

**IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Lanusungkum Jamir

And

The Hon'ble Justice Rai Chattopadhyay

FMA 564 of 2025

With

CAN 1 of 2025

Swarnakshar Prakasani Pvt Ltd

Vs.

State of West Bengal and Ors.

For the Appellant

: Mr. Ranjay De, Id. Sr. Adv

: Mr. S. Dutta

: Mr. R. Guha Thakurta

: Mr. A. A. Bose

: Mr. B. Banerjee

For the State

: Mr. Ushanath Banerjee

: Mr. Debapriya Chatterjee

For the respondent No. 3

: Mr. Soumya Majumder, Id. Sr. Adv.

: Ms. Sanjukta Dutta

: Mr. Kinnor Ghosh

Heard on

: 10/09/2025

Judgment on

: 27/10/2025

Rai Chattopadhyay, J. :-

1. A judgment and order of the Hon'ble Single Judge dated **February 20, 2025** in WPA No. 281 of 2025 is under challenge in the instant appeal.

2. The appellant/writ petitioner had challenged an order dated **January 30, 2023**, of the learned Presiding Officer at the 4th Industrial Tribunal, West Bengal, in Case No. VIII/95/2024, in the said writ petition.
3. The related preliminary issue was with regard to the point of maintainability of the dispute referred by the State, to the tribunal. The maintainability of the reference was challenged on the ground that the respondent No.3 herein, that is the private respondent is not a “*workman*” within the purview of the definition of “*workman*”, as envisaged in section 2(s) of the Industrial Disputes Act, 1947. According to the verdict of the Hon’ble Single Bench, the tribunal was right in finding that the company/appellant herein could not prove employment of the respondent No.3 in managerial, administrative or supervisory capacity; also, that the tribunal was proper and right in finding that considering the nature of job of the respondent No.3 herein, he must be considered to be a “*workman*”, within the purview of the statutory definition. The Hon’ble Single Bench has also upheld the decision of the tribunal regarding the respondent’s eligibility for grant of interim relief and as regards the quantum of interim relief. The other challenge is as to the effective date from which the relief is granted, whereas it is stated that the same ought not to have been granted from a date beyond the date of reference. Hence, the said

judgment and order of the Hon'ble Single Judge dated **February 20, 2025** in WPA No. 281 of 2025 is challenged in the instant appeal. Alongside, the appellant has also put forth its grievances as to the order of the tribunal dated **January 30, 2023**, as an illegal and unsustainable order.

4. Mr.De learned senior counsel has appeared in this case for the appellant/company. His first contention is that the conclusions arrived at by the Hon'ble Single Judge are non-est in the eye of law, being contrary to and inconsistent with the settled position of law, which govern the field as regards the concept of "*interim relief*" under section 15(2)(b) of the Industrial Disputes Act, 1947, allowable to a "*workman*" within the purview of section 2(s) of the said Act. So far as the point of maintainability of the dispute is concerned, that is whether the respondent No.3 was a "*workman*" or not in terms of the statutory definition, he has submitted that reference of a dispute by the State to the tribunal does not ipso-facto make a person a "*workman*", in terms of the definition of the same as provided in law. His further contention is that there would not be any automatic grant of "*interim relief*" to a person, upon reference of dispute, but the tribunal has to adjudicate his eligibility and entitlement as to the same, including that whether he is a "*workman*", in terms as envisaged under the law. He says that only the nature of job actually used to be done by the employee would

determine his status, that is, if he was a “*workman*” or not, in accordance with the law established and not on the basis of any other considerations. According to him, the tribunal as well as the Hon’ble Single Judge have made gross errors in this context, in so far as both have proceeded to mis- construe the evidence on record as to the nature of job actually used to be discharged by the respondent No.3, in the appellant company. He has stated that the fact transcendent from the entire documentary as well as oral evidence before the tribunal should meaningfully draw only one conclusion, that the respondent No.3 was discharging, independent, managerial and administrative nature of duty in the appellant company. His other submission is that the duty discharged by the private respondent in the appellant company was of managerial, administrative and supervisory nature, requiring his independent application of mind and imposition of decision making power, to execute the scheduled job in the company. Hence, thus he has negated that the respondent No.3 was a “*workman*” and buttressed his argument that the reference is not maintainable for this reason.

