

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
APPELLATE SIDE

Present:

The Hon'ble Justice Shampa Dutt (Paul)

WPA 13542 of 2025

CESC Sramik Karmachari Union & Ors.

Vs.

State of West Bengal & Anr.

With

WPA 19086 of 2025

Federal Chatkal Mazdoor Union & Anr.

Vs.

The State of West Bengal & Anr.

For the Petitioners : Mr. Soumya Majumdar, Sr. Adv.,
(in WPA 13542 of 2025) Ms. Sanjukta Dutta.

For the Petitioners : Mr. Purbayan Chakraborty,
(in WPA 19086 of 2025) Mr. Deeptangshu Kar.

For the State : Mr. Ushanath Banerjee, Sr. Adv.,
Mr. Biswabrata Basu Mallick, AGP,
Ms. Parna Roy Choudhury,
Mr. Debangshu Dinda.

Judgment reserved on : 19.09.2025

Judgment delivered on : 04.11.2025

Shampa Dutt (Paul), J.:

1. The writ application has been preferred challenging the notice dated 08.04.2025 and the communication dated 07.05.2025 and 29.05.2025 issued by the Registrar of Trade Unions, West Bengal.
2. The petitioners' case is that the petitioner no.1 is a trade union registered under the Trade Unions Act, 1926. The petitioner nos. 2 and 3 are elected Office-bearers of the petitioner trade union and are citizens of India. The petitioner no.2 is a serving employee of CESC Ltd. and the petitioner no.3 is a retired employee of CESC Ltd.
3. On the basis of an order passed by this Hon'ble Court on 28.2.2024 in W.P.A. 4810 of 2024 (Calcutta Electric Supply Workmen's Union & Anr. -vs- State of West Bengal & Ors.) the petitioner trade union was recognized as a sole bargaining agent by the Registrar of Trade Unions through a Certificate dated 1.3.2024.
4. The union has its Executive Committee to administer all affairs of the union subject to the control of the General Body of members.
5. The petitioners' further state that petitioner union has been functioning for a period of about thirty two years and historically and by practice, some of its Office-bearers have been retired employees of CESC Ltd. by reason of expression of the democratic will of the members. The petitioner union presently has a strength of 3905 members. The membership strength and the office-bearers elected has always been in accordance with the provisions of the Trade Unions Act, 1926. The election of office-bearers has been duly

made in accordance with the provisions of the Rules and Regulations of the trade union, and as per law.

- 6.** On 8th April, 2025, the respondent no.2 issued a notice observing that a person shall cease to remain in the post of or be disqualified for being elected or nominated as or for being, where the registered trade union belongs to organized sector, a Secretary or a Treasurer of the Executive Committee, or the post of the Chief Executive Officer or the Chief Financial Officer by whatever name called, if he is not in employment. The said notice was not widely circulated and is evidently an inter-departmental notice.
- 7.** The petitioners caused an inquiry to be made in relation to the purported allegations made in the so-called representation and it came to revelation that many of the signatures contained in the purported representation had been forged. Accordingly, many employees complained to the Officer-in-Charge of Hare Street Police Station through letter dated 20.5.2025. The said letter was signed by 54 employees contending that their signatures had been forged.
- 8.** On 22.5.2025, the petitioners also intimated the respondent no.2 about the falsity of the purported complaint which had caused the respondent no.2 to call for an Action Taken Report from the union.
- 9.** On 2.6.2025, the petitioners received a communication dated 29.5.2025 from the Registrar of Trade Unions seeking to negate the criminal propensity in the act of making complaint.

- 10.** That till today no other trade union under the jurisdiction of the respondent no. 2 has received a similar notice seeking to enforce the notice dated 08.04.2025.

11. Hence the writ applications on the ground:-

That the respondent no. 2, the Registrar of Trade Union has no jurisdiction to issue the notice dated 08.04.2025 as he has no authority to alter with any provision of Section 6 and Section 22 of the Trade Unions Act, 1926.

- 12.** The petitioners in their written notes have stated that they have thus challenged the notice dated 8th April, 2025 issued by the Registrar of Trade Unions, which erroneously refers to Section 22(2) of the Trade Unions Act, 1926 and commands a Secretary or a Treasurer of the Executive Committee or the post of the Chief Executive Officer or the Chief Financial Officer of a trade union to be elected from in-service employees only.
- 13.** Further challenge is to the notice dated 7th May, 2025 by which Action Taken Report was called for by the Registrar of Trade Unions on the basis of the purported complaint made by the purported signatories of the complaint letter.
- 14.** Even after the union having pointed out that such complaint letter was concocted and suffered from misrepresentation or fraud, for which complaint with the police authorities had already been lodged, the Registrar had proceeded to seek rectification of the trade

union's occupation of position of an office bearer, by his order dated 29th June, 2025.

15. It is further stated by the petitioners that the interplay of Section 6(e) and Section 22 of the Trade Unions Act, 1926 is required to be considered.
16. Section 6 provides for the Rules of a trade union. The said section makes provisions to be contained in the Rules of a trade union for the purpose of registration of a trade union. Therefore, section 6 operates in a field prior to registration of a trade union while section 6(e) provides for a Rule to be contained with regard to admission of ordinary members and office bearers required under Section 22 to form the executive of the trade union.
17. The petitioners also submit that Section 22(2) restricts the number of non employed office bearers to be one-third of the total number of office bearers or five, whichever is less.

However, "Explanation" to Section 22(2) specifically explains that a retired or retrenched employee shall not be construed as an outsider for the purpose of holding an office in a trade union.

Thus a retired employee will be reckoned as an engaged or employed person/employee of the establishment for the purpose of finding out the ceiling of outsider office bearer.

It is thus stated that the said legislative intent is possibly backed up by reasoning that **an employee having experience of the industry is well acquainted with its operational activities** and therefore capable of holding the position of an office bearer.

The meaning of "Explanation" to a section has been considered by the Hon'ble Supreme Court.

18. The petitioners further state that the most important and fundamental question raised by the petitioners in this case is whether the Government of West Bengal in discharge of its executive function can encroach upon the legislative field of Section 22(2) of T. U. Act, 1926, and interfere with the democratic will of the members of a trade union who may be electing a retired employee in a post as mentioned in the impugned notice dated 8th April, 2025.
19. Mr. Majumder learned senior counsel for the petitioners, argues that law is well settled that an executive function can only supplement the law, but cannot supplant it. Executive function is the residuary of judicial and legislative function. If there is a field legislatively occupied, then the executive cannot transgress into such occupied field of legislative provision.
20. The petitioners have relied upon the following judgments:-
 - i. ***Dipak Chandra Ruhidas v. Chandan Kumar Sarkar, (2003) 7 SCC 66.***
 - ii. ***State Bank of India Staff Association & Anr. v. State Bank of India & Ors., (1996) 4 SCC 378.***
 - iii. ***UCO Bank vs All India UCO Bank Officers Federation and Ors., 2022 SCC OnLine Cal 4174, (Para 6, 19, 22, 23, 24).***
 - iv. ***Rai Sahib Ram Jawaya Kapur & Ors. v State of Punjab, 1955 SCC OnLine SC 14.***

***v. P.H. Paul Manoj Pandian v. P. Veldurai, (2011) 5
SCC 214.***

- 21.** The petitioners in **WPA 13542 of 2025** have annexed a document showing the number of office bearers of the petitioner no. 1 therein for the **year, 2024.**
- 22.** **It is stated that out of 51 executives, 7 are retired employees and one is an outsider.**
- 23.** In **WPA 19086 of 2025**, the petitioners have annexed at page 13, the list of office bearers as on 2nd October, 2023.
- 24.** It appears that the number of office bearers in this case are **19, out of which members in actual employment are 9. Retired workers are 6 and non workers (outsiders) are 4.**
- 25.** **The respondents/State in their written argument have stated as follows:-**
 - i. Primary issue is whether a retired Employee could hold on prime decision-making position of being "President" or "Secretary" or "Treasurer" in a Trade Union in place and stead of 'actually employed/engaged workmen', **taking undue advantage of "Explanation" to Section 22(2) of the Trade Union Act** and whether such clutching of powers cause detriment to the actually engaged and employed workmen?
 - ii. Trade Union belongs to Employees' "actually engaged" and/or employed. This primary incident could be easily

ascertained from the "Definitions" of Trade Union, Trade Dispute provided under the Trade Union Act.

- iii. Each and every issue related to or arising out of the Trade Union is meant for **Workers/Employees actually employed** and not for any former or ex-Employee. Thus, when the objected benefits are meant for the employees actually employed, the function, administration and control of a Trade Union must have to be with the **'Employees actually employed'**.
- iv. Similarly, **Section 3** read with **Section 36** of the **Industrial Dispute Act** expressly defines with expression **"Engaged In"**, meaning thereby to be chosen only from amongst "Workmen" engaged in the Establishment and not from outsider or former employee.
- v. Thus, any interpretation under Trade Union Act has to be harmonized with relevant provisions of the Industrial Dispute Act, which is a much later Act.
- vi. It is further submitted that based on harmonious constructions of the Trade Union Act, Trade Unionism, Trade Disputes and Industrial Disputes Act, the Subject issue of the present Case may be considered and not reading a particular Section or part of it alone in isolation.
- vii. It is also stated that **Section 22(2)** of the **Trade Union Act** also demands **"persons actually engaged or employed in the establishment."**

It is further submitted that:-

"Explanation" to Section 22(2) of the Trade Union Act was introduced in 2001. It was not there earlier.

While the objectives for amendment in 2001, was to enhance transparency in the functioning of Trade Unions and to provided stronger support for their activities, if anyone merely sticks to the "Explanation" so provided, the entire objectives would be nothing but otiose and powers would remain under the clutches of former Employees.

- viii. Mr. Banerjee, learned Senior Special AGP, states that it is now well settled that an **Explanation** added to a statutory provision is not a substantive provision in any sense of the term but as the plain meaning of the word itself shows it is merely meant to explain or clarify certain ambiguities which may have crept in the statutory provision.

It is also stated that:-

"Explanation" to a Section of a Statute does not confer any additional rights than that expressly provided in the Section, nor can an Explanation enlarge the scope of Section. The object of an "Explanation" is to remove doubt or confusion which may be possible from the existing provision.

26. The respondents rely upon the judgment of the Supreme Court in ***Burmah Shell Oil Storage & Distributing Co. of India Ltd. & Anr. vs Commercial Tax Officer & Ors.***, AIR 1961 SC 315, wherein the Supreme Court held:-

"Now, the Explanation must be interpreted according to its own tenor, and it is meant to explain cl. (1)(a) of the Article and not vice versa. It is an error to explain the Explanation with the aid of the Article, because this reverses their roles."

27. In ***Bihar Co-operative Development Cane Marketing Union Ltd. Vs. Bank of Bihar*** reported in AIR 1967 SC 389, the Hon'ble Supreme Court also observed that:-

"The Explanation must be read so as to harmonise with and clear up any ambiguity in the main section. It should not be so construed as to widen the ambit of the section."

28. Relying upon ***Bihar Co-operative Development Cane Marketing Union Ltd. Vs. Bank of Bihar (Supra)*** and Section 3 read with Section 36 of the I.D. Act, Mr. Banerjee, submits that "workmen are to be chosen from actually employed workmen" and is to be applied in respect of the Trade Unions Act.
29. The respondents have further relied upon the judgment in:-

i. S. Sundaram Pillai & Ors. v. V.R. Pattabiraman & Ors., (1985) 1 SCC 591.

30. It is further stated by the Respondent/State that the object of an Explanation to a statutory provision is:-

- (a) to explain the meaning and intendment of the Act itself,
- (b) where there is any obscurity or vagueness in the main enactment, to clarify the same so as to make it consistent with the dominant object which it seems to subserve,
- (c) to provide an additional support to the dominant object of the Act in order to make it meaningful and purposeful,
- (d) an Explanation cannot in any way interfere with or change the enactment or any part thereof but where some gap is left which is relevant for the purpose of the Explanation, in order to suppress the mischief and advance the object of the Act, it can help or assist the Court in interpreting the true purport and intendment of the enactment.

31. On hearing the learned counsels and on perusal of the materials on record, it appears that:-

- i) Vide **notice dated 08.04.2025** the Registrar of Trade Union (W.B.) relied upon sub-Section 2 of Section 22 of the Trade Unions Act and directed as follows:-

17
Annexure- "P-3"


 Government of West Bengal
 Office of the Registrar of Trade Unions
 New Secretariat Buildings (11th Floor)
 1, K. S. Roy Road
 Kolkata- 700 001

NOTICE

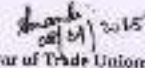
No. 41/Misc.02/