

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
APPELLATE SIDE

Present:

The Hon'ble Justice Shampa Dutt (Paul)

WPA 2562 of 2025

Gloster Limited

Vs.

The State of West Bengal & Ors.

For the Petitioner	:	Mr. S.K.Singh, Mr. R.Guha Thakurata, Ms. S.Sengupta.
For the Respondent/ State	:	Mr. Biswabrata Basu Mallick, AGP Mr. Tamal Taru Panda.
For the Pvt. Respondent	:	Mr. Balai Paul.
Hearing concluded on	:	18.08.2025
Judgment on	:	04.09.2025

Shampa Dutt (Paul), J.:

1. The present writ application has been preferred challenging the award dated November 13, 2024 as passed by the Respondent Tribunal in Case No. 05/2015 under Section 2A(2) and the impugned Publication order dated December 03, 2024.
2. The petitioner's case in short is that the petitioner has a Jute Mill at the address given in the cause title and employs about 4500

employees presently, wherein the concerned workman had been appointed initially to operate the Boat, owned by the petitioner, which was being used to ferry the employees and persons connected with its Jute Mill, across the Hooghly river.

- 3.** The said ferry service of the Boat has been stopped permanently w.e.f. 20th February, 2014. Still the petitioner/company as a good gesture kept the concerned workman in its employment instead of retrenching him and provided him an alternative job of a Calendar Operator in the Finishing Department of its Jute Mill, after giving him sufficient training. The concerned workman too gave his consent and accepted his new assignment after duly completing his training without any demur or protest.
- 4.** It was then found from the computerized attendance records that the concerned workman had been remaining absent from his duties w.e.f. 8th November, 2014 without any information and/or seeking permission from his superiors.
- 5.** The petitioner vide its Memo dated 25th November, 2014 sent by Registered Post, wrote to the concerned workman that such act of absenteeism on his part amounts to misconduct under the provisions of Certified Standing Orders applicable to the petitioner and also intimated him that such act had exposed the concerned workman to disciplinary action and the concerned workman was asked to report for his duty immediately or to submit explanation for his unauthorized absenteeism.

6. In spite of receiving such notice the private respondent failed to join his duties or explain the reasons for remaining absent.
7. Subsequent notices sent to the private respondent were un-served with the postal endorsement 'left' return to sender, 'door locked' etc.
8. On 15.9.2014 the petitioner received a letter from the respondent workman wherein he alleged that "*without following principles of law and/or without giving him opportunity to learn the job of Mill*" **he was forcibly appointed in Mill** and also falsely alleged that his request for his reinstatement had been bypassed by the petitioner.
9. The concerned workman thus raised a dispute with the Conciliation Officer, Government of West Bengal, Uluberia, Howrah.
10. The petitioner vide its letter dated 14th October, 2015 duly submitted its detailed comments to the Conciliation Officer stating inter alia that the purported complaint of the concerned workman is not maintainable, as he had not worked continuously for one year in between 20th March, 2014 to 19th March, 2015 in terms of the provisions contained U/s 25B of the Industrial Disputes Act, 1947, therefore, his complaint for invoking provisions of Section 12 of the Industrial Disputes Act 1947, for alleged act of retrenchment by the petitioner is not maintainable.
11. As the Conciliation failed, reference was made to the Tribunal and the Reference Case no. 05/2015 u/s 2A(2) of the Industrial Disputes Act was initiated.
12. The respondent workman expired on 12th January, 2017 and his wife was substituted in his place. The tribunal pronounced its

Award on November 13, 2024 directing inter alia the petitioner to pay the private respondent a compensation of Rs. 6,00,000/- and the full back wages alongwith consequential reliefs from 19.03.2015 till the date of payment with compound interest @ 10% per annum on the entire arrear amount of back wages and consequential benefits which was also most mechanically published by the 1st respondent on December 03, 2024.