5. His further argument is that, the determination as to whether the employee was or not a “*workman*”, in terms and accordance with the definition as provided in the statute, at the stage of consideration of prayer of the employee under section 15(2)(b) of the Industrial

Disputes Act, 1947, is final and binding upon the parties in dispute, pursuant to judgment of the Full Bench of this Court in ***B.G.Sampat vs State of West Bengal, reported at 2001 (1) LLN 616***. That the same is a judgment in reversal of the earlier legal position, that the tribunal's findings as to whether the employee was a "*workman*" or not, at the stage of grant of interim relief on his prayer under section 15(2)(b) of the said Act, is only a tentative and interim nature of finding of fact, based on only prima facie consideration of materials and evidences available on record. He has pointed out that vide the judgment in ***B.G.Sampat (supra) (2001)***, the Full Bench of this Court has overruled the earlier Division Bench judgment of this Court, in ***Ganges Printing Ink. Factory Employees' Industrial Co-operative Society Limited & Others vs 7th Industrial Tribunal & Others reported at (1986) 2 CHN 243***. Thus, the proposition thereof was set at naught. With reference to the judgment of ***B.G.Sampat (supra) (2001)***, Mr.De has further submitted that the tribunal ought not have allowed the amount of interim relief, so adjudicated by the same, beyond the date of reference.

6. Mr. De learned senior counsel has further submitted that the respondent No.3 is not entitled to any interim relief, in terms of the statutory provision for the reason of his gainful earning, post termination. According to him, on this score too, the Hon'ble Single

Judge has erred to assess the order of the tribunal and has come to an erroneous and unsustainable finding.

7. With reference to the definition of “*workman*”, as provided in section 2(s) of the Industrial Disputes Act, 1947, Mr.De learned senior counsel has submitted that the onus of proof that his nature of duty was that of a “*workman*” and not in any managerial, administrative or supervisory capacity, rests upon the person himself. In this regard, according to the appellant, the Hon’ble Single Judge has committed error in the impugned judgment, by holding that the appellant was to prove the nature of duty of the private respondent and since it has failed to prove the same, the respondent should be considered as a “*workman*”, in accordance with law. In this respect, Mr.De has referred to a judgment of the Supreme Court in ***Lenin Kumar Roy vs Express Publications (Madurai) Limited, reported at 2024 SCC Online SC 2987*** and the following paragraph thereof.

“15. The law is well settled that the determinative factor for “workman” covered under section 2(s) of the I.D. Act, is the principal duties and functions performed by an employee in the establishment and not merely the designation of his post. Further, the onus of proving the nature of employment rests on the person claiming to be a “workman” within the definition of section 2(s) of the I.D. Act.”

8. Mr. De has further proceeded to refer to the host of documents and copies of deposition of the witnesses from the records elaborately, to show from there as to what nature of duty was being discharged by the respondent No.3, in the appellant company. He has stated that the respondent No.3 was discharging, independent managerial and administrative nature of duty in the appellant company. That, the Court in **Lenin Kumar Roy (supra)** has held in no uncertain terms that the onus lies on the person to prove, who claims to be a “*workman*”. According to the appellant, by holding otherwise as contrary to the law settled as above and to what has emerged from the documentary and oral evidence available before the tribunal, the said tribunal as well as the Hon’ble Single Judge have committed errors in law as well as in fact. According to the appellant, it is an error in the impugned judgment that the Court did not appreciate that the onus of proof lies on the person who claims himself to be a “*workman*” in accordance with law. With reference to a judgment of the Supreme Court in **Sonepat Co-operative Suger Mills Limited vs Ajit Singh reported at (2005) 3 SCC 232**, it has been submitted that in accordance with the verdict of the Court as above, while assessing the preliminary point of maintainability of the reference, by adjudicating if the concerned person shall or not be a “*workman*” as per the statutory definition, the Court takes into consideration the materials and evidence on record and tests the same on the anvil of

the “*inclusive part*” of the definition of “*workman*”, as enshrined in section 2(s) of the Act of 1947. That the status of a person cannot be determined based on the aspect, what he/she did not perform. With reference to the judgment of the Supreme Court in ***Bharti Airtel Limited vs A.S.Raghabendra reported at (2024) 6 SCC 418***, it has been submitted that according to the ratio thereof, absence of power and authority to appoint, dismiss or hold disciplinary enquiries would not be the sole criteria to determine the status of a person. Furthermore, according to the appellant, it is only an admission by the respondent/employee, that he was gainfully earning with a company namely, ‘Vinayak’. Mr. De has emphasised that admission is the best piece of evidence, as it has been held by the Supreme Court in ***Bharti Airtel Limited (supra)***. Hence, he says that the Court could not have ignored the admission by the respondent/workmen regarding his gainful earning, which fact actually disentitles him from any benefit under section 15(2)(b) of the said Act of 1947.

