled to ? ”*

1. On receiving Order **No. 1(4)/2023/E** dated 13.04.2023 from the Office of the Deputy Chief Labour Commissioner (Central), Asansol, Ministry of Labour, Government of India, for adjudication of the dispute **Reference case No. 23 of 2023** was registered on 02.05.2023 and an order was passed for issuing notice to the parties through registered post, directing them to appear and submit their written statements along with relevant documents in support of their claims and a list of witnesses.
2. The aggrieved employee filed her written statement on 12.06.2023 assailing the impugned order of her termination from service, issued by the General

Manager (P&M), communicated through his letter No. SRBWIPL/Termination from Service/01 dated 09.11.2020.

3. The fact of the case disclosed in the written statement of the dismissed employee is that, she was a permanent employee of SAIL-RITES Bengal Wagon Industry Private Limited (hereinafter referred to as SRBWIPL) since 11.06.2020. The petitioner was appointed as an Assistant Executive at SRBWIPL by their letter No. SRBWIPL/KULTI/HR/20-21 dated 09.06.2020. Thereafter petitioner was re-designated from Assistant Executive to Executive. Considering her past performance in the company, she was promoted to the post of Executive-Secretary to the Chief Executive Officer (hereinafter referred to as CEO) by company's letter No. SRBWIPL/KULTI/HR/20-21 dated 07.09.2020. The petitioner / employee rendered unblemished service to the company with dedication and received appropriate increment in her salary.

4. Within three months the petitioner found herself in a difficult situation when K. Chandrasekar, CEO, under whom she functioned as an Executive-Secretary, started sexually abusing her and subjected her to harassment. She could not raise any complaint against the CEO before the company as she was under threat of dire consequences and termination from service, if she divulged the sexual harassment by the CEO to any person. On her protest the petitioner was degraded to lower post. It is the case of the petitioner that K. Chandrasekar tried to establish an extra-marital relationship with her and called her to his bungalow on the pretext of learning Bengali language from her. He also tried to seduce the petitioner and used social networking sites like Facebook and WhatsApp to communicate with her in order to impress her that her promotion and increment depended upon his satisfaction. When the move of the

CEO to get intimate with the petitioner went in vain the employment of Mr. Soumita Chatterjee, the petitioner's husband, who was working under the principal employer through contractor was forcefully terminated.

5. The aggrieved employee tried her best to keep a distance from the CEO for which the CEO started abusing her and constantly kept her in fear of termination of service. On 05.10.2020 a letter was issued to her by the General Manager (P&M), alleging violation of service rules by her due to her engagement with a puja committee and collecting of subscription. The petitioner reciprocated to such false allegation by raising objection. The petitioner wrote to the Secretary of Post Office Para Sarbojonin Durgapuja Committee, Kulti, wanting to know why her name was incorporated in the subscription vouchers when she was not a member of the puja committee. Ms. Indrani Gupta, Member of the committee replied to her letter, informing that due to misunderstanding her name has been incorporated in the Subscription Vouchers of the puja committee. A police complaint was lodged in this matter by her on 08.10.2020. The management of the company after having a fair explanation and documentary proof from the petitioner, on the instruction of the CEO reduced the rank of the petitioner from E1 to NE4 post and thereby reduced her pay by their letter dated 14.10.2020. Mr. Sayantan Banerjee, Manager issued a letter to the petitioner bearing No. SRBWIPL/KULTI/SAFETY SHOE/20-21 dated 07.10.2020 making whimsical accusation against the employee, alleging violation of safety rules by not wearing safety shoes in the shop floor during inspection. According to the petitioner she submitted her reply to the Manager, QA department through email on 08.10.2020, informing that shoes of her size were neither available in the company's store nor in the open market but the reply did not satisfy the CEO, who pressurize the Manager, QA, to compel the petitioner to leave her job. On 08.10.2020 the petitioner received another letter

