

IN THE HIGH COURT AT CALCUTTA

Constitutional Writ Jurisdiction

Appellate Side

Present:

The Hon'ble Justice Shampa Dutt (Paul)

WPA 5366 of 2025

Madhusudan Adhikary

Vs.

The State of West Bengal & Ors.

With

WPA 23265 of 2024

Sourav Chakraborty

Versus

The State of West Bengal & Ors.

For the Petitioner : Mr. Lakhsman Chandra Halder (in
WPA 5366 of 2025).
Md. Baharuzzaman (in WPA
23265 of 2024).

For the Respondent No.4 : Mr. Asish Kr. Das,
Mr. Sunny Nandi,
Md. Baharuzzaman (in WPA
5366 of 2025).

For the State : Mr. Asish Kumar Guha
Mr. Naren Ghosh Dastidar (in WPA
5366 of 2025).
Mr. K.J. Yusuf
Mr. Parikshit Goswami (in WPA
23265 of 2024).

Hearing concluded on : 22.07.2025

Judgment on : 06.08.2025

SHAMPA DUTT (PAUL), J. :

1. The writ application has been preferred challenging an award dated 16.02.2018 passed by the learned 8th Industrial Tribunal, West Bengal in Case No. VIII-03/2011 and order dated 16th April, 2024, passed by the First Labour Court in Computation Case No. 22 of 2021 under Section 33C (2) of the Industrial Dispute Act, 1947.
2. The petitioner's case is that he was appointed as Marketing Assistant by the respondent no.4 in the establishment of the respondent no.3, vide letter dated December 3, 2007 at its area of work in Kolkata, Hooghly, Howrah Birbhum, Nadia and 24 Parganas, both North and South. The petitioner "workman" joined his service on December 5, 2007.
3. The petitioner submits that his service was terminated vide letter dated 25.08.2009 giving effect from 23.08.2009 and in spite of the petitioner putting in demand to be permitted to join was not allowed to do so.
4. It is further submitted that number of conciliation meetings failed due to the conduct of the respondent no. 4/company and as such a reference was made by the Government for adjudication of the following issues:-

"1. Whether termination of service of Shri Madhusudan Adhikary with effect from 23.08.2009 by the management is justified?"

2. What relief, if any, the workman is entitled to?”

5. The Tribunal on considering the materials on record including the evidence, passed an award declaring the termination of service of the workman as illegal and unjustified and granted relief of reinstatement with 50% of back wages and other consequential benefits.
6. It is further submitted by the petitioners that when the private respondents failed to comply with the directions of the Learned Tribunal in spite of demand, the petitioner filed an application under Section 33C(2) of the Act, claiming back wages and other consequential benefits as per the award of the Learned Tribunal before the Learned 1st Labour Court, in Computation case no. Comp 15 of 2018 for the period from 25.08.2009 to June, 2018 i.e. from the date of termination till prior to the date of filing of the case.
7. It is submitted that the Labour Court erroneously held that the that the salary of the workman was Rs.3,000/- per month, without considering the fact that the management of the private respondent intentionally did not produce the books of account, to suppress the fact that the management actually paid Rs.9000/- as monthly salary at the time of termination. The Labour Court allowed part claim of the petitioner and thereby caused serious injustice to the petitioner.

8. During pendency of the proceeding as initiated subsequently, the management paid the amount as determined by the Learned Labour Court in earlier proceeding of Case No. Comp. 15 of 2018 and the petitioner had to receive the said amount recording strong objection.
9. The petitioner has challenged the order dated 09.02.2022 in Computation Case No. 15 of 2018 and order dated 16.04.2024 passed in Computation Case No. 22 of 2021.
10. The learned Judge, Labour Court, West Bengal in Computation Case No. 15 of 2018 under Section 33C(2) of the Industrial Dispute Act directed as follows:-

*“.....Considering evidences on record including Annexure-A and exhibited documents, the instant application U/S 33C(2) of the Industrial Disputes Act 1947 as filed by the applicant for realizing of monetary benefits from the opposite party/company herein succeeds on contest but only to the extent as scheduled below. Opposite parties are directed to make payment of the claim amounting to **Rs. 1,72,694.70 (Rupees one lakh seventy-two thousand six hundred ninety-four and paise seventy)** only to Sri Madhusudan Adhikary, applicant/workman, particulars of which have been set down in the schedule supplied herewith within (3) three months from the date of this order jointly and severally.*

**Sd/-
Judge
First Labour Court, Kolkata”**

11. The Learned Judge, First Labour Court in Computation Case No. 22 of 2021 held as follows:-

“RELIEVES

*In view of aforesaid discussions this Court holds that **Applicant** Sri Madhusudan Adhikary is entitled for following relieves only particulars of which has been set down in the schedule supplied herewith and shall be paid within (3) three months from the date of this order by O.P. No.-1 and 2. Their liability will be **jointly and severally**.*

1. O.P. No. 1 and 2 are directed to pay due wages of the workman from July 2018 to 31.06.2021 amounting to **Rs. 54,000.00 (Rupees fifty-four thousand) only.**

2. O.P. No. 1 and 2 are directed to pay **Bonus of Rs.12,000.00 (Rupees twelve thousand) only.**

3. Interest @ **10%** to be added on the aforesaid amount of Rs. **66,000.00 (Rupees sixty-six thousand) only** from the date of filing of this application till the date of actual payment.

Considering evidences on record including Annexure-A and exhibited documents, the instant application U/S 33C(2) of the Industrial Disputes Act 1947 as filed by the applicant for realizing of monetary benefits from the opposite party/company herein succeeds on contest but in part only to the extent as scheduled below.