9. It has been submitted that in common parlance, it is only when a person aspires for prospect in professional carrier, he shifts to a job which is regarded as a better one from the earlier one. In case of the respondent/workman, his biodata in the appellant company clearly indicates that previously he was engaged with the other company in

managerial and administrative post. It is submitted that the Court has failed to appreciate that the said respondent would not have changed for a job which would not have been for his carrier advancement but only reduces him from a manager/administrator to a workman. The impugned judgment has also been termed as a perverse one, that allegedly having not considered the relevant materials on record.

10. Regarding the finding of the Court that the respondent No.3 would be eligible for grant of interim relief and its order directing payment of interim relief to him, the appellant has stated that the Court, while upholding the direction of the tribunal of grant of interim relief, did not take into account the aspect of gainful earning of the private respondent, by wrongfully ignoring the relevant materials and evidence in that respect, available on record before it. That, the Court has erred in considering that, even if an objection as to the claim of his gainful earning has been raised by the respondent, the same stood contrary to the documents submitted by the appellant/company in support of its claim as above. According to the appellant, the respondent No.3 has admitted his gainful earning and that would disentitle him from the protection and benefit under section 15(2)(b) of the Industrial Disputes Act, 1947. In support, Mr.De has referred to the judgment of the Supreme Court in **North-**

East Karnataka Road Transport Corporation vs M. Nagangouda reported at (2007) 10 SCC 765, in which the Supreme Court holds that gainful employment includes gainful earnings. The appellant has prayed for setting aside of the judgment of the Hon'ble Single Judge dated February 20, 2025 in WPA No. 281 of 2025 and the order of the tribunal dated January 30, 2023, in Case No.VIII/95/2024 and for an appropriate order to be passed by this Court.

11. Mr. Majumder, learned senior counsel, while representing the respondent No.3, has raised strong objections as to the contentions and prayer of the appellant, principally for the reason that the entire argument of the appellant is as if the instant appeal lies against a final determination of dispute and an Award of the tribunal. Whereas, he says, the present appeal lies challenging an order of the Hon'ble Single Judge, determining therein the legality and propriety of an order of "*interim relief*" granted by the tribunal, in terms of the statutory provision. According to Mr. Majumder, learned senior counsel, the very perspective, parameters and legal standards to look into the legality and propriety of an order of "*interim relief*", should be different from that of a final Award of the tribunal, determining the lis pending before it.

- 12.** Mr. Majumder has addressed the reference, made by the competent authority before the tribunal for adjudication, from a different angle altogether, than it has been done by Mr.De. Mr.Majumder submits that the reference denotes a rebuttable presumption of what has been referred to for adjudication. He says that when the reference is *“Whether the termination of service of Sri Dulal Chatterjee w.e.f. 15th July, 2013 by the management of M/s Swarnakkar Prakashani Pvt. Ltd. justified?”*— as it is in the instant case, it is a presumption of fact that the respondent is governed and covered within the purview of the Act of 1947 and he has been unjustifiedly terminated by the instant appellant. He submits further that therefore such presumption becomes rebuttable only at the instance of the appellant, who challenges or disputes such reference. According to Mr. Majumder, the onus of rebuttal of the presumption attached with the order of reference, is upon the present appellant, who actually disputes the said reference. In support of this and also the proposition that purpose of section 15(2)(b) of the Industrial Disputes Act, 1947 is to protect interest of workman when fighting a case, Mr. Majumder has placed strong reliance on the judgment of a Division Bench of this Court in ***Ganges Printing Ink. Factory Employees’ Industrial Co-operative Society Limited & Others vs The 7th Industrial Tribunal & Others reported at (1986) 2 CHN 243.***

