

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
APPELLATE SIDE

Present:

The Hon'ble Justice Shampa Dutt (Paul)

WPA 281 of 2025

Swarnakshar Prakasani Pvt. Ltd.

Vs.

The State of West Bengal & Ors.

For the Petitioner : Mr. Ranjay De,
Mr. Soumitra Datta,
Mr. Rananeesh Guha Thakurta,
Ms. Senjuti Sengupta,
Mr. B. Banerjee,
Mr. A.A.Bose.

For the State : Mr. Susovan Sengupta,
Mr. Subir Pal,
Mr. Somnath Ganguly,
Mr. Debapriya Chatterjee.

Hearing concluded on : 06.02.2025

Judgment on : 20.02.2025

Shampa Dutt (Paul), J.:

1. The present writ application has been preferred praying for setting aside of the order dated 30.1.2023 passed by the learned Judge, 4th Industrial Tribunal, West Bengal in case No. VIII/95/2014.

2. The State Government being the appropriate Government by an Order of Reference dated 14th October, 2014 referred the following dispute to the learned 4th Industrial Tribunal, Kolkata for adjudication:-

“ ISSUE (S)

- a. *Whether the termination of Service of Sri Dulal Chatterjee w.e.f. 15th July, 2013 by the management of M/s. Swarnakkhar Prakashani Pvt. Ltd. justified?*
 - b. *To what relief is he entitled?”*
3. Being aggrieved by the order dated 17.07.2015 passed in the said reference, the company moved the Hon’ble Court and on 25.1.18 in the **WP 26291 (W) of 2015**, the Court was pleased to allow the prayer of company, by setting aside the order dated 17.7.15 and directed the Tribunal to hear out the preliminary issues along with the prayer for interim relief expeditiously and preferably within a period of 3 months.
4. The learned Judge, Industrial Tribunal vide an order dated 30.1.2023 decided the preliminary issue and also considered the application filed by the respondent no. 3 herein praying for interim relief under Section 15(2)(b) of I.D. Act.
5. In the said order dated 30.01.2023, the tribunal took up the matter for hearing on the point of maintainability (preliminary issue). **The maintainability of the proceedings was challenged on the ground that the respondent no. 3 herein Dulal Chatterjee is not a ‘workman’ as per definition of Workman under Section 2(s) of the I.D. Act, 1947.**

6. The company pleaded that the said Dulal Chatterjee is not a “workman” as—(i) he was all along entrusted with executive, managerial and administrative /supervisory job and (ii) his pay scale and salary was Rs. 17,617/-p.m.
7. The respondent no. 3 herein though admitted the salary but pleaded that he had no supervisory or managerial job or responsibility and in view of the nature of duty performed by him he is very much a ‘workman’.
8. **Considering the evidence adduced before the Tribunal and the materials on record, the learned Tribunal held:-**

*“So far as nature of duties entrusted to Mr. Dulal Chatterjee is concerned there is nothing on record to show that he had any supervisory powers like power to grant leave, to initiate disciplinary proceedings or to make temporary appointment etc. **The company failed to prove that any other employee was working under the supervision of Mr. Dulal Chatterjee or Mr. Dulal Chatterjee had power to grant leave or to initiate disciplinary proceeding etc. against any other employee.** No oral or documentary evidence to this effect could be produced by Company. Even no such suggestion to this effect was given to Mr. Dulal Chatterjee by Company during his cross-examination. So, Company could not prove that Mr. Dulal Chatterjee was ‘employed mainly’ in managerial or administrative capacity’ or ‘Supervisory Capacity’. Thus it is found that in view of nature of job **Mr. Dulal Chatterjee is a workman** as u/s. 2 (s) of I.D. Act, 1947, issue of maintainability is decided in favour of workman accordingly.”*

9. **The next point** considered by the learned Tribunal was regarding the prayer for interim relief which was strongly objected to by the company.
10. The tribunal considering the materials on record and the evidence before it and also the relevant provisions of law held as follows:-

“1. So far as question of *prima facie* case is concerned, it is crystal clear from the pleadings and evidence on record as discussed above that no domestic enquiry whatsoever was held by the company, **no charge sheet was submitted and no show cause notice was issued.** The so called termination letter was issued only on the basis of some inhouse enquiry of which the workman had no knowledge and during which he was never heard. There was no process involving examination /cross examination of the workman or of the company’s personnels by the workman. **It is clear that principles of natural justice were not followed by the company before terminating this workman.** Therefore, it is found that there does exist strong *prima facie* case in favour of the workman which entitles him to interim relief.

