

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side

Present :

The Hon'ble Justice Shampa Dutt (Paul)

WPA 3769 of 2025

Alok Pakhira
Vs.
The State of West Bengal & Ors.

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

For the Respondent No. 3 : Mr. Ranjay De, Sr. Adv.
Mr. Basabjit Banerjee,
Mr. Adityajit Abel Bose.

Hearing concluded on : 27.02.2025

Judgment on : 24.03.2025

Shampa Dutt (Paul) , J.

1. The present writ application has been preferred praying for direction upon the respondent Tribunal to frame an issue as *“Whether the workman’s dismissal from service by issuance of Dismissal Order dated December 11, 2021 is illegal and unjustified?”* and directing the Respondent Tribunal to allow the petitioner to exhibit all the documents as mentioned in his affidavit-in-chief and to dispose of the said Case No.05/2022 u/s 2A(2) within a specified time frame.
2. The petitioner’s case herein is that the petitioner was a workman of the private respondent having joined his service

on May 26, 2004 and was also covered under the provision of ESI of 1948.

3. The petitioner was an office bearer of the Union of the operating units at the private respondents.
4. It is further stated that the private respondent along with one Kakali Pramanick in conspiracy has issued a false and fabricated charge sheet-cum- suspension notice dated December 31, 2020 upon the petitioner herein.
5. The petitioner submitted a reply to the said charge sheet but was not allowed to join. As such he was forced to approach the Deputy Labour Commissioner, Howrah with a representation dated January 19, 2021.
6. The petitioner then raised an industrial dispute before the Conciliation Officer, Howrah vide his representation dated January 20, 2022 **over the illegal and unjustified dismissal of service on conducting a sham enquiry.**
7. No action has been taken by the Conciliation Officer on his representation, who asked him to raise a proper industrial dispute.
8. As such, the petitioner vide representations dated April 13, 2022 and May 17, 2022 and after a lapse of 45 days from the date of raising an industrial dispute on April 13, 2022, invoked the provisions of Section 2A(2) of the Act, 1947 and instituted case no.05/2022 u/s 2A(2) before the Tribunal.

9. It is the grievance of the petitioner that the Tribunal framed issues for adjudication in Case No.05/2022 u/s 2A(2) on November 17, 2023, but did not frame the main issue to be decided in the lis, i.e. *“whether the workman’s dismissal from service by issuance of Dismissal Order dated December 11, 2021 is illegal and unjustified”* and also did not frame any issue regarding validity of domestic enquiry but fixed the case for hearing on the said issue and in spite of praying before the Tribunal for framing the said issue, the Tribunal did not do so and as such, the present writ petition has been preferred.

10. The learned Tribunal vide order dated 17.11.2023 framed the following issues:-

- “i) Is the case maintainable in its present form and law?*
- ii) Has the petitioner any cause of action to file this case?*
- iii) Is the petitioner entitled to get relief as prayed for?*
- iv) To what other relief or reliefs, if any, is the petitioner entitled?”*

11. The learned Judge, Industrial Tribunal considering the prayer of the petitioner for framing of additional issues rejected his prayer on the ground that, *“four issues already framed are sufficient enough for proper adjudication of the case”*.

12. It was specifically stated in the order that *“issue no.3 would cover the issue as to whether the dismissal order dated 11.12.2021 was illegal and unjustified”*.

13. Vide the said order, the Tribunal framed another issue regarding validity of the domestic enquiry, but refused to add the issue regarding the validity of the order dismissing the petitioner from service.
14. The claim statement of the dispute raised by the petitioner/workman herein is under Section 2A(2) of the Industrial Dispute Act.
15. **Section 2A of the Act is as follows:-**

“[2A. Dismissal, etc., of an individual workman to be deemed to be an industrial dispute.-

(1)Where any employer discharges, dismisses, retrenches or otherwise terminates the services of an individual workman, any dispute or difference between that workman and his employer connected with, or arising out of, such discharge, dismissal, retrenchment or termination shall be deemed to be an industrial dispute notwithstanding that no other workman nor any union of workmen is a party to the dispute.

(2) Notwithstanding anything contained in section 10, any such workman as is specified in sub-section (1) may, make an application direct to the Labour Court or Tribunal for adjudication of the dispute referred to therein after the expiry of forty-five days from the date he has made the application to the Conciliation Officer of the appropriate Government for conciliation of the dispute, and in receipt of such application the Labour Court or Tribunal shall have powers and jurisdiction to adjudicate upon the dispute, as if it were a dispute referred to it by the appropriate Government in accordance with the provisions of this Act and all the provisions of this Act shall apply in relation to such adjudication as they apply in relation to an industrial dispute referred to it by the appropriate Government.