13. Being aggrieved, the present writ application has been filed challenging the award on the ground that it has been passed without considering the evidence on record in the proper perspective and the same is thus liable to be set aside.
14. On hearing the learned counsel appearing for the parties and on perusal of the materials on record, it appears that O.P.W.No.3, on behalf of the petitioner/company has deposed before the tribunal as follows:-

*"I am a sardar in the company M/s. Gloster Ltd., I work in finishing department, I would know Naimullah Ansari, this Naimullah Ansari came to my department to do works, he was given the work of receiver of calendar which means press. **We taught him as to how to do work in calendar. The work in calendar receiver means the cloth come to the machine and get it pressed and then it started coming out from the machine and then it is to be received and this work was taught to him, to understand the work of doing receiver in calendar requires a training for 2/3 days only. Naimullah Ansari then worked for 12/14 days.***

Cross-examination:

Naimullah Ansari worked properly for about 12/14 days and then stopped attending work and I reported the matter to my higher authority but not in writing.”

15. Several copies of correspondences have been annexed, (exhibit 2 series) wherein it appears that the employee was requested to join in the alternate engagement after closure of the ferry service but the respondent workman after having initially joined, remained absent without any communication.
16. Documents have been filed to substantiate that the ferry service where the workman was employed stopped permanently on 20.02.2014, but the workman was not retrenched and was provided alternate work/job as Calendar Operator in the Finishing Department, wherein the job required only 2 to 3 days training to learn the job. The workman in spite of attending for 12 to 14 days, later did not continue to work at the alternate job provided to him.
17. **The wife of the deceased workman** deposed as PW.1 before the Tribunal. This witness has deposed **that her husband the deceased workman did not like the work in the Finishing Department of the Company.**
18. The tribunal while deciding the dispute held as follows:-

“So considering the entire materials on record I find that the deceased petitioner was a permanent employee under the OP company but no disciplinary action was started against him and no domestic enquiry was held against him and no charge sheet containing allegation of

absence from duty was made against him but by violating the Principle of Natural Justice and the Service Rule, the OP company terminated his service by a letter dated 19.03.2015 most illegally, arbitrarily and without any justification by holding that he himself had left and abandoned his service.”

19. Finally the tribunal directed as follows:-

ORDERED

“That the case no. 05/2015 under Section 2A(2) of the Industrial Disputes Act, 1947 is allowed on contest against the OP company with a compensation of Rs. 5,00,000/- and Rs. 1,00,000/- total Rs. 6,00,000/- (Rs. Six Lakhs) to be paid to the substituted petitioners namely Salma Begam, Nawab Ansari, Arshi Sabha, Amirullah Ansari and Anwari Begam equally within 30 days from this date of order.

It is hereby declared that the order of termination dated 19.03.2015 passed by the OP company against the deceased petitioner is illegal, invalid, baseless and unjustified.

The OP company is directed to pay the full back wages alongwith consequential reliefs from 19.03.2015 till the date of payment with a compound interest of 10% per annum on the entire arrear amount of back wages and consequential reliefs to the substituted petitioners equally within 30 days from this date of order.”

20. Both parties have filed their written notes. Subsequently affidavit has been filed by the petitioner wherein the notice closing down ferry service permanently w.e.f. 20.2.2014 has been annexed as annexure P-7.

21. The writ petitioner has relied upon the following judgments in support of their case:-

1) *Syndicate Bank –vs-The General Secretary, Syndicate Bank Staff Association and another, reported in (2000) AIR (SCW) 2288;*

“17. It is no point laying stress on the principles of natural justice without understanding their scope or real meaning. There are two essential elements of natural justice which are : (a) no man shall be judge in his own cause; and (b) no man shall be condemned, either civilly or criminally, without being afforded an opportunity of being heard in answer to the charge made against him. In course of time by various judicial pronouncements these two principles of natural justice have been expanded, e.g., a party must have due notice when the Tribunal will proceed; Tribunal should not act on irrelevant evidence or shut out relevant evidence; if the Tribunal consists of several members they all must sit together at all times; Tribunal should act independently and should not be biased against any party; its action should be based on good faith and order and should act in just, fair and reasonable manner. These in fact are the extensions or refinements of the main principles of natural justice stated above.

18.Assuming for a moment that inquiry was necessitated, evidence led before the Tribunal clearly showed that notice was given to Dayananda and it is he who defaulted and offered no explanation of his absence from duty and did not report for duty within 30 days of the notice.....