- 13.** Mr. Majumder has submitted that at the stage of consideration for grant of “*interim relief*” by the tribunal, the findings of the tribunal are only tentative and interim in nature, including that regarding the preliminary point whether or not the concerned person falls within the four corners of the definition of “*workman*”, as provided in the statute. He says that benefit under the provision of section 15(2)(b) of the Act of 1947 is to provide a means for sustenance to the workman who is rather a squirt in comparison to his mighty employer. Therefore, in terms of the dictum of the statute, the tribunal can form a prime facie opinion, and decision that it may proceed for adjudication of the dispute referred to before it. For the said purpose, the tribunal can form a decision based on its prima facie perception with regard to all the related and incidental materials on record, including that with regard to the point of maintainability of the dispute as to whether the concerned person is a “*workman*” as per law or not. He says that at this stage, all the decision of the tribunal as above would be of tentative nature and not final. Therefore, the tribunal would be empowered to dwell on and consider as regards the entire aspects in a dispute referred to it, including the point, whether the concerned person was or not a “*workman*” as per law, at the stage of final hearing of the dispute referred. According to Mr Majumder, therefore, there may not be any interference by the Court at this interim stage of the proceeding, as the findings of the tribunal are not

final as yet. He elaborates that at this stage the same tests, as applicable in case of consideration of an injunction application, would apply and findings as regards a proximate co-relation with the prayer of the workman and a plausible case being made out by him, should suffice for the tribunal to grant “*interim relief*” to him. That, it all depends on a prima facie finding of the tribunal and not that to the hilt with regard to the issues, Mr.Majumder has stated. He has mentioned in this regard, the judgment of the Full Bench of this Court in ***B.G.Sampat’s case (supra) (2001)***, to fortify the proposition of law argued by him, that a strong prima facie case on merit requiring the reference to go for trial, would be sufficient at the stage of “*interim relief*” and proof of facts to the hilt would not be a condition imperative for the tribunal to grant interim relief.

14. It has further been submitted that presumption of facts, including that with regard to the jurisdictional issue and point on maintainability as to whether the person is a “*workman*” or not, is rebuttable at the stage of final determination of the reference, on evidence. Mr. Majumder has also referred to a judgment of a Single Bench of this Court with regard to the proposition that the interim relief and the main reference can never be decided together, that is in ***Vishan Roy vs Bayer (India) Limited reported at 1993 (2) CHN 383***.

- 15.** With reference to the evidence on record Mr.Majumder has submitted that the basis on which the appellant becomes convinced about independent earnings of the respondent/workman after his termination, as claimed, has in fact not come on record as a credible and acceptable fact proved and brought on record. He says that the appellant desires to rely on a report of a private investigator in this regard though the said investigator has not been brought for examination or being cross-examined by the respondent. That, in such an eventuality, his report, which is not formally proved before the tribunal, does not bear any credence or evidentiary value at all. According to the respondent, that could not have been relied on and that the tribunal has not erred in refusing giving any credence to the same. Similarly, it has been further submitted that the contents of resume is not relevant in any manner whatsoever and the submissions based on the same is only due to conjecture and guess works by the appellant.
- 16.** For all these reasons Mr. Majumder, for the respondent No.3, has submitted that the appeal is liable to be dismissed and has insisted for an order accordingly.

- 17.** The Full Bench of this Court in ***B.G.Sampat's case (supra) (2001)***, was adjudicating a reference. Pursuant to the Industrial Dispute raised by the terminated employees, the competent authority made references before the tribunal. In the said references, prayers were made for grant of interim relief in terms of section 15(2)(b) of the Industrial Disputes Act, 1947. Such prayer was allowed in some cases like in ***Webel Nico Electronics Limited vs Smt Anima Roy & Others [1997 1 LLN 866]*** and ***CESC Limited vs State of West Bengal & Others*** . However, similar prayer was refused in ***B.G.Sampat (Babulal Gordhandas Sampat) vs Sate of West Bengal [1999 3 LLN 160]***. Hence, the reference was made before the Full Bench.
- 18.** Almost all the disputed questions of law as raised in the instant appeal, can found answer in the ratio decided by the Full Bench in ***B.G. Sampat's case (supra) (2001)***. The Court has held that power to grant an interim relief as incidental or ancillary to the main power of the industrial tribunal in terms of Section 10 (4) of the Industrial Disputes Act, 1947 cannot be disputed. The Court considered whether such an order should be passed only mechanically. The Court has answered to the said question in negative. The Court finds that the word “determine” in the proviso to Section 15 (2) (b) of the Act of 1947 means “authoritatively determine”. It has stated that a

