

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
APPELLATE SIDE

Present:

The Hon'ble Justice Shampa Dutt (Paul)

WPA 2056 of 2025

Gloster Ltd.
Vs
The State of West Bengal & Ors.

For the Petitioner : Mr. S.K. Singh,
Mr. Rananeesh Guha Thakurta,
Ms. Senjuti Sengupta.

For the State : Mr. Arjun Roy Mukherjee,
Mr. Rajsekhar Basu.

For the Respondent/ESIC : Mr. Satyendra Agarwal,
Mr. Bijoy Bag,
Mr. Goutam Malik.

Hearing concluded on : 03.07.2025

Judgment on : 09.07.2025

Shampa Dutt (Paul), J.:

1. The writ application has been preferred praying for setting aside and or recalling the impugned award dated August 14, 2024 and Order dated November 14, 2024, passed by the respondent Tribunal in Case No. 44/2022.
2. Vide the said award under challenge the 2nd Industrial Tribunal Kolkata held as follows:-

“..... Admittedly from 11.02.2022 to 06.05.2022 the petitioner was under treatment under the ESI and it was recommended by the ESI that the petitioner may join his service on 09.05.2022.

From the record it is not clear as to whether from 11.02.2022 to 09.05.2022, the OP company paid salary of the petitioner and accordingly I hold that if full back wages along with other consequential benefits from 11.02.2022 to 09.05.2022 have not been paid by the OP company to the petitioner earlier, the OP company is bound to pay the same to the petitioner immediately.

So considering the entire materials on record, I hold that the petitioner is not entitled to get any relief for reinstatement of his service as he has voluntarily resigned from his service during pendency of this.

Hence it is,

ORDERED

that the case no. 44/2022 under Section 10 (1)(b)(d) of The Industrial Disputes Act, 1947 is dismissed against the company.

If the full back wages along with other consequential benefits from 11.02.2022 to 09.05.2022 have not been paid by the OP company to the petitioner earlier, the OP company is directed to pay the same to the petitioner with interest of 10% per annum for the said period within 30 days from this date of Order.

Sd/-

Judge

2nd Industrial Tribunal Kolkata.”

3. Subsequently, vide an order dated 14.11.2024, the Tribunal **rejected the review petition** filed by the opposite party company/petitioner herein and **imposed cost of Rs. 1 lakh** to be paid to the workman respondent herein.
4. At the time of hearing **the respondent ESI has filed a report wherein it has been stated that the workman was paid sickness benefit.** The report of the respondent ESI authority is as follows:-

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*In reference to the WPA 2056 of 2025, it is hereby stated that the concerned IP Golak Chandra Patra (IP No. 4109701430) **was paid Sickness Benefit** during the period 13.02.2022 to 06.04.2022 in 3 parts viz. 13.02.2022 to 05.03.22 amounting Rs. 8442/- (Rate Rs. 402/- * No. of days-21), 06.03.2022 to 12.03.2022 amounting Rs. 2814/- (Rate Rs. 402/- * No. of days-7) and 13.03.2022 to 06.04.2022 amounting Rs. 10050/- (Rate Rs. 402/- * No. of days -25). Since, the IP was declared to join service with Light work on 06.04.2022, no further payment was paid to him.*

Moreover, it is stated that the Sickness benefit which is 70% of the daily Gross pay rate, is paid only if the Employer of the IP does not pay any remuneration to the said IP.

Please find the Offline Ledger Sheet enclosed herewith in support of the payments made to the IP Golak Chandra Patra (IP No. 4109701430) is hereby attached for your ready reference.

17/6/2025

**Sd/-
SSO (Legal)”**

5. The tribunal in its award under challenge held that the workman was under treatment of the ESI from 11.02.2022 to 06.05.2022.
6. Learned counsel for the petitioner/company has relied upon the provision of Section 46(1)(a) of the ESI Act and Regulation 52(1) of the ESI (General) Regulations.

7. Section 46(1)(a) of the ESI Act is as follows:-

“Section 46(1)(a):- *periodical payments to any insured person in case of his sickness certified by a duly appointed medical practitioner [or by any other person possessing such qualifications and experience as the Corporation may, by regulations, specify in this behalf] (hereinafter referred to as sickness benefit);”*

8. Regulation 52(1) of the ESI (General) Regulations, is as follows:-

“52. Benefits when payable.-*[(1) Any benefit payable under the Act shall be paid-*

(a) in the case of sickness benefit not later than 7 days;

[(b) in the case of funeral expenses not later than 15 days;]

(c) in the case of the first payment in respect of maternity benefit not later than 14 days;

(d) in the case of the first payment in respect of Temporary Disablement Benefit, not later than one month;

(e) in the case of the first payment in respect of Permanent Disablement Benefit, not later than one month;

(f) in the case of first payment of Dependants' Benefits, not later than 3 months, after the claim therefore together with the relevant medical or other certificates and any other documentary evidence which may be called for under these regulations has been furnished completed in all particulars to the appropriate office.]”

9. Accordingly, in view of the materials on record and the report of the respondent ESI authority, it appears that the workman has already

received sickness benefit for the period for which the tribunal granted full back wages with consequential benefits, even though an employee is not entitled to their full normal wages in addition to sickness benefit under the ESI Act.

10. Accordingly, the award dated August 14, 2024 passed by the respondent Tribunal in Case No. 44/2022 **being not in accordance with law is set aside.**
11. Consequently, the order imposing cost while rejecting the review application vide order dated 14.11.2024, being also not in accordance with law and against the principle of justice, is also set aside.
12. **Writ petition is accordingly allowed.**
13. All connected application, if any, stands disposed of.
14. Interim order, if any, stands vacated.
15. Let the copy of this order be sent to the 2nd Industrial Tribunal Kolkata.
16. Urgent Photostat certified copy of this judgment, if applied for, be supplied to the parties expeditiously after due compliance.

(Shampa Dutt (Paul), J.)