19. This undue reliance on the principles of natural justice by the Tribunal and even by the High Court has certainly led to miscarriage of justice as far as Bank is concerned. Conduct of Dayananda as an employee of the Bank has been astounding. It was not a case where the Tribunal should have given any relief to Dayananda and yet the Bank was directed to

reinstate him with continuity of service and mercifully the latter part of the relief High Court struck down. *There was no occasion for the Tribunal to direct that Dayananda be reinstated in service or for the High Court not to have exercised its jurisdiction under Article 226 of the Constitution to set aside the Award."*

2) The Range Forest Officer-vs- S.T.Hadimani, State of Karnataka and another -vs- S.T.Hadimani, reported in (2002) AIR (SCW) 909.

22. The respondent workman in his written argument has stated that he has been illegally terminated and was not reinstated. As such he is entitled to the relief as granted in the award under challenge.

23. The contention on behalf of the respondent/deceased workman is two fold:-

- i. No notice under Section 9A of the ID Act was served upon him.**

Section 9A of the ID Act, lays down:-

"9-A. Notice of change.- *No employer, who proposes to effect any change in the conditions of service applicable to any workman in respect of any matter specified in the Fourth Schedule, shall effect such change,-*

(a)without giving to the workmen likely to be affected by such change a notice in the prescribed manner of the nature of the change proposed to be effected; or

(b)within twenty-one days of giving such notice:

Provided that no notice shall be required for effecting any such change-

(a)where the change is effected in pursuance of any [settlement or award]; or

(b)where the workmen likely to be affected by the change are persons to whom the Fundamental and Supplementary Rules, Civil Services (Classification,

Control and Appeal) Rules, Civil Services (Temporary Service) Rules, Revised Leave Rules, Civil Service Regulations, Civilians in Defence Services (Classification, Control and Appeal) Rules or the Indian Railway Establishment Code or any other rules or regulations that may be notified in this behalf by the appropriate Government in the Official Gazette, apply.”

This claim of no notice under Section 9A of the ID Act

being served upon the workman, is barred by the principle of estoppel, at this stage, considering that not only did the workman admittedly join his new job but continued there for about 12/14 days, on learning the job within 2-3 days.

- ii. It is stated in the written notes filed by the respondent/workman that:-

*“.....**As the workman (since deceased) was not habituated to the said nature of job,** he was not provided day-to-day job and ultimately his service was terminated by way of refusal on 19.03.2015. The workman made protest to such termination of service but to no effect. The workman died on 12.11.2017 during pendency of the proceedings before the Learned Tribunal.....”*

This along with the evidence of the workman’s wife (PW1) proves that the workman was not interested to continue with the job allotted to him in the mill, in lieu of the job on the boat, as the ferry service closed down permanently. More so, **several notices** were issued to the workman asking him to join his job on which he had worked for 12-14 days. The notices could not be served, as they were returned with

endorsement –“Door locked”- intimation served, addressee absent intimation served etc. (Exhibit 2 series).

24. The tribunal discarded the evidence of O.P.W. 2 to O.P.W. 5 on the finding as follows:-

“..... But the OPW No. 2 to OPW No. 5 have not filed their affidavit-in-chief in respect of their evidences and proved some documents and they have been cross-examined.

As the OPW No. 2 to OPW No. 5 have not filed their affidavit-in-chief in respect of their evidences, their oral evidences-in-chief before this Tribunal regarding the facts and circumstances of this case cannot be considered legally because they have violated the mandatory provisions of Order 18 Rule 4 of the CPC and Rule 24 of the WBID Rules, 1958 by not filing affidavit in chief in respect of their evidences but they have proved some documents in chief and they have been cross-examined and accordingly their cross-examinations and evidences in chief in this Tribunal regarding proof of documents can be considered legally.....”

25. It is submitted that as the further evidence adduced by the petitioner on dock before the Tribunal was not considered and rejected by the Tribunal as the same was not under Order 18 Rule 4 CPC, the petitioner has suffered injustice and as such the award challenged is not in accordance with law and thus liable to be set aside.