statutory tribunal exercising judicial functions has to determine the dispute between the parties authoritatively in as much as, such an order would be final and binding on the parties. The Court has held further that the very fact that Section 15 (2) (b) has been added after Section 15 (1) of the said Act, which inter alia provides for passing of an Award and also goes to show that the relief granted in favour of the workman, if any, although interim in nature, is final and binding on the parties. Further, the Court has held that once an interim relief is prayed for, the tribunal has to apply its mind to relevant facts including staleness of the dispute and whether in a fact situation a workman is entitled to any interim relief or not and as regards existence of a prima facie case that the workman would be entitled to the reliefs when a final Award is passed. That, the appropriate Government itself considers the dispute before making an order of reference, would not constitute a prima facie case for the purposes of Section 15(2)(b) of the Act of 1947 in favour of the workman. The Court has also held that, prima facie case does not mean a case proved to the hilt but a case which can be said to be established if the evidence which is laid in support of the same were believable for determining the same. According to the Court, criteria is not whether it is the only conclusion that could be arrived at on that evidence, but whether it was possible to arrive at the conclusion in question. The Court has held that “prima facie” means “at the first sight or on the

first appearance or on the face of it, or so far as it can be judged from the first disclosure”. The Court has further held that in coming to a prima facie conclusion, the authority may, depending on the facts and circumstances of the case, examine the evidence or take evidence as to the validity of the domestic enquiry. But the scope, nature and extent of enquiry being limited, the determination is not final adjudication on any issue (as per paragraph 21 of the said judgment).

19. A question has cropped up from the respective arguments of the learned senior counsels representing the respective parties, that whether determination of the status of the employee as a part of preliminary issue, at the stage of consideration of an application under section 15(2)(b) of the Act filed by him, is final and binding or not. Answer to the said question can be found from Paragraph 23 of the Full Bench’s judgment (2001). The Court has held that the words “*interim relief*” has been used in Section 15(2)(b) of the said Act, is a pointer to the fact, that the same has not been done in the same terms as that of an “*interlocutory order*”. Relief has to be granted by way of interim measure. Such a relief when granted becomes final and thus the question of any refund thereof does not arise.

20. Therefore, this Court is of a firm view that the Hon'ble Full Bench has deliberately distinguished the legislators' intent in employing the term

mean a case proved to the hilt but a case which can be said to be established if the evidence which is led in support of the same were believed. While determining whether a prima facie case had been made out the relevant consideration is whether on the evidence led it was possible to arrive at the conclusion in question and not whether that was the only conclusion which could be arrived at on that evidence. It may be that the Tribunal considering this question may itself have arrived at a different conclusion. It has, however, not to substitute its own judgment for the judgment in question. It has only got to consider whether the view taken is a possible view on the evidence on the record. [See Buckingham and Carnatic Company, Ltd. v. The Workers of the Company [1952 Lab. A.C.490 (P.)].

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21. In the General Electric Company of India, Ltd. v. Fifth Industrial Tribunal, West Bengal and others, reported in 1988 (1) L.L.N. 421, it is stated, in Paras. 24 and 42, at pages 430 and 438:

*"24. The expression 'prima facie' means at the first sight or on the first appearance or on the face of it, or so far as it can be judged from the first disclosure. Prima facie case means that the evidence brought on record would reasonably allow the conclusion that the plaintiff seeks. The prima facie case would mean that a case which has proceeded upon sufficient proof to that stage where it would support finding if evidence to the contrary is disregarded. (See The Black's Law Dictionary, 5th Ed.). ***

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22. The Hon'ble Full Bench, in the said judgment (supra)(2001), has also considered as to whether the amount granted under section 15(2)(b) of the said Act, can be directed to be refunded or not. Relevant paragraphs may be quoted as herein bellow:

"24. The proviso appended to Section 15(2)(b) must in this context be taken into, consideration.

25. In S. Sundaram Pillai v. V.R. Pattabiraman, reported in AIR 1985 SC 582, it has been held that proviso may serve four different purposes namely :--

"To sum up, a proviso may serve four different purposes:

(1) qualifying or excepting certain provisions from the main enactment:

(2) it may entirely change the very concept of the intendment of the enactment by insisting on certain mandatory conditions to be fulfilled in order to make the enactment workable;

(3) it may be so embedded in the Act itself as to become an integral part of the enactment and thus acquire the tenor and colour of the substantive enactment itself; and (4) it may be used merely to act as an optional addenda to the enactment with the sole object of explaining the real intendment of the statutory provision."