(3)The application referred to in sub-section (2) shall be made to the Labour Court or Tribunal before the expiry of three years from the date of discharge,

dismissal, retrenchment or otherwise termination of service as specified in sub-section (1).]”

- 16. The prayer of the petitioner in the claim statement is as follows:-**

*“In the aforesaid premises, it is, therefore, humbly prayed that Your Honour would graciously be pleased to pass an Award holding that **the workman's dismissal from service by issuance of Dismissal Order dated December 11, 2021 as illegal and void ab-initio and further be pleased to pass an order granting reinstatement in service with full back-wages and all other consequential benefits and the reasonable costs and interests thereto;***

And/or

Pass any other or further order(s) as the Learned Tribunal may deem fit and proper, for the interests of justice.”

- 17. The dispute in the present case has arisen as the employer has dismissed the petitioner/workman from service.**

- 18. Framing issues under the Industrial Disputes Act** is crucial because it clearly defines the specific points of contention within a labour dispute, providing a structured framework for adjudication, ensuring that the relevant matters are addressed during the proceedings, and facilitating a fair and efficient resolution between the employer and employee parties.

Focus on the dispute:

By clearly outlining the issues, the adjudicating authority can concentrate on the core areas of disagreement, preventing unnecessary tangents or irrelevant arguments.

Fairness and transparency:

Both parties are aware of the precise points being contested, allowing them to present evidence and arguments relevant to the specific issues at hand.

Efficient adjudication:

A well-framed set of issues streamlines the process by guiding the proceedings and preventing delays caused by ambiguous or irrelevant claims.

Legal clarity:

It helps to identify the applicable legal provisions and precedents related to the disputed issues, ensuring consistency in decision-making.

Reduces scope for misinterpretation:

Precisely defined issues minimize the chances of misinterpretations or conflicting interpretations by the adjudicator.

Based on pleadings:

The issues should be derived from the statements made by both parties in their written submissions, capturing the essence of their claims and counterclaims.

Specific and concise:

Each issue should be clearly articulated, avoiding vagueness or overly broad language.

Relevant to the dispute:

Issues should directly address the core points of contention in the industrial dispute.

19. The respondents have relied upon the following judgments:-

- i. *Sujit Kumar Banerjee vs M/s. Indian Explosives Ltd. & Ors., 1992 SCC OnLine Cal 249.***

“7. Further, the Supreme Court in Gujarat Steel Tube's case (supra) had not deviated from the principle laid down by the Supreme Court in the case of the Workmen of Firestone Tyre & Rubber Co. of India (P.) Ltd. v. The Management reported in AIR 1973 S.C. 1227. The law is now well settled by the Supreme Court in the case of Firestone Tyre & Rubber case (supra) that the Tribunal after holding that the domestic enquiry was held fairly and properly, can examine the correctness of the finding of the domestic enquiry and at that time it cannot allow production of fresh and new evidence which was not adduced before the Enquiry Officer after the domestic enquiry, and that the Industrial Tribunal followed a course of action which was consistent with the principle laid down by the Supreme Court. According to that principle once the Tribunal has found that the enquiry has been made fairly and properly, in that event the Tribunal under Section 11A reappraised the evidence on record. But the Tribunal cannot travel beyond record and cannot take into consideration of any new evidence which was not on record and the Tribunal cannot be directed to take into consideration any piece of evidence which was not on record. In the instant case, the Tribunal had applied its mind and on reappraisal of the evidence laid down before the Enquiry Officer decided on the merits and came to the conclusion that on the basis of the evidence on record the order of dismissal could not be sustained and set aside the punishment order.”

ii. **Director of Settlements, A.P. & Ors., vs M.R.**

Apparao & Anr., (2002) 4 SCC 638.