from the Deputy General Manager, QA, alleging gross violation of discipline by the petitioner. She replied through email and apologized for her mistake. It is contended that K. Chandrasekar, CEO, became vindictive towards her and harassed her physically and mentally raising frivolous allegations against her. On 09.10.2020 the petitioner was accused of violation of service rules and she defended herself against such false allegation. The management did not follow the basic rules of Departmental Enquiry and in order to fructify the deep-rooted conspiracy of the CEO, the charge of violation of service rule was levelled against her. The Deputy General Manager, Quality Assurance in his letter No. SRBWIPL/KULTI/POOR PERFORMANCE/20-21 dated 12.10.2020 accused the petitioner of poor performance in the Quality Assurance Department. On 03.11.2020 the Deputy General Manager, QA of the employer company issued another letter to the petitioner informing her that disciplinary action will be taken against her and asked her to submit explanation regarding violating the service rules due to unauthorized entry to in the factory premises without valid Gate Pass. The petitioner submitted her explanation on 03.11.2020 through email to the CEO and the General Manager, informing them as to why she entered into the premises of the factory but the employer company in an arbitrary and whimsical manner and without holding any Departmental Enquiry held the petitioner guilty of a false charge. It is stated that the petitioner was not allowed to submit any reply against the Charge Sheet to defend herself which is a clear violation of the principles of natural justice. The petitioner was then terminated from her employment through a whimsical decision of the management without giving any opportunity of hearing her and adducing evidence in her favour. It is urged that the General Manager (P&M) issued a letter of termination bearing No. SRBWIPL/Termination from Service/01 dated 09.11.2020, terminating the service of the petitioner in an illegal and whimsical manner. The petitioner

informed the entire matter to the Managing Director, SRBWIPL at Laxmi Nagar, Delhi, by lodging a complaint dated 31.12.2020. An enquiry was held over the matter on 23.02.2021 at City Centre, Durgapur, West Bengal. Petitioner received a letter dated 07.07.2022 from Ms. Sujata Savant, General Manager, UE&S, the Chairman of the Prevention of Sexual Harassment Committee (hereinafter referred to as PoSH Committee) of RITES Limited along with a copy of Enquiry Report dated 29.04.2022 held on the basis of the petitioner's complaint dated 31.12.2020 and she was informed that the management has decided to take necessary action against the respondent i.e. CEO and assistance shall be provided to her to undergo a suitable skill development programme which can help her to gain necessary expertise for future career prospects. It is contended by the petitioner that K. Chandrasekar, CEO, who subjected her to sexual harassment at her place of work was relegated to lower post as a punishment but the petitioner who was subjected to such sexual harassment and was terminated in an arbitrary manner was neither reinstated in service nor did she received any monetary compensation for the sexual harassment she suffered while working under the company. On 31.12.2020 the petitioner wrote a letter addressed to the Managing Director, SRBWIPL with a prayer for reinstating her but she received no relief. On 07.07.2022, Ms. Sujata Savant, General Manager, UE&S informed the petitioner that the guilt of K. Chandrasekar, CEO has been proved before the PoSH Committee Members and the management was asked to take necessary action against the CEO but refused to reinstate the petitioner. The petitioner thereafter approached the Deputy Chief Labour Commissioner (Central), Asansol and raised an Industrial Dispute regarding her dismissal and non-payment of back wages and compensation. The conciliation proceeding before the Deputy Chief Labour Commissioner (Central), Asansol failed and by exercising the jurisdiction of the Ministry of Labour, Government of India the Deputy Chief Labour Commissioner

(Central), Asansol has referred the Industrial Dispute before this Industrial Tribunal for adjudication. The petitioner in her pleading has prayed for setting aside the order of termination issued against Siuli Chatterjee and for her reinstatement in the post of Senior Assistant, QA with back wages w.e.f. 09.11.2020.

6. The management of SRBWIPL contested the Industrial Dispute by filing their written statement on 12.06.2023. It is contended that the Industrial Dispute is not maintainable and the same is liable to be dismissed. It is their case that the petitioner's case disclosed in her written statement is replete with distorted version and suppression of truth. It is their case that SRBWIPL is a joint venture company of Steel Authority of India Limited (a Central Public Sector Undertaking under the Ministry of Steel, Government of India) and Rail India Technical and Economic Service Limited (a Central Public Sector Undertaking under the Ministry of Railways, Government of India). The company was incorporated on 30.12.2010 and as per the joint venture agreement the CEO was deputed from Rail India Technical and Economic Service Limited and the Chief Finance Officer was deputed from Steel Authority of India Limited. All other employees recruited by the company are on contractual basis and their contract period was extended time to time as per requirement of the company.

7. The contention of the management in their written statement is that, Siuli Chatterjee was appointed as Assistant, Executive on contractual basis w.e.f. 11.06.2020 for a period of three months and her appointment letter bearing No. SRBWIPL/KULTI/HR/20-21 was issued on 09.06.2020. Initially the petitioner was appointed in the Stores Department under the General Manager, MM, where her performance was not satisfactory and several complaints were received by the

office regarding her poor performance which has been recorded in her Service Record. The petitioner did not have any intention to improve her efficiency. It was reported by the Departmental Head that she was not found suitable for work at the Store.