26. It is now a well settled principle of law that while interpreting a provision of statute, the same has to be read in its entirety and not in isolation.

27. A reference can be made in respect of various disputes. The dispute may be in relation to a scale of pay or Dearness Allowance. As regard demand of enhanced D.A. and/or for an enhanced scale of pay even the appropriate Government grants interim relief. Such interim reliefs granted are not refundable.

28. The intention of the Legislature is further clear from the fact that in terms of the proviso appended to Section 15(2)(b) interim relief in certain categories of cases would be equivalent to the subsistence allowance as may be admissible under the West Bengal Payment of Subsistence Allowance Act, 1969. The provisions of the said Act have been incorporated by reference with regard to the quantum of allowance only but the said provision leads to a conclusion that in a case where an interim relief is granted, no direction can be issued to refund thereof as subsistence allowance can never be directed to be refunded. _The reason why a subsistence allowance is granted has succinctly been stated by the Apex Court in Capt. M. Paul Anthony v. Bharat Gold Mines Ltd., (1999-I-LLJ-1094) (SC) in the following terms at P-1102 :

"The provision for payment of subsistence allowance made in the service rules only ensures non-violation of the right to life of the employee. That was the reason why this Court in State of Maharashtra v. Chandrabhan Tale, (1983-II-LLJ-256) (SC) struck down a service rule which provided for payment of a nominal amount of rupee one as subsistence allowance to an employee placed under suspension. This decision was followed in Fakirbhai

Fulabhai Solanki v. Presiding Officer (1986-II-LLJ-124) (SC), and it was held in that case that if an employee could not attend the departmental proceedings on account of financial stringencies caused by non payment of subsistence allowance, and thereby could not undertake a journey away from his home to attend the departmental proceedings, the order of punishment, including the whole proceedings would stand vitiated. For this purpose, reliance was also placed on an earlier decision in Ghanshyam Das Shrivastava v. State of M.P. (1973-I-LLJ-414)."

29. The provisions of the West Bengal Payment of Subsistence Allowance Act, 1969, inter alia, prohibits such grant of subsistence allowance in the event the workman was gainfully employed. For the purpose of computation of the quantum of interim relief even the said factor will be relevant.

30. It therefore, cannot be said as was sought to be argued by the learned counsel appearing on behalf of the workmen that the proviso to Section 15(2)(b) is a substantial provision and has to be read independent of the main provision.

31. In this context, the provision of Section 17-B of the Act must also be taken note of. Both Sections 15(2)(b) and 17-B are beneficent in nature. Such a provisions must, therefore, be construed liberally.

32. In Dena Bank v. Kirtikumar T. Patel, (1998-I-LLJ-1) the Apex Court held:

"The object underlying the provision is to relieve to a certain extent the hardship that is caused to the workman due to delay in the implementation of the award. The payment which is required to be made by the employer to the workman is in the nature of subsistence allowance which would not be refundable or recoverable from the workman even if the award is set aside by the High Court or this Court. Since the payment is of such a character, Parliament thought it proper to limit it to the extent of the wages which were drawn by the workman when he was in service and when his services were terminated and therefore, used the words "full wages last drawn." To read these words to mean wages which would have been drawn by the workman if he had continued in service if the order terminating his service had not been passed since it has been set aside by the award of the Labour Court or the Industrial Tribunal, would result in so enlarging the benefit as to comprehend the relief that has been granted under the award that is under challenge. Since the amount is not refundable or recoverable in the event of the award being set aside, it would result in the employer being

required to give effect to the award during the pendency of the proceedings challenging the award before the High Court or the Supreme Court without his being able to recover the said amount in the event of the award being set aside. We are unable to construe the provisions contained in Section 17-B to cast such a burden on the employer. In our opinion, therefore, the words 'full wages last drawn' must be given their plain and material meaning and they cannot be given the extended meaning as given by the Karnataka High Court in Visveswaraya Iron and Steel Ltd., (1994-I-LLJ-555) (Kant-DB), or the Bombay High Court in Carona Sahu Co. Ltd. (1997-II-LLJ-1233)(Bom).