**Sd/-
Judge
First Labour Court, Kolkata”**

12. Notes of submission has been filed by the petitioner stating that he used to get an annual increment @ 20%, but the **management used to pay Rs.3,000/- on voucher** and balance amount was shown in their books of account. The workman used to receive bonus of Rs.9,000/- which is one month salary.
13. The petitioner workman filed a case for Computation of back wages being Case No. Comp. 15 of 2018 and the Learned Labour Court passed an order **holding per month salary was Rs.3,000/-** and allowed part of the claim (Annexure "P-12"). The petitioner workman accepted the amount as determined by the Learned Labour Court under protest and thereafter another application was filed by the petitioner claiming benefits for the subsequent period being Case No. Comp. 22 of 2021.
14. The petitioner states that the learned Labour Court strictly confined itself U/s. 33C(2) to the benefit as granted in the award passed by the Learned Tribunal, which has caused prejudice to the petitioner.
15. It appears from the award passed by the tribunal that the applicant/petitioner ***“contended by the applicant that at the material time his salary stood at Rs. 3,000.00 per month. But the company only paid a sum of Rs. 2,000.00 through pay slip after deduction for a sum of Rs. 1000/- per month.***

The applicant made several demands to the company to refund the said deducted amount but all are in vain”.

16. The tribunal further observed as follows:-

“.....Be that as it may, it appears from Item No. 5 of the both Ext. 1 and Ext. A that he was offered Rs. 2200/- as monthly salary and accepting the said salary he joined the O.P. Company according to applicant his salary was incremented to Rs. 9000/- per month and that was his last drawn salary.

In his cross examination dated 04.07.2012 the applicant has specifically stated that "I shall not join service if the employer provides me salary @ Rs. 3000/-per month. I shall not join service if the company does not provide me salary @ Rs.9000/- along with other benefits mentioned in my deposition". He has further stated in his cross-examination that the basis of his legitimate demand of his salary @ Rs.9000/- per month along with other benefits and he received the documents namely a letter dated 01.12.2008 of the company addressed to him from the Labour Commissioner's Office during conciliation proceeding. But for the reason best known to the applicant he did not file the purported letter dated 01.12.2008 alleged to have been issued by the company. In fact no scrap of paper is forthcoming to show that his salary was incremented to Rs. 9000/- per month.

.....

*No evidence or any scrap of paper is forthcoming from the applicant to show that he used to draw a salary of Rs. 9000/-p.m. at the time of his termination. **It is seen from his appointment letter (Ext. 1) that he was offered Rs. 2,200/- as monthly salary which he accepted.***

.....the O.P. has admitted that the last drawn salary of the applicant was Rs. 3,000/- per month.....”

17. In Computation case no. 15 of 2018, the Labour Court held:-

*“.....From a concatenation of facts and events on record clubbed with exhibited documents, more particularly from the Award dated 16.02.2018, from page 1, it is evident that the applicant was appointed on 05.12.2007 by the opposite parties and from page 7 of the same Award, **it is evident that he joined the opposite party company with salary of Rs.2,200/- per month.** From cross examination of P.W.1- Madhusudan Adhikary dated 25.02.2022. It is evident that 20% increment was mentioned in the terms and condition of his service contract for every year. It was also stated in that terms and conditions of his service contract that he was entitled to get bonus at the rate of 8.33% per year. As such his salary ought to have been Rs.2,640/- on 05.12.2008 per month and on 05.12.2009 it ought to have been Rs.3,168/- only per month. But it was admission by the opposite party as revealed from page 4 of the Award dated 16.02.2018 that at the relevant time of termination of service of the workman in the month of August 2009, his salary was Rs. 3,000/- and also from the cross examination of O.P.W.-1 Mr. Sourav Chakraborty dated*

27.06.2022, it was evident that the opposite party used to pay Rs.3,000/- per month to the applicant/workman then. Consequently, in absence of any pay slip placed before this Court either by the applicant/workman or by the opposite party this Court holds that at the time of termination on 23.08.2009, **the salary of the applicant/workman was Rs.3,000/- per month.....”**

18. In Computation case no. 22 of 2021, the Labour Court held:-

*“.....From a concatenation of facts and events on record clubbed with exhibited documents, more particularly from the Award dated 16.02.2018 (Exhibit-E Collectively), **it is evident that the applicant was appointed on 05.12.2007 by the opposite party with salary of Rs. 2,200/- per month.***

Considering 20% increment his salary ought to have been Rs.2,640/- on 05.12.2008 per month and on 05.12.2009 it ought to have been Rs.3,168/- only per month. But it was admission by the opposite party as reveled from page 4 of the Award dated 16.02.2018 that at the relevant time of termination of service of the workman in the month of August 2009, his salary was Rs. 3.000/-and also from the cross examination of O.P.W.-1 Mr. Sourav Chakraborty dated 20.03.2024. It was evident that the opposite party used to pay Rs.3,000/- per month to the

*applicant/workman during the year 2009. Consequently, in absence of any pay slip/other document placed before this Court either by the applicant/workman or by the opposite party **this Court holds that at the time of termination on 23.08.2009, the salary of the applicant/workman was Rs.3,000/- per month.....***”

19. Considering, the materials on record, **it is admitted that on voucher, the petitioner used to receive Rs. 3000/- (three thousand only) per month.**
20. Thus, the findings of the tribunal and the Labour Courts in the two computation cases being in accordance with law require no interference.
21. **WPA 5366 of 2025 with WPA 23265 of 2024 stand dismissed.**
22. Pending applications, if any, stands disposed of.
23. Interim order, if any, stands vacated.
24. Urgent Photostat certified copy of this Judgment, if applied for, be given to the parties, upon usual undertakings.

[Shampa Dutt (Paul), J.]