“7. So far as the first question is concerned, Article 141 of the Constitution unequivocally indicates that the law declared by the Supreme Court shall be binding on all courts within the territory of India. The aforesaid Article empowers the Supreme Court to declare the law. It is, therefore, an essential function of the Court to interpret a legislation. The statements of the Court on matters other than law like facts may have no binding force as the facts of two cases may not be similar. But what is binding is the ratio of the decision and not any finding of facts. It is the principle found out upon a reading of a judgment as a whole, in the light of the questions before the Court that forms the ratio and not any particular word or sentence. To determine whether a decision has “declared law” it cannot be said to be a law when a point is disposed of on concession and what is binding is the principle underlying a decision. A judgment of the Court has to be read in the context of questions which arose for consideration in the case in which the judgment was delivered. An “obiter dictum” as distinguished from a ratio decidendi is an observation by the Court on a legal question suggested in a case before it but not arising in such manner as to require a decision. Such an obiter may not have a binding precedent as the observation was unnecessary for the decision pronounced, but even though an obiter may not have a binding effect as a precedent, but it cannot be denied that it is of considerable weight. The law which will be binding under Article 141 would, therefore, extend to all observations of points raised and decided by the Court in a given case. So far as constitutional matters are concerned, it is a practice of the Court not to make any pronouncement on points not directly raised for its decision. The decision in a judgment of the Supreme Court cannot be assailed on the ground that certain aspects were not

considered or the relevant provisions were not brought to the notice of the Court (see *Ballabhadas Mathurdas Lakhani v. Municipal Committee, Malkapur* [(1970) 2 SCC 267 : AIR 1970 SC 1002] and AIR 1973 SC 794 [(sic)]). When the Supreme Court decides a principle it would be the duty of the High Court or a subordinate court to follow the decision of the Supreme Court. A judgment of the High Court which refuses to follow the decision and directions of the Supreme Court or seeks to revive a decision of the High Court which had been set aside by the Supreme Court is a nullity. (See *Narinder Singh v. Surjit Singh* [(1984) 2 SCC 402] and *Kausalya Devi Bogra v. Land Acquisition Officer* [(1984) 2 SCC 324] .) We have to answer the first question bearing in mind the aforesaid guiding principles. We may refer to some of the decisions cited by Mr Rao in elaborating his arguments contending that the judgment of this Court dated 6-2-1986 [*State of A.P. v. Rajah of Venkatagiri*, (2002) 4 SCC 660] cannot be held to be a law declared by the Court within the ambit of Article 141 of the Constitution. Mr Rao relied upon the judgment of this Court in the case of *M.S.M. Sharma v. Sri Krishna Sinha* [AIR 1959 SC 395 : 1959 Supp (1) SCR 806] wherein the power and privilege of the State Legislature and the fundamental right of freedom of speech and expression including the freedom of the press was the subject-matter of consideration. In the aforesaid judgment it has been observed by the Court that the decision in *Gunupati Keshavram Reddy v. Nafisul Hasan* [(1952) 1 SCC 343 : AIR 1954 SC 536 : 1954 Cri LJ 1704] relied upon by the counsel for the petitioner which entirely proceeded on a concession of the counsel cannot be regarded as a considered opinion on the subject. There is no dispute with the aforesaid proposition of law.”

iii. Chairman-cum-Managing Director, Coal India Limited & Ors. vs Ananta Saha & Ors., (2011) 5 SCC 142.

“27. There can be no quarrel with the settled legal proposition that the disciplinary proceedings commence only when a charge-sheet is issued to the delinquent employee. (Vide Union of India v. K.V. Jankiraman [(1991) 4 SCC 109 : 1991 SCC (L&S) 387 : (1993) 23 ATC 322 : AIR 1991 SC 2010] and UCO Bank v. Rajinder Lal Capoor [(2007) 6 SCC 694 : (2007) 2 SCC (L&S) 550] .)”

- 20. The industrial dispute (core point) in these cases clearly relate to the petitioner’s/workman’s dismissal from services and the said issue is the principal issue in this case.**
- 21. As such the order dated 05.01.2024 (under challenge) is hereby set aside,** being not in accordance with law and also against the principle of natural justice.
- 22. Additional issue “is the workman’s dismissal from service in accordance with law, justified and proper” be framed and be adjudicated by the tribunal.**
- 23. Next is the issue of the petitioner not being permitted to exhibit documents to be adduced in evidence as per the petitioner’s examination (affidavit) in chief.**
- 24. It appears from the order dated 29.10.2024 that the tribunal rightly rejected the petitioner’s prayer for marking some documents as stated in the affidavit as exhibits, as the said**

documents were not part of the pleadings and were thus not relevant for the adjudication of the dispute in accordance with law. **The tribunal rightly held that the petitioner's prayer was in respect of documents not relevant to the issues.**

- 25.** Thus the order dated 29.10.24 relating to the above prayer requires no interference by this Court.
- 26. WPA 3769 of 2025 stands disposed of.**
- 27.** All connected applications, if any, stand disposed of.
- 28.** Interim order, if any, stands vacated.
- 29.** 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.)