33. Request for subsistence allowance during pendency of a departmental proceeding is also made with a view to achieve the said purpose. However, there cannot be any doubt that while passing a final award under Section 15 of the Act, the Court may direct adjustment as an interim relief is in aid of the final relief which may be granted by the Court."

- 23.** Therefore, pursuant to the said judgment of the Hon'ble Full Bench, there cannot be any confusion as regards the standard of proof applicable at the time of adjudication of the prayer of the employee under section 15(20(b) of the Industrial Disputes Act, 1947 in an industrial dispute referred to before the tribunal. That is of existence of a strong prima-facie case as per available materials and evidences, including with regard to a preliminary point of objection, like whether the person concerned is a "workman" or not in terms of the statutory definition. Of course, the law settled by the Hon'ble Full Bench in **B. G. Sampat's case (supra) (2001)**, is that a reference does not imply consideration of the dispute by the competent authority on merits and would not automatically trigger grant of "interim relief" by the tribunal, rather for that the tribunal has to adjudicate by taking into

consideration the evidence and other material available on record. However, the standard of proof of a person's eligibility as to the said statutory right at this stage, is eternally about existence of a strong prima-facie case.

24. The Court is therefore, concerned with the questions that whether “*workman*” status under section 2(s) of the Industrial Disputes Act, 1947 is to be considered as a final determination thereof, in the context of section 15(2)(b) proceedings, as per law; also, that whether the materials, documents and evidence so far, in this case, should be construed to have made out a strong prima facie case for grant of interim relief to the respondent No.3, in accordance with law. Let it also be mentioned that in that event, there shall not be any reason for this appeal Court to interfere into the impugned order passed by the Hon’ble Single Judge or the order of the tribunal granting interim relief.

25. Section 15(2)(b) of the Industrial Disputes Act, 1947, mandates that upon hearing the parties, the tribunal must determine the quantum of interim relief admissible, within 60 days from the date of reference. Importantly, the section as above explicitly states that the relief relates to “the quantum of interim relief admissible” and involves “hearing the parties” without requiring a full-fledged adjudication of the main dispute. In this regard the Court finds it proper to mention the

judgment in ***B.G.Sampat (supra) (2001)*** and ***Ganges Printing (supra)***. There, it has been clarified that the tribunal's inquiry during the interim relief stage is limited to whether the applicant has a prima facie case on merit including any question as to his status as a "*workman*", for the purpose of the interim relief, which is an order final in nature and not an interlocutory one. This examination process has been distinguished from the final adjudication of the main dispute. The Court observed that the tribunal's order for interim relief was not to determine the entire dispute but to provide temporary support and of the question of the applicant's status as a "*workman*" was only to be examined to the extent necessary for granting interim relief.

- 26.** The primary purpose of section 15(2)(b) of the Industrial Disputes Act, 1947, is to provide interim relief, not to decide the main dispute. It has consistently been held by the Courts that the issue of the applicant's status as a "*workman*" at this stage is meant to be a preliminary, provisional determination. The scope of the tribunal's enquiry during the consideration of an interim relief application is limited to whether there is a prima facie case, and whether the applicant qualifies as a "*workman*", for the purpose of interim relief, without delving into a final adjudication. The dispute regarding the applicant's status is not finally decided at this stage but is only a threshold consideration to determine eligibility for interim relief. Preliminary and threshold enquiry can't be

conflated with final determination or otherwise it would amount to overstepping of the due process of law. The legal position settled as on date is that the tribunal's findings at this stage are only tentative and a provisional, based on strong prima facie materials only, for the limited purpose of grant of interim relief for sustenance to the person concerned. Once adjudicated and granted, the order of interim relief assumes a characteristic to be final and binding. All other disputed questions of law and fact though remain open for final determination by the tribunal, on a full-fledged trial on evidence. At the interim relief stage, the focus is on establishing a strong prima facie case regarding the workman's status rather than conclusively determining whether the employee qualifies as a "*workman*" under the Act of 1947.

- 27.** The distinction is clear and unambiguous. The final determination of "*workman*" status involves a detailed factual and legal enquiry, including examining the nature of duties, control over subordinates, employment conditions, et cetera – elements that are typically established during the main trial or adjudication. The order under section 15(2)(b) is meant to prevent hardship during the pendency of the dispute and does not constitute a conclusive finding of the status of the person.