2. Interim relief is sought for u/s 15 (2)(b) of I.D. Act, 1947 West Bengal Amendment. Section 15(2)(b) lays down the Labour Court or tribunal shall..... “after hearing the parties to dispute, determine, within a period of 60 days from the date of the Order referring such industrial dispute or within such shorter period as may be specified in such order, the quantum of interim relief admissible if any.....”

3. So far as question of defining ‘gainful employment’ is concerned, the I.D. Act defines the same only u/s 17B and this provision has been clearly interpreted to mean that ‘gainfully employed’ person must be **getting salary by being employed in any establishment.** As Section 15(2)(b) does not make any such distinction. The explanation as given u/s. 17B, although for a different circumstance, has to be implied to be the intention of the legislature for the purpose of and in the context of granting interim relief to the workman. Section 15(2)(b) lays down the duty of trial court during pendency of industrial dispute and section 17B lays down ‘payment of full wages to the workman pending proceeding in higher courts’. So essentially both these provisions are meant to ensure survival of the workman during pending of litigation. Under such circumstances, the meaning of ‘gainful employment’ as applicable u/s 17B may be applied as u/s. 15(2)(b) for the survival and welfare of the workman.

4. Section 15(2)(b) of I.D. Act, 1947 has mandated the Tribunal to accord interim relief to workman during pendency of Industrial Disputes.

5. Under such circumstances the workman Dulal Chatterjee is found entitled to receive Rs. 15,000/- p.m. towards interim relief w.e.f. the date of his termination i.e. 15.07.2013.

6. The **arrear** amount of Rs. 17,10,000/- (upto 15.01.2023) is to be paid by the company to the workman in **ten equal monthly instalments** of Rs. 1,71,000/- starting 28.02.2023. The current monthly interim relief is to be paid regularly from date.

7. The prayer for interim relief is accordingly adjudicated in favour of workman.

Fixing 24.2.2023 for hearing on merit.

Dictated & corrected by me

**Sd/-
Judge
4th Industrial Tribunal,
30.01.2023"**

11. Supplementary affidavit on behalf of the petitioner has been filed to substantiate their argument that the respondent no. 3 is not a workman and it is submitted that such documents prove that the respondent no. 2 was working in a supervisory category.

12. The following judgments have relied upon by the petitioner by filing a written notes of argument:-

- i) *B.G.Sampat –vs-State of West Bengal and Ors., 2001 (1) LLN 616.*
- ii) *Sonepat Cooperative Sugar Mills Ltd. –vs- Ajit Singh, (2005) 3 SCC 232.*

- iii) *Lenin Kumar Ray-vs-M/s. Express Publications (Madurai) Ltd., 2024 SCC OnLine SC 2987.*
- iv) *Mukesh K. Tripathi-vs- Senior Divisional Manager, LIC & Ors., (2004) 8 SCC 387.*
- v) *Bharti Airtel Limited-vs- A.S. Raghavendra, (2024) 6 SCC 418.*
- vi) *North East Karnataka Road Transport Corporation –vs- M. Nagangouda, (2007) 10 SCC 765.*
- vii) *Delhi Transport Corporation –vs-Shyam Lal, (2004) 8 SCC 88.*

13. In *Lenin Kumar Ray vs M/s. Express Publications (Madurai) Ltd., in Civil Appeal No. 11709 of 2024, decided on October 21, 2024,* the Supreme Court held:-

“10. At the outset, it is pertinent to point out that the Industrial Disputes Act, 1947, was enacted by the legislature to settle the industrial disputes. It was brought with the object to ensure social justice to both the employers and employees and advance the progress of industry by bringing about the existence of harmony and cordial relationship between the parties.

11. Section 2(s) of the I.D. Act defines “workman”, which is quoted below for ready reference:

“2(s) "Workman" means any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person—

(i) who is subject to the Air Force Act, 1950 (45 of 1950), or the Army Act, 1950 (46 of 1950) or the Navy Act, 1957 (62 of 1957); or

(ii) who is employed in the police service or as an officer or other employee of a prison; or

(iii) who is employed mainly in a managerial or administrative capacity; or

(iv) who, being employed in a supervisory capacity, draws wages exceeding [ten thousand rupees]13 per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature.”

As per the above provision, a person to be qualified as a “workman” has to do any work of manual, unskilled, skilled, technical, operational, clerical or supervisory in nature. But, the latter part of the section excludes four classes of employees including a person employed in a supervisory capacity drawing wages exceeding Rs.10,000/- after amendment (Rs.1,600/- before amendment) per month or exercises functions mainly of a managerial nature. In this legal backdrop, let us first examine, whether the employee falls within the definition of “workman”.