8. According to the management the petitioner was re-designated as an Executive to deal with clients. The petitioner submitted an application on 22.08.2020, requesting her transfer from Store to any office job, admitting her failure in performing job at the Store. The competent authority considered her appeal and transferred her to the office of the CEO at the same level by letter dated 22.08.2020. After completion of three months of contractual period and upon Annual Performance Appraisal Report (APAR) and the proposal dated 29.08.2020, the contract period of the petitioner was extended up to 28.02.2022 at the same level with incremental pay.

9. A Charge Sheet dated 05.10.2020 was issued to the petitioner for involving herself in collection of contribution for local puja committee at Kulti and after enquiry by the nominated committee, the petitioner was found guilty for violating company's service conduct rule and her position was reduced from E1 to NE4 with a reduction of pay of Rs. 15,000/- for her balance period of contract vide letter SRBWIPL/KULTI/HR/20-21/01 dated 14.10.2020 and she was transferred to the Quality Assurance Department as a Senior Assistant. The Manager, QA also chargesheeted her for not wearing Safety Shoes in the Shop floor and violating safety regulations. The petitioner submitted her explanation through email. The performance of the petitioner in the Quality Assurance Department was not found satisfactory and the same was recorded in the Service Record. The Deputy General Manager, QA issued a letter dated 12.10.2020 to Siuli Chatterjee



regarding her poor performance. According to the management the Gate Pass of the petitioner was revoked but she entered into the factory premises in unauthorized manner and signed the Attendance Register for which a Charge Sheet dated 03.11.2020 was issued against her by the Deputy General Manager, QA and as there was no suitable explanation submitted by the petitioner, the management had no option but to terminate the petitioner from her service for gross violation of safety, discipline and unsatisfactory performance in different departments. Accordingly, a termination letter dated 09.11.2020 was issued by the competent authority. The employer adopted appropriate procedure before issuing termination letter dated 09.11.2020. It is asserted that the opposite party/ employer is unable to reinstate the petitioner. Furthermore, the petitioner being employed on contractual basis and performed poorly, is liable to be terminated prior to completion of her tenure. According to the management the petitioner has no cause of action for initiating the Industrial Dispute and the same is liable to be rejected in limine.

10. The appropriate government in exercise of the jurisdiction vested in it under Section 10 of the Industrial Disputes Act, 1947 referred this Industrial Dispute to this Tribunal for adjudication as to the legality and justification of termination of Siuli Chatterjee from service by issuance of letter dated 09.11.2020 by the management of SRBWIPL.

11. Assailing the impugned order of termination, the aggrieved employee examined herself as Workman Witness – 1 and filed an affidavit-in-chief. She has reiterated her statements made in the written statement and produced the following documents in support of her case :

- (i) Copy of the appointment letter of Siuli Chatterjee dated 09.06.2020 is produced as Exhibit W-1.

- (ii) Copy of the complaint dated 31.12.2020 submitted by Siuli Chatterjee before the Managing Director, as Exhibit W-2.
- (iii) Copy of the Enquiry Report of the PosH Committee dated 29.04.2022, as Exhibit W-3.
- (iv) Copy of the letter 07.09.2020 posting Siuli Chatterjee as an Executive-Secretary to the CEO, as Exhibit W-4.
- (v) Copy of the letter dated 05.10.2020, accusing Siuli Chatterjee of collecting puja subscription, as Exhibit W-5.
- (vi) Copy of the reply of Siuli Chatterjee dated 06.10.2020 to the letter dated 05.10.2020, as Exhibit W-6.
- (vii) Copy of the letter dated 03.11.2020 regarding disciplinary action for unauthorized entry in the factory premises without valid Gate Pass, as Exhibit W-7.
- (viii) Copy of the letter of termination dated 09.11.2020, as Exhibit W-8.
- (ix) Copy of the application of Siuli Chatterjee, addressed to the Dy. CLC(C), Asansol, as Exhibit W-9.
- (x) Copy of the findings of the Conciliation Officer dated 10.04.2023, as Exhibit W-10.
- (xi) Copy of the screenshots of WhatsApp Status of K. Chandrasekar, as Exhibit W-11 series.

