

W.P.A. 6182 of 2016

Board of Trustees for the Port of Kolkata
Vs.
Union of India & Ors.

Mr. Alok Kr. Banerjee
Mr. Ashok Kr. Jena ... for the petitioner

1. Learned advocate appearing for the petitioner is present.
2. None appears on behalf of the respondents.
3. At the outset Mr. Jena, learned advocate appearing on behalf of the petitioner draws the attention of this Court to the order dated 21.2.2025. It is submitted by him that as of now he has got no instruction as to whether any Vakalatnama has been filed by respondent no. 4 or not. He further submits that he has also not received any copy of the affidavit-in-opposition.
4. From the report dated 20.3.2025 as submitted by Assistant Registrar (Mandamus-II) it reveals that on behalf of respondent no. 4 neither any Vakalatnama nor any affidavit-in-opposition has been filed.
5. In view of such, this Court proposes to take up hearing of the instant writ petition in absence of the respondents.
6. In course of his submission, Mr. Jena, learned advocate appearing on behalf of the writ petitioner at the very outset draws attention of this Court to page no. 35 being a copy of the letter dated 27.11.2014 as written by the Assistant Labour Commissioner (Central) Kolkata, addressed to the Secretary, Ministry of Labour & Employment, Government of India. It is

submitted by Mr. Jena that from the said letters dated 27.11.2014 and 25.3.2015 it would reveal that workmen of the respondent no. 4 federation were the employees of respondent no. 5 through their contractor, respondent no. 7 and under the cover of the said two letters a purported case has been made out to the effect that the said employers were denying payment to the employees of the respondent no. 7 through respondent no. 5.

7. Drawing the attention to Section 2(k) of the Industrial Disputes Act, 1947 (hereinafter referred to as the said Act in short), it is submitted before this Court that since there exists no relationship of employer and employee between the writ petitioner and the workmen of the respondent no. 4 federation the reference under Section 10 of the said Act of 1947 is patently illegal and the same may be set aside.
8. On careful scrutiny of the aforementioned two letters dated 27.11.2014 and 25.3.2015 it appears to this Court that the employees under respondent no. 4 federation worked under the management of respondent no. 7 through its contractor respondent no. 5. The allegation of unfair labour practice and denying payment are leveled against the respondent nos. 5 & 7. It further reveals that the said two private respondents obtained services of 354 number of contract labours of respondent no. 4 federation in respect of loading of dry ash at the T.T. Shed which belongs to writ petitioner.
9. It thus, appears to this Court that by no stretch of imagination it can be held that there exists any relationship of employer and employee between the writ petitioner and the contract labourers

of the respondent no. 4 federation within the meaning of Section 2(k) of the said Act of 1947. For the reasons stated hereinabove, this Court, thus, finds that in absence of any relationship between the writ petitioner and the workmen of the respondent no. 4 federation as employer-employees, no reference can be made under Section 10 of the said Act of 1947.

10. The writ petition thus succeeds.

11. Consequently the order of reference dated 05.3.2025 is hereby quashed and set aside.

12. Consequently the reference case no. 13 of 2015 as initiated by Central Government, Industrial Tribunal, Kolkata is / are also quashed and set aside.

13. The instant writ petition, is thus, disposed of in the light of the observations made hereinabove.

14. There shall be no order as to costs.

(Partha Sarathi Sen, J.)