

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
APPELLATE SIDE

Present:

The Hon'ble Justice Shampa Dutt (Paul)

WPA 816 of 2025

Mr. Tarakeswar Rewani

Vs.

Union of India & Anr.

For the Petitioner : Mr. Suvadip Bhattacharjee,
Mr. Balaram Patra.

**For the Respondent No.1/
Union of India** : Mr. Raj Kumar Gaurisaria.

**For the Respondent No. 2/
UCO Bank** : Mr. L. Vishal Kumar.

Hearing concluded on : 27.01.2025

Judgment on : 12.02.2025

Shampa Dutt (Paul), J.:

1. The present writ application has been preferred praying for direction upon the respondents for setting aside the Award dated 13.06.2024 passed by the learned Central Industrial Tribunal-cum-Labour Court, Kolkata in Ref. No. 20 of 2019 Industrial Disputes Act, 1947.
2. The petitioner's case is that he was appointed as casual worker by the respondent no. 2 on 14.10.2001 and since then he was discharging

his duties sincerely and diligently and he was illegally and unlawfully terminated by the respondent no. 2 on 31.12.2014.

3. As the petitioner was terminated illegally and unlawfully he had raised an industrial dispute through the union and as the matter could not be amicably settled the same was referred to the learned Central Government Industrial Tribunal-cum-Labour Court at Kolkata (hereinafter referred to as Learned Tribunal), which was registered as Ref. No. 20 of 2019.
4. The learned Tribunal considering the dispute and hearing the parties passed its Award on 13.06.2024. The said Award was notified vide Ref. No. 20 of 2019/781 dated 23.10.2024.
5. The Government of India, Ministry of Labour vide Order No. L-12011/36/2019-IR(B-II) dated 04-10-2019 in exercise of the power conferred under Section 10(1)(d) & sub section (2A) of the Industrial Dispute Act, 1947 made the following reference to the Tribunal for adjudication.

*“Whether the action of the management of UCO Bank, Main Retail Branch, 10, B.T.M. Kolkata in terminating the services of Sh. Tarakeshwar Rewani & Sh. Monoj Kumar, Casual Safai Karmachari (working for more than 13 years) from the last month of 2014 and non-regularisation of their services **whereas services of their juniors Sh. Sukanta Ghosh and Sh. Prabir Chatterjee, Casual Safai Karmachari were regularized, is legal and justified? If not, what relief the workmen are entitled to?**”*

6. The reference case was persued only by the petitioner and not his co-worker Monoj Kumar.
7. **The learned Tribunal's relevant findings in the Award under appeal is as follows:-**

“.....Since it is the case of the concerned workman that he was retrenched by the bank from the service of casual sweeper in the month of December, 2014. Then he was not in service of the bank in any capacity on the date of reference of his dispute to this Tribunal for adjudication on 04-10-2019. Therefore, the workman cannot seek regularization or absorption in permanent post of Sweeper by passing over the recruitment rules, if any, of the bank on the basis of his past service as a casual sweeper.

*However, the documentary evidence and oral evidence of the witnesses discussed above it becomes clear that Sri **Tarakeshwar Rewani** was never appointed as a Badli as alleged by the bank rather he **was engaged as a casual sweeper on 14-10-2001 against the permanent vacancy arising out of transfer of permanent sweeper Baijnath Das** to head office in month of September, 2001. That due to expansion of Kolkata Main (retail) Branch the management of the said branch expressed necessity to engage casual sweepers to clean the premises of the branch before the start of banking hours at 10-00 a.m. That exhibited documents further prove that Tarakeshwar Rewani was not only rendering his service as a casual sweeper but also as a messenger of the bank during banking/working days and also during the bank holidays to keep vigil over the renovation work of the main branch in the year 2008. **Therefore, it can be safely assumed that he had indeed rendered more than 240 days service in a calendar year to the bank.***

Thus, in view of provision of section 25-B of the I.D. Act, he having rendered more than 240 days service in a calendar year is/was deemed to be in continuous service of the bank as a casual sweeper. Therefore, in view of provisions of section 25-F of the Act, the bank cannot terminate the service of Sri Tarakeshwar Rewani by discontinuing his service or by preventing him from discharging his duty without giving one month's notice in writing indicating the reason for retrenchment or without making payment of wages for the period of notice. Further, without making payment of retrenchment compensation.