12. In her examination-in-chief WW-1 claimed to be a permanent employee of SRBWIPL, where she was initially appointed as an Assistant Executive (Storekeeping) at Kulti on 11.06.2020. She was subsequently posted as a Senior Assistant in the Quality Assurance Department. Thereafter she was posted as Secretary to the CEO on 07.09.2020 for a period of one month. The witness deposed that K. Chandrasekar, CEO, sexually harassed her in various manner

and tried to get intimate with her in his office and at his residence. As she did not yield to his demands, K. Chandrasekar, CEO called her in his cabin and informed that she could not serve the purpose of his secretary and terminate her from her service. The witness further stated that Mr. Ujjal Mukherjee, General Manager (P&M) of the establishment issued a letter to her on 05.10.2020, accusing her of collecting puja subscription by misusing her position in the company and sought for an explanation by 07.10.2020, the copy of letter has been produced as Exhibit W-5. The aggrieved employee submitted her reply dated 06.10.2020 along with two documents. In her affidavit-in-chief she stated that she wrote to the Secretary of Post Office Para Sarbojonin Durgapuja Committee, Kulti and wanted to know the reason why her name was incorporated in the Subscription Voucher, though she was not a member of the committee. On 05.10.2020 Ms. Indrani Gupta, a member of the committee replied through a letter that due to misunderstanding her name was incorporated in the Subscription Voucher of the committee and in this matter a police complaint was lodged on 08.10.2020. She further stated in her affidavit-in-chief that in spite explanation submitted by her along with documents from the puja committee, the management reduced her rank and pay in service from E1 to NE4. On 07.10.2020 once again Mr. Sayantan Banerjee, Manager issued a letter against her, levelling allegation that she violated the safety norms by not wearing Safety Shoes on the Shop floor during inspection. The employee replied to the letter on 08.10.2020, disclosing that shoes of her size were neither available at company's store nor in the open market, but the reply did not satisfy and the CEO who pressurize the Manager, QA to harass her repeatedly.

13. On 03.11.2020 the Deputy General Manager, QA issued a letter informing the charged employee to submit an explanation as to why disciplinary action would not be initiated against her, as she entered the factory premises on

02.11.2020 in unauthorized manner, without any valid Gate Pass and thereby violated the discipline of the company. In that letter explanation, in writing, was sought for within three days from the receipt of the letter as to why disciplinary action would not be taken against her for violating security rules. In her averment as WW-1, the charged employee stated that the management did not issue any Charge Sheet nor any Notice of enquiry and without appointing any Enquiry Officer and without holding any enquiry proceeding, the management has whimsically issued a letter of termination on 09.11.2020, which has been produced as Exhibit W-8. The evidence of the aggrieved employee reveals that after her termination she submitted a complaint before the Managing Director, SRBWIPL dated 31.12.2020, seeking reinstatement on the ground that she had been subjected to sexual harassment by K. Chandrasekar, CEO and that she was not provided any opportunity to represent herself in the enquiry proceeding, which was held in violation of natural justice. An enquiry was held by the Chairperson and Members of the PoSH Committee found that the allegation against K. Chandrasekar was correct. In her evidence the dismissed employee has prayed for setting aside the order of termination from service and for her reinstatement in service as Senior Assistant, QA with full back wages from 09.11.2020 and for compensation for physical, mental and sexual harassment meted to her in her place of work.

14. In course of cross-examination of Workman Witness – 1 management did not venture to controvert the statements made by Siuli Chatterjee against K. Chandrasekar, CEO. She also reaffirmed that no copy of the Enquiry Proceeding or findings of the Enquiry Officer was supplied to her and no 2<sup>nd</sup> Show Cause Notice was issued by the Disciplinary Authority before issuing letter of termination. Furthermore, the letter of termination was not issued by the competent authority of the management.

15. Mr. Sushanta Bhattacharya, authorized representative of the management of SRBWIPL filed affidavit-in-chief in support of the management's case and has been examined as Management Witness – 1. The affidavit-in-chief appears to be a replica of the written statement, filed by the management. Management witness produced the following documents in support of their case :

- (i) Copy of the letter dated 03.11.2020 regarding disciplinary action for unauthorized entry in the factory premises without having valid Gate Pass is produced as Exhibit M-1.
- (ii) Copy of the letter of termination dated 09.11.2020, as Exhibit M-2.
- (iii) Copy of the Note Sheet dated 09.11.2020, as Exhibit M-3.
- (iv) Copy of the Show Cause Notice issued to Siuli Chatterjee, as Exhibit M-4.
- (v) Copy of another Show Cause Notice dated 05.10.2020 issued to Siuli Chatterjee, as Exhibit M-5.

16. In his examination-in-chief the witness stated that he is the General Manager, Incharge at SRBWIPL and has been authorized to adduce evidence on behalf of the company. The witness stated that Siuli Chatterjee was appointed as Assistant Executive on 11.06.2020 and was posted at different units but unable to perform to the satisfaction of the management. From the post of Executive-Secretary to the CEO she was posted as Senior Assistant on 14.10.2020, which is an inferior post, due to her deficiency in work. The management witness further deposed that at the time she was posted as Senior Assistant, QA department, she was dismissed from her contractual service after an enquiry proceeding. The witness produced a copy of letter dated 03.11.2020 which disclosed the charge against the employee but in the same breath the witness deposed that no Enquiry Officer was appointed by the CEO or anyone else and no enquiry proceeding was

held. A copy of letter dated 09.11.2020, relating to termination of service of Siuli Chatterjee has been produced as Exhibit M-2.