26. In *Salem Advocate Bar Association, Tamil vs. Union of India* dated 25th October, 2002 wherein the Court held as follows:-

“17. In Order 18, Rule 4 has substituted and sub-rule (1) provides that in every case examination-in-chief of the witnesses shall be on affidavits and copies thereof shall be supplied to the opposite parties by the part

who calls them for evidence. It was contended by Mr. Vaidyanathan that it may not be possible for the party calling the witness to compel that witness to file an affidavit. It often happens that the witness may not be under the control of the party who wants to rely upon his evidence and that witness may have to be summoned through court. Order 16 Rule 1 provides for list of witnesses being filed and summons being issued to them for being present in court for recording their evidence. Rule 1A, on the other hand, refers to production of witnesses without summons where any party to the suit may bring any witness to give any evidence or to produce documents. Reading the provisions of Order 16 and Order 18 together, it appears to us that Order 16 Rule 1A, i.e. where any party to a suit, without applying for summoning under Rule 1 brings any witness to give evidence or produce any document. **In such a case, examination-in-chief is not to be recorded in court but shall be in the form of an affidavit.**

18. In cases where the summons have to be issued under Order 16 Rule 1, the stringent provision of Order 18 Rule 4 may not apply. When summons are issued, the court can give an option to the witness summoned either to file an affidavit by way of examination-in-chief or to be present in court for the examination. In appropriate cases, the court can direct the summoned witness to file an affidavit by way of examination-in-chief. In other words, with regard to the summoned witness the principle incorporated in Order 18 Rule 4 can be waived. Whether a witness shall be directed to file affidavit or be required to be present in court for recording of his evidence is a matter to be decided by the court in its discretion having regard to the facts of each case.

19. Order 18 Rule 4(2) give the court the power to decide as to whether evidence of a witness shall be taken by the court or by the Commissioner. An apprehension was raised to the effect that the court has no discretion and once it decides that the evidence will be recorded by the Commissioner then evidence of other witnesses cannot be recorded in court. We do not

*think that is the correct **interpretation of sub-rule 4(2). Under the said sub-rule, the court has the power to direct either all the evidence being recorded in court or all the evidence being recorded by the Commissioner or the evidence being recorded partly by the Commissioner and partly by the court.** For example, if the plaintiff wants to examine 10 witnesses, then the court may direct that in respect of five witnesses evidence will be recorded by the Commissioner while in the case of other five witnesses evidence will be recorded in court. In this connection, we may refer to Order 18 Rule 4(3), which provides that the evidence may be recorded either in writing or mechanically in the presence of the Judge or the Commissioner. The use of the word ‘mechanically’ indicates that the evidence can be recorded even with the help of the electronic media, audio or audio-visual, and in fact whenever the evidence is recorded by the Commissioner it will be advisable that there should be simultaneously at least an audio recording of the statement of the witnesses so as to obviate any controversy at a later stage.”*

- 27. In the present case,** the tribunal has noted that petitioner’s witnesses did not file affidavit-in-chief as per Order 18 Rule 4 CPC **but deposed in this case.**
- 28.** The deposition was permitted by the then Presiding Officer, who recorded the evidence on dock without insisting on examination-in-chief on affidavit.
- 29.** It is the Court, which permitted the same and is with the record.
- 30.** Admittedly the examination in chief in the case was recorded on dock, by the predecessor-in-office of the present Presiding Officer. The learned Judge rejected the said evidence as it was not adduced as per the provisions of Order 18 Rule 4 CPC.

31. When the Code grants **the discretion to the Court** while recording evidence in respect of summoned witnesses, the same is permissible in some rare cases in the interest of justice, when ever such irregularity is seen.
32. This is an irregularity and not an illegality, but Courts should act as per the relevant provisions of law in normal circumstances.
33. The provisions of Order 18 Rule 4 CPC was incorporated to expedite proceedings in civil cases and thus evidence on dock of the parties is discouraged. But unless it is affirmed on dock the same is not admissible.
34. In exceptional cases, non-consideration of such evidence is against the principle of natural justice.
35. **In the present case**, the evidence on record shows that the workman could not even be served with a notice inspite of the petitioner's best efforts and as such the question of an inquiry does not arise in such circumstances. (Para 18 of ***Syndicate Bank -vs- The General Secretary, Syndicate Bank Staff Association and another (Supra)***)
36. **Thus the award and it's findings therein under challenge, being not in accordance with law is set aside.**
37. The respondent workman is not entitled to any relief as it has been clearly proved that **the workman had abandoned his services.**
38. **WPA 2562 of 2025 is thus allowed.**
39. All connected application, if any, stands disposed of.
40. Interim order, if any, stands vacated.

- 41.** 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.)