The concerned workman having put more than 240 days in a calendar year as a casual sweeper to do the perennial nature job of the bank and he having engaged in place of permanent sweeper Sri Baijnath Das who was transferred to head office in the month of September, 2001 is deemed to have been rendered continuous service to the bank as a casual sweeper. Therefore, he is entitled to get one month's wage and retrenchment compensation from the bank in view of provision of section 25-F of the I.D. Act, 1947 and which bank has failed to pay.

Therefore, the concerned workman is awarded a lump sum compensation of Rs.6,00,000/- (Rupees Six Lakh) for his illegal retrenchment. The bank is directed to pay the compensation within one month from the date hereof failing which the workman shall be at liberty to get the order executed as per law. Accordingly Reference No. 20 of 2019 is disposed of.

Sd/-
Presiding Officer."

8. Written notes have been filed on behalf of the Union of India/respondent no. 1 and the petitioner herein who has relied upon the following judgments in support of his case:-

- (i) ***Mohan Lal vs. Management of M/s. Bharat Electronics Ltd., (1981) 3 SCC 225;***
- (ii) ***Gammon India Limited vs. Niranjan Dass, (1984) 1 SCC 509;***
- (iii) ***Deepali Gundu Surwase vs. Kranti Junior Adhyapak Mahavidyalaya (D.ED) & Anr., (2013) 10 SCC 324;***
- (iv) ***Tapash Kuamr Paul vs. Bharat Sanchar Nigam Limited, (2014) 15 SCC 313;***
- (v) ***Mintu Kumar vs. Management of Punjab National Bank Zonal Office, Laws (SC) 2019 1 429;***
- (vi) ***Maharashtra State Road Transport Corporation & Anr. vs. Casteribe Rajya Parivahan Karmachari Sanghatana (2009) 8 SCC 556;***
- (vii) ***Ajaypal Singh vs. Haryana Warehousing Corporation (2015) 6 SCC 321;***
- (viii) ***Umralla Gram Panchayat vs. Secretary, Municipal Employees Union & Ors. (2015) 12 SCC 775;***
- (ix) ***Durgapur Casual Workers Union & Ors. vs. Food Corporation of India & Ors. (2015) 5 SCC 786;***
- (x) ***Chennai Port Trust vs. Chennai Port Trust Industrial Employees Canteen Workers Welfare Association & Ors., (2018) 6 SCC 202;***

(xi) *Jaggo vs. Union of India & Ors.*, 2024 SCC online SC 3826;

(xii) *Sri Biswajit Goswami & Ors. vs. Secretary (Municipal Affairs), State of WB & Ors.*, in WPA 14298 of 2015, Calcutta High Court.

9. In *Hochtief Gammon v. Industrial Tribunal, Bhubaneswar, Orissa and Ors.*, (AIR 1964 SC 1746), decided on 1st April, 1964,

the Supreme Court held:-

“7. In dealing with this question, it is necessary to bear in mind one essential fact, and that is that the Industrial Tribunal is a Tribunal of limited jurisdiction. Its jurisdiction is to try an industrial dispute referred to it for its adjudication by the appropriate Government by an order of reference passed under Section 10. It is not open to the Tribunal to travel materially beyond the terms of reference, for it is well-settled that the terms of reference determine the scope of its power and jurisdiction from case to case. Section 10 itself has been subsequently amended from time to time. Act 18 of 1952 made substantial amendments in Section 10. One of these amendments was that Section 10(1)(d) now empowers the appropriate Government to refer the dispute or any matter appearing to be connected with, or relevant to, the dispute, whether it relates to any matter specified in the Second Schedule, or the Third Schedule, to a Tribunal for adjudication. In other words under Section 10(1)(d), the appropriate Government can refer to the Industrial Tribunal not only a specific industrial dispute, but can also refer along with it matters appearing to be connected with, or relevant to, the said dispute. In that sense the power of the appropriate Government has been enlarged in regard to the reference of industrial disputes to the Tribunal.