17. In his cross-examination the management witness deposed that the Service and Conduct Rule, 2019 of SRBWIPL applied to the contractual employees in their establishment but the witness failed to produce the said Service Rule, applicable to SRBWIPL. Cross-examination of MW-1 further reveals that from the post of Assistant Executive, Siuli Chatterjee was re-designated as Executive on 25.07.2020 and thereafter on 07.09.2020 she was posted as Executive-Secretary to the CEO. The witness admitted that on promotion of the employee his / her pay is increased and in the instant case on being posted as Executive-Secretary to the CEO her pay was Rs. 20,425/- per month. It transpires from the cross-examination of MW-1 that letter dated 03.11.2020 (Exhibit M-1) is the document disclosing the charge against the employee and the expression "Charge Sheet" has not been explicitly stated. It was suggested to the management witness that no specific charge was described in the Letter / Charge Sheet dated 03.11.2020 and it also does not disclose the rules and provisions of the service condition which had been violated by the candidate and does not disclose the indiscipline conduct. The witness denied such suggestions. The testimony of MW-1 however clearly admits that no one was appointed as the Enquiry Officer to hold enquiry in respect of charge levelled against the delinquent. The witness has categorically stated that they have no information if the charge of sexual harassment was proved against the CEO or that he was demoted from the post of CEO on the recommendation of POSH committee. The management witness denied the suggestion that Siuli Chatterjee was terminated from her service illegally to satisfy K. Chandrasekar, CEO and denied that she is entitled to be reinstated in the service.

18. The moot question for consideration by this Tribunal is whether the action of the management of SRBWIPL in terminating the service of Siuli Chatterjee by letter dated 09.11.2020 is legal and justified. If not, to what relief she is entitled to.

19. Mr. Debashis Mondal, learned advocate for the dismissed employee advancing his argument submitted that Siuli Chatterjee was a contractual employee who was appointed as an Assistant Executive by letter dated 09.06.2020, produced as Exhibit W-1. Initially the period of her employment was for three months as per the terms and conditions laid down in the letter of appointment issued by the competent authority. The condition of service also provided that the contractual period of service could be terminated or renewed further as may be decided by the CEO of the company. Learned advocate referred to a letter dated 07.09.2020 issued by the CEO, whereby after completion of three months of probation period the management of SRBWIPL appointed her as Executive-Secretary to CEO on contractual basis from 11.09.2020 to 28.02.2022 and she was required to fill up her Performance Appraisal Form by 28<sup>th</sup> February of every year and put up the same before the competent authority. In case of poor performance, the management of the employer company reserved the right to terminate her service prior to completion of the tenure. Learned advocate referring to the evidence of Siuli Chatterjee (WW-1) argued that while being posted as Executive-Secretary to CEO from 11.09.2020, during a period of one month, she was accosted and subjected to sexual harassment by K. Chandrasekar, CEO but she could not raise any complaint before the company under the apprehension of losing her job. The witness in her affidavit-in-chief stated that she was under immense pressure of termination from service by the CEO for not satisfying his wishes. She experienced physical and mental torture and sexual harassment in

the hands of CEO. On raising protest against the conduct of CEO towards her, she was degraded from a higher post to lower post on concocted and baseless allegations. Serious allegations have been made by Siuli Chatterjee in her affidavit-in-chief that the CEO tried to develop extramarital relationship with her but when the same could not be fulfilled, Mr. Soumita Chatterjee, her husband who was working under a contractor at SRBWIPL was terminated from his service. The CEO called Siuli Chatterjee to his residence on the pretext of learning Bengali language from her and tried to make physical contact. It is argued that when object of the CEO was not fulfilled a letter dated 05.10.2020 was issued by the General Manager (P&M) of the employer company (Exhibit W-5), at the instance of the CEO, alleging violation of service rules due to her involvement in collection of Puja subscription by misusing her position in the company. Learned advocate for the employee submitted that on receiving the letter Siuli Chatterjee replied to the same, raising objection against the false allegation. She also sought for an explanation from the Secretary of the Post Office Para Sarbojonin Durgapuja Committee, Kulti, as to why her name has been incorporated in the Subscription Vouchers, though she was not a member of the committee. Learned advocate referred to Exhibit W-6, the reply submitted by Siuli Chatterjee dated 06.10.2020, whereby she stated that she was not engaged with any puja committee nor did she collect any subscription and that the Post Office Para Sarbojonin Durgapuja Committee, Kulti had incorporated her name in the subscription voucher, without any prior permission and the same would be evident from the letters issued by Ms. Indrani Gupta, member of the committee and Secretary of Post Office Para Sarbojonin Durgapuja Committee, Kulti that the name of Siuli Chatterjee was erroneously mentioned due to some misunderstanding. It is submitted that even after such explanation submitted by her, the management of the company at the instance of the CEO reduced her rank from E1 to NE4 accompanied by reduction