28. It is further to note if on the basis of the available materials, the tribunal has come to finding of existence of a strong prima facie case, before allowing the “interim relief” to the respondent No.3 vide its order dated **January 30, 2023**, and the Hon’ble Single Judge is justified in upholding the same. The tribunal rejected the company’s contention that the person concerned was supervisory/managerial; it has found no evidence showing powers conferred to the person, like granting leave, initiating disciplinary proceedings, or appointing others, and no subordinate staff under him. The tribunal has found that determination of “*workman*” turns on the nature of duties and functions, not the job title or salary. Hence, “*interim relief*” was ordered by it, with effect from the date of his termination. Prima facie case in favour of the workman was found, given the lack of any domestic enquiry, charge sheet, or show-cause notice, and the termination based on an in-house inquiry with no opportunity for hearing. The Hon’ble Single Judge has held with reference to the guidelines of Supreme Court that the test for “*workman*” focuses on actual duties and functions rather than title; designation is not dispositive. That the onus of proving the nature of employment rests on the person claiming to be a workman; that the discussions held by the Court also reinforces that the law aims to balance employer interests with worker welfare during disputes. Therefore, the Court declined to interfere with the tribunal’s order,

emphasizing the protective, remedial nature of interim relief, in the said writ petition.

- 29.** Keeping in mind the settled legal principles as discussed above, this Court does not find any reason to interfere with the judgment as impugned in this appeal as well as the order of the tribunal, as those are found to be at-tandem with the settled principles of law. Mr. De, learned senior counsel has very meticulously argued about the intricacies of the principles of law of evidence, which according to him have not been followed, in the case by the said fact finding authority. It is practically needless to mention that none of the issues in the case are closed as yet since trial is yet to be commenced and those are yet to be tested in trial, for the final determination thereof, to be culminated in an Award. Therefore, at the stage of grant of “interim relief” and particularly taking into the account the beneficial purpose of the said statutory provision envisaged by the Constitutional Courts time and again, this Court sees no reason to interfere with such factual findings of the tribunal upheld by the Hon’ble Single Judge, on the basis of the strong prima facie case been made out. The principles of law as envisaged by the Supreme Court in ***Arun Kumar and Others vs Union of India and Others (2007) 1 SCC 732*** (mentioned on behalf of the appellant) is a settled law. One can see prima facie finding as regards the same, in the order of the tribunal and that of the Single Judge as

well. Similar can be said about the principles as enunciated by this Court in ***Webel Nicco Electronics Limited vs Smt. Anima Roy [1997 (1) LLN 866***, referred to by the appellant], that there can be no automatic application of the provision under section 15(2)(b) of the Act. Having come to a finding regarding existence of a prima facie case, the two earlier orders of the tribunal and the Court respectively, have not mutinied with the said well settled principles of law. A plausible view of the Hon'ble Single Judge is not subject to reversal in this intra Court appeal, only to substitute any other view instead of that [***per Airport Authority of India vs Pradip Kumar Banerjee (2025) 4 SCC 111; B.Venkatamuni vs C.J.Ayodhya Ram Singh (2006) 13 SCC 449***, as referred to by the respondent No.3].

- 30.** However, before dismissing the appeal, this Court wants to mention that grant of “*interim relief*” with effect from the date of termination of service of the workman, is a direction, not commensurate with the law settled in this regard. As discussed earlier, the Full Bench of this Court has held and that is the law in vogue as on date, that the “*interim relief*” should be affected from the date of reference and not beyond. Therefore, to that extent both the order of the tribunal and the judgment of the Hon'ble Single Judge as above are erroneous and subject to necessary modification.

31. Hence, the instant appeal is therefore allowed to the limited extent that the effective date for grant of “*interim relief*” should be with effect from the date of reference of dispute by the competent authority before the tribunal; the directions of the tribunal as well as the Hon’ble Single Judge that the “*interim relief*” should be granted from the date of termination of employment of the respondent No.3, is therefore set aside. Rest of the order/judgment remain as it is, without any interference by this Court.

32. F.M.A. No. 564 of 2025 is disposed of with the directions as above.

33. Urgent certified copy of this judgment, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(Lanusungkum Jamir, J.)

(Rai Chattopadhyay, J.)