8. Section 10(4) which was also added by the same amending Act provides, inter alia, that the jurisdiction of the Industrial Tribunal would be confined to the points of dispute specified by the order of reference, and adds that the said jurisdiction may take within its sweep matters incidental to the said points. In other words, where certain points of dispute have been referred to the Industrial Tribunal for adjudication, it may, while dealing

with the said points, deal with matters incidental thereto, and that means that if, while dealing with such incidental matters, the Tribunal feels that some persons who are not joined to the reference should be brought before it, it may be able to make an order in that behalf under Section 18(3)(b) as it now stands.

12. *Reverting then to the question as to the effect of the power which is implied in Section 18(3)(b), it is clear that this power cannot be exercised by the Tribunal so as to enlarge materially the scope of the reference itself, because basically the jurisdiction of the Tribunal to deal with an industrial dispute is derived solely from the order of reference passed by the appropriate Government under Section 10(1). What the Tribunal can consider in addition to the disputes specified in the order of reference, are only matters incidental to the said disputes; and that naturally suggests certain obvious limitations on the implied power of the Tribunal to add parties to the reference before it, purporting to exercise its implied power under Section 18(3)(b). If it appears to the Tribunal that a party to the industrial dispute named in the order of reference does not completely or adequately represent the interest either on the side of the employer, or on the side of the employee, it may direct that other persons should be joined who would be necessary to represent such interest. If the employer named in a reference does not fully represent the interests of the employer as such, other persons who are interested in the undertaking of the employer may be joined. Similarly, if the unions specified in the reference do not represent all the employees of the undertaking, it may be open to the Tribunal to add such other unions as it may deem necessary. The test always must be, is the addition of the party necessary to make the adjudication itself effective and enforceable? In other words, the test may well be would the non-joinder of the party make the arbitration proceedings ineffective and unenforceable? It is in the light of this test that the implied power of the Tribunal to add parties must be held to be limited.*

15. *In Anil Kumar Upadhaya v. P.K. Sarkar [AIR 1961 Cal 60] a learned Single Judge of the Calcutta High Court has accepted the same view. In that case, the Trustees of the Provident Fund in question who had not been impleaded originally to the reference were summoned by the Tribunal and the Court held that in the absence of the Trustees, the award would have*

become nugatory. It would be noticed that in all these decisions, the implied power of the Tribunal to summon additional parties in the reference proceedings is confined only to cases where such addition appeared to be necessary for making the reference complete and the award effective and enforceable. Such a power cannot be exercised to extend the scope of the reference and to bring in matters which are not the subject-matter of the reference and which are not incidental to the dispute which has been referred.

17. *The next contention raised by Mr Chatterjee is that M/s Hindustan Steel Ltd. is a necessary party because it is the said concern which is the employer of the respondents and not the appellant. In other words, this contention is that though in form the appellant engaged the workmen whom the respondent Union represents, the appellant was acting as the agent of its principal and for adjudicating upon the industrial dispute referred to the Tribunal by the State of Orissa, it is necessary that the principal viz. M/s Hindustan Steel Ltd. ought to be added as a party. In dealing with this argument, it is necessary to bear in mind the fact that the appellant does not dispute the respondent Union's case that the workmen were employed by the appellant. It would have been open to the State Government to ask the Tribunal to consider who was the employer of these workmen and in that case, the terms of reference might have been suitably framed. Where the appropriate Government desires that the question as to who the employer is should be determined, it generally makes a reference in wide enough terms and includes as parties to the reference different persons who are alleged to be the employers. Such a course has not been adopted in the present proceedings, and so, it would not be possible to hold that the question as to who is the employer as between the appellant and M/s Hindustan Steel Ltd. is a question incidental to the industrial dispute which has been referred under Section 10(1)(d). This dispute is a substantial dispute between the appellant and M/s Hindustan Steel Ltd. and cannot be regarded as incidental in any sense, and so, we think that even this ground is not sufficient to justify the contention that M/s Hindustan Steel Ltd. is a necessary party which can be added and summoned under the implied powers of the Tribunal under Section 18(3)(b).*