of her pay and posted her as Senior Assistant in the Quality Assurance Department by letter dated 14.10.2020 without any fault on the part of the employee.

20. Mr. Mondal argued that the management of the employer company did not stop there but in a vindictive manner issued a letter dated 07.10.2020 to Siuli Chatterjee, which has been marked as Annexure L to the affidavit-in-chief of management witness, seeking an explanation as to why action would not be taken against her for violating safety rules by not wearing safety shoes at the Shop floor. According to the lady employee, she submitted her explanation on 08.10.2020 stating that Safety Shoes of her size was not available in the Company Store as well as in the open market but the management did not consider her plea. The final blow was dealt by the management by issuing a letter dated 03.11.2020, disclosing that a disciplinary action was being taken against her for her unauthorized entry in the factory premises without any valid Gate Pass. Learned advocate for the petitioner drew my notice to the letter dated 03.11.2020, produced as Exhibit W-7, which was issued by the Deputy General Manager, QA, stating therein that she had entered into the factory premises on 02.11.2020 and signed her attendance in unauthorized manner and due to her failure to submit a Police Verification Certificate in time she had to wait till the Deputy General Manager, QA returned after attending an urgent meeting in Kolkata and thereafter process issuance of a valid Gate Pass. On an allegation of entering the factory premises without a valid Gate Pass on 02.11.2020 Siuli Chatterjee was asked to submit an explanation, in writing, within three days as to why disciplinary action would not be taken against her for violating the security rules. Learned advocate argued that an employee of the company whose service validity had been extended till 28.02.2022 could not be debarred from entering into the premises of the factory for discharging her duty. It is only with a convoluted motive and to harass

her, the management of the employer company raised a non-issue that she had entered into the factory premises on 02.11.2020 to sign her attendance without having a valid Gate Pass. It is vehemently contended that the employer company did not consider the explanation submitted by Siuli Chatterjee on 03.11.2020 through email to the CEO and the General Manager as to why she entered into the office of the factory without any valid Gate Pass, and without providing her any opportunity to reply to the Charge has arbitrarily, whimsically and in an illegal manner terminated her from her service by issuing a termination letter dated 09.11.2020 (Exhibit W-8) without having conducted any Departmental Enquiry in accordance with the service rules applicable to the employer company and employees. Learned advocate strenuously argued that the charge levelled against the employee by letter dated 03.11.2020 without issuance of any formal Charge Sheet or appointment of an Enquiry Officer or holding of enquiry proceeding or establishing the charge by examining management representative in support of the charge or affording reasonable opportunity to the charged employee of hearing and without issuance of any 2<sup>nd</sup> Show Cause Notice, issued the order of dismissal by an office who is not the competent authority. It is argued that the order of dismissal is arbitrary and illegal and the same requires to be set aside. Learned advocate in support of his argument placed reliance on a decision of the Hon'ble Supreme Court of India in the case of **Union of India and Others vs Mohd. Ramzan Khan [AIR (1991) SC 471]**, wherein the Hon'ble Supreme Court of India mandated that a 2<sup>nd</sup> Show Cause Notice along with Enquiry Proceeding and Findings of the Enquiry Officer should be served upon the delinquent for representing his case before the final decision is taken.

21. Mr. Ayan Ranjan Mukherjee, learned advocate for the management of the company took me through the evidence of management witness and argued that the allegation levelled by Siuli Chatterjee against K. Chandrasekar, CEO of the

employer company is unfounded as she never lodged any complaint before any authority of the employer company nor before the police, in respect of her alleged sexual harassment by the CEO. It is only after the order of dismissal was passed on 09.11.2020 she has come out with a story to escape the rigour of the punishment and to seek reprieve from the order of termination. Learned advocate fairly admitted that no formal charge was framed against the employee nor any Enquiry Officer was appointed. It is also admitted that no enquiry proceeding was held and the management did not issue any 2<sup>nd</sup> Show Cause Notice before issuance of the order of dismissal. Learned advocate referred to a Note Sheet initiated by the Deputy General Manager, QA (Exhibit M-3) dated 19.11.2020 stating that the *“proceeding of the charges against Mrs. Siuli Chatterjee is forwarded for taking appropriate decision”* by the competent authority. It is argued that the CEO has approved the termination of Siuli Chatterjee on security and safety reasons. According to the learned advocate for the management the delinquent in paragraph 11 of her affidavit-in-chief has admitted that she had entered into the office of the factory without any valid Gate Pass, thereby nothing remains to be proved against her and the order of termination from service is just and appropriate and there is no reason for interfering with the same.