15. The law is well settled that the determinative factor for “workman” covered under section 2(s) of the I.D. Act, is the principal duties and functions performed by an employee in the establishment and not merely the designation of his post. Further, the onus of proving the nature of employment rests on the person claiming to be a “workman” within the definition of section 2(s) of the I.D. Act.”

- 14. In the present case,** the private respondent was first appointed in 2002 as Assistant Accountant for a monthly salary of Rs. 7500/-.
- 15. The petitioner has stated that the private respondent’s job included updating accounts ledgers, filing returns, issues of ESI and Bank matters under his signature.**
- 16. Dulal Chatterjee,** private respondent was promoted to the position to the Accountant with effect from 01.08.2011 at a CTC of Rs. 18,000/- per month. Subsequently the petitioner company having found several laches, negligence in the functioning of the private respondent terminated his service.

17. The Government of West Bengal Labour Department being satisfied that the private respondent is a 'workman' made a reference to the industrial tribunal.
18. It is submitted by the petitioner that the nature of work of the private respondent was supervisory/administrative and thus managerial and as such he is not a workman.
19. **The learned tribunal in paragraph 6 of the order under challenge held as follows:-**

*"5. Hon'ble Court has held in **Vimal Kumar Jain vs. Labour Court, Kanpur & Anrs., AIR 1988 SC 384** that the duties of a Supervisor means the power to grant leave, to initiate disciplinary proceedings and to make temporary appointments. In **Management of Heavy Engineering Corporation Ltd. vs. Presiding Officer, Labour Court-1998(3) LLN 902** it was held that the in charge of first and post- a male nurse, nursing attendant, sweeper and one driver of ambulance working under him was doing supervisory work. In **State of Maharashtra & ors vs. Shaligram, s/o Dhondbaji Charjan & ors, 1998(2) LLR 1012 (Bom)** the above view was confirmed. It was held that person empowered with administrative work and supervisory work over the staff working under him cannot be regarded as workman. **It is clear from these judgements that the yardstick to decide whether the concerned person was working in supervisory/Managerial capacity or not is not the designation but the nature of job entrusted.**"*

20. The learned tribunal relying upon the said judgments finally held that the company could not prove that Mr. Dulal Chatterjee was employed mainly in managerial or administrative capacity or supervisory capacity and considering the nature of his job came to the finding that **he is a workman.**

21. It appears that the **private respondent was doing the work of a clerk** by filing returns, writing ledgers and was thus doing stereo type work.
22. **Admittedly he had no power of control over any subordinate staff.**
23. In *Lenin Kumar Ray vs M/s. Express Publications (Madurai) Ltd., (Supra)*, the Court held that the determinative factor for workman as:-

“15. The law is well settled that the determinative factor for "workman" covered under section 2(s) of the I.D. Act, is the principal duties and functions performed by an employee in the establishment and not merely the designation of his post. Further, the onus of proving the nature of employment rests on the person claiming to be a "workman" within the definition of section 2(s) of the I.D. Act.”

24. Herein the petitioner could not prove that the private respondent had authority over any subordinates. The duties as performed by him were **purely clerical in nature, with no supervisory authority.** It is the nature of work and not the salary or the designation which determines who is a worker. Even a pilot is considered to a ‘workman’.
25. As such this Court finds that the learned tribunal rightly came to the finding that the petitioner was performing the duties as a ‘workman’ and thus the said findings of the learned tribunal being in accordance with law requires no interference by this Court.
26. The next contention of the petitioner is that the grant of interim relief by the tribunal is erroneous, on the ground that since his termination, the private respondent is gainfully employed and is thus not entitled to

any interim relief in the present case, as he does not meet the criteria to get the benefit of interim relief.

27. No document or material in support of such contention has come before this Court nor was available before the tribunal.
28. The amount of interim relief as granted by the tribunal in favour of the private respondent is minimum to barely sustain a person with a family.
29. **The legislation being a beneficial one, grant of interim relief is an integral part of such proceeding and as such this Court is not inclined to interfere with the order under challenge.**
30. **WPA 281 of 2025 stands dismissed.**
31. Tribunal to proceed for expeditious disposal.
32. All connected application, if any, stands disposed of.
33. Interim order, if any, stands vacated.
34. Urgent Photostat certified copy of this judgment, if applied for, be supplied to the parties, expeditiously after complying with all necessary legal formalities.

(Shampa Dutt (Paul), J.)