18. *The result is, though we accept Mr Chatterjee's argument that Section 18(3)(b) postulates the existence of an implied power in the Tribunal to add parties and summon them, in the present case that power cannot be exercised, because having regard to the limited nature of the implied power, M/s Hindustan Steel Ltd. cannot be regarded as a necessary party under the provisions of Section 18(3)(b). The appeal accordingly fails and is dismissed with costs."*

10. Section 10 of the Industrial Disputes Act, 1947 lays down:-

"10. Reference of disputes to Boards, Courts or Tribunals.- (1) *[Where the appropriate Government is of opinion that any industrial dispute exists or is apprehended, it may at any time], by order in writing-*

(a) refer the dispute to a Board for promoting a settlement thereof; or

(b) refer any matter appearing to be connected with or relevant to the dispute to a Court for inquiry; or

[(c) refer the dispute or any matter appearing to be connected with, or relevant to, the dispute, if it relates to any matter specified in the Second Schedule, to a Labour Court for adjudication; or]

[(d) refer the dispute or any matter appearing to be connected with, or relevant to, the dispute, whether it relates to any matter specified in the Second Schedule or the Third Schedule, to a Tribunal for adjudication:

Provided that where the dispute relates to any matter specified in the Third Schedule and is not likely to affect more than one hundred workmen the appropriate Government may, if it so thinks fit, make the reference to a Labour Court under clause (c):]

.....

[(4) Where in an order referring an industrial dispute to [a Labour Court, Tribunal or National Tribunal] under this section or in a subsequent order, the appropriate Government

has specified the points of dispute for adjudication, [the Labour Court or the Tribunal or the National Tribunal, as the case may be,] shall confine its adjudication to those points and matters incidental thereto.].....”

11. In the present case the reference to tribunal to the extent **“.....whereas services of their juniors Sh. Sukanta Ghosh and Sh. Prabir Chatterjee, Casual Safai Karmachari were regularized, is legal and justified? If not, what relief the workmen are entitled to?”** has not been decided by the tribunal even though the reference clearly included the same.
12. **It is trite that Tribunal gets jurisdiction to pass the Award in terms of reference. Tribunal cannot go beyond the terms of reference nor avoid deciding a point in reference while passing an Award.**
13. **Thus the findings on the reference here is incomplete.** The said left out part of the reference is very necessary for proper adjudication of the principle issue in the reference, as it relates to consideration of the fact that persons juniors to the petitioner have been regularized.
14. The said part in the reference needs an answer as to **how and why** was the services of juniors to the petitioner regularized. The decision in this context is necessary to also decide the principle issue in the reference which is to decide the legality and justification of non regularization of the service of the petitioner herein though his juniors services had been regularised.

- 15. The decision therein to the above extent is required as the same is connected/incidental to the principle issue that is the non regularization of service of the petitioner herein.**
- 16.** Accordingly the award under challenge being not in accordance with law is set aside and remanded to the learned tribunal with a direction that the tribunal shall decide the **reference in full afresh** to the last word in the reference and dispose of the reference within 60 days from the date of this order in accordance with law.
- 17.** Parties are at liberty to communicate the server copy of this order.
- 18. WPA 816 of 2025 stands disposed of.**
- 19.** All connected application, if any, stands disposed of.
- 20.** Interim order, if any, stands vacated.
- 21.** Let a copy of this judgment be sent to the learned tribunal.
- 22.** 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.)