22. Considered the arguments advanced by the learned advocates of both parties in the light of evidence and materials on record. There is no dispute that Siuli Chatterjee was appointed as an Assistant Executive at SRBWIPL by the competent authority w.e.f. 11.06.2020 on a contractual basis, initially for a period of three months at a monthly emolument of Rs. 15,000/- (Rupees fifteen thousand only). Exhibit W-4 reveals that after completion of three months, the period of her service was extended up to 28.02.2022 on contractual basis and she was designated as Executive-Secretary to CEO and her gross monthly salary was Rs. 20,425/- (Rupees twenty thousand four hundred and twenty-five only). The

said document established the employer-employee relationship between Siuli Chatterjee and SRBWIPL.

23. The crux of the issued in this case is that within a span of five months of service a charge was levelled against the employee by issuing letter dated 03.11.2020 (Exhibit W-7 / M-1) that a disciplinary action had been drawn up against her for entering the factory premises on 02.11.2020 without any valid Gate Pass and permission of higher authority. In the letter dated 03.11.2020 (Exhibit M-1) she was asked to submit her explanation, in writing, within three days, as to why disciplinary action would not be taken against her for violating security rules of the employer company. It is true that no copy of email or any reply to the notice has been filed on behalf of Siuli Chatterjee at the time of adjudication of this Industrial Dispute. In the written statement and affidavit-in-chief she has stated that on 03.11.2020 she had sent an email to the CEO and the General Manager, submitting her explanation as to why she entered into the office of the factory without any valid Gate Pass. This statement has not been controverted in the course of cross-examination of Siuli Chatterjee (WW-1). It is an admitted fact and also transpires from the evidence of the management witness that no enquiry proceeding was held. Mr. Sushanta Bhattacharya, General Manager (IC) (MW-1) of SRBWIPL in his cross-examination stated that no one was appointed as Enquiry Officer to hold enquiry in respect of the charge levelled against the employee. However, he has denied that Siuli Chatterjee was dismissed in an illegal manner without holding any enquiry proceeding against her. The materials on record is rife to suggest that no formal Charge Sheet was issued against the delinquent employee. The allegation made in letter dated 03.11.2020 disclosed the intention of the management to initiate a disciplinary action against the concerned employee for her unauthorized entry in the factory

premises on 02.11.2020. The letter does not disclose the relevant provisions of Service and Conduct Rule, 2019 of SRBWIP, applicable to the contractual employees working in the establishment. The letter dated 03.11.2020 does not disclose for a while as to whether the said charge was brought against Siuli Chatterjee with the approval of the competent authority of the company. If the contents of the allegation in the letter is considered, it would appear that the management of the company having extended the period of employment of Siuli Chatterjee up to 28.02.2022 was bent upon to stop the employee from entering the premises of the factory to attend her work. If the employee failed to enter the premises to attend her duty, the management conversely could have charged her for her unauthorized absence and would treated her in the same manner. The management is duty bound to provide a valid Gate Pass to approved employees in time. Management failing such responsibility cannot blame their employees for entering the place of work. It is an axiomatic truth that a person having a valid appointment in an establishment has an implied licence to enter the premises and the employee cannot be treated as a trespasser. Issuance of a Gate pass is only an arrangement made for enabling the employee to enter the premises. The management therefore, did not act in a bona fide manner by not issuing a Gate pass to the employee after appointing her for employment. It is established from the materials on record and from their own admission that the management did not hold any enquiry proceeding before the issuance of the letter of termination dated 09.11.2020 by Mr. U. Mukherjee, General Manager (P&M), without stating as to what constituted the charge framed by the Deputy General Manager, QA. It is not the case of the management that the Deputy General Manager, QA who issued the letter dated 03.11.2020, containing the purported charge had himself acted as the Enquiry Officer. It is crystal clear that the management issued the letter of dismissal without holding the enquiry proceeding whatsoever. It is

obvious that no copy of Enquiry Proceeding or Report was served upon the charged employee before taking the final decision. On this point the law has been clearly laid down by the Hon'ble Supreme Court of India in the case of **Union of India and Others vs Mohd. Ramzan Khan [AIR (1991) SUILI CHATTERJEE 471]**, as follows:

*“ When the Inquiry Officer is not the Disciplinary Authority, the delinquent employee has a right to receive a copy of the inquiry officer's report before the Disciplinary Authority arrives at its conclusion with regard to the charges levelled against him. A denial of the inquiry officer's report before the Disciplinary Authority takes its decision on the charges, is denial of opportunity to the employee to prove his innocence and is a breach of principles of natural justice.”*

From the facts and circumstances of this case I find and hold that no enquiry was held before dismissing Siuli Chatterjee from her service. Such act is arbitrary and violative of the principles of natural justice. It is a settled law that in a disciplinary action or regular trial, the burden of proof to establish the charge is upon the management of the employer and not on the accused. The burden must be discharged by proper evidence adduced by the representative of employer. In the instant case the management did not appoint any Enquiry Officer, no Notice of enquiry was issued to the employee, no evidence was led against the charge employee and the concerned employee was not given the opportunity to lead any evidence in support of her defence. I find there is a gross violation of the principles of natural justice and the management has acted in an arbitrary and unlawful manner by issuing letter of termination on 09.11.2020, which is found not sustainable under the facts and circumstances and law of natural justice.

24. It would be apposite to consider the reason why the management went ahead to take an abrupt decision of terminating a lawfully appointed employee without establishing the charge against her. The rival contention of the charged

employee is that after she was posted as an Executive-Secretary to CEO from 07.09.2020 she was subjected to sexual harassment by Mr. K. Chandrasekar, CEO, who strove to develop extramarital relationship with her and created pressure upon her psychologically and also threaten to terminate her from service if she disclosed the same to others. Out of fear of losing her job she did not lodge any complaint, but ultimately Siuli Chatterjee raised a complain dated 31.12.2020 addressed to the Managing Director, SRBWIPL. It is gathered from her evidence that an enquiry proceeding was held by the Chairperson and Members of the PoSH Committee and the report in eight pages has been filed before the Tribunal as Exhibit W-3. It transpires from the Enquiry Report (Exhibit W-3) that K. Chandrasekar, CEO (respondent) had indulged in act of sexual harassment at workplace and thereby violated Rule 19.1 of RITES (CDA Rules), 1980 and there were administrative lapses at various stages in the official dealings done by the respondent. In their report the committee also observe that the charges of Mental Harassment of the complainant in various forms and on various occasion was very clear. The committee recommended taking strict action against the respondent for his misconduct of sexual harassment, in accordance of Rule 19.1 of RITES (CDA Rules), 1980 by imposing minor penalty on the respondent and to pay monetary compensation, equivalent to six months' salary to the complainant.

25. Having considered the facts and circumstances discussed above I find and hold that the order issued by the General Manager (P&M), in his letter dated 09.11.2020, terminating the service of Siuli Chatterjee on and from 09.11.2020 is not sustainable under the law and the same is hereby set aside. The management witness has not been able to produce the Rules governing the condition of employment of the contractual employees and whether they are to

continue in service until they attend their age of superannuation. In such view of the matter, without any adverse findings against the concerned employee she is entitled to continue in service even though the period of service was up to 28.02.2022 as per Exhibit W-4. Since there has been no worthwhile reason for termination of service of Siuli Chatterjee, the management of SRBWIPL is directed to reinstate her in service within one month from the date of communication of this Award in the same post which she was occupying prior to her termination, on usual terms and conditions of service applicable to all other employees similarly placed. The period of her absence shall be treated as dies non. The aggrieved employee has been deprived of her earning and livelihood in a wrongful manner and as she had fallen a prey to the administrative hierarchy of the company. In my considered view this is a fit case to allow her full back wages and continuity in service. the Industrial Dispute is accordingly allowed on contest against the management of SRBWIPL.

Hence,

**ORDERED**

that the Industrial Dispute is allowed against the management of SRBWIPL on contest. The management of the employer company is directed to reinstate Siuli Chatterjee in her service within one month from the date of communication of the Award and pay her full back wages from 09.11.2020 till the date of her reinstatement. The Period of her absence shall be treated as dies non. Let an award be drawn up in light of my above findings. Let copies of the Award in duplicate be sent to the Ministry of Labour and Employment, Government of India, New Delhi for information and Notification.

**(ANANDA KUMAR MUKHERJEE)**

Presiding Officer,  
C.G.I.T.-cum-L.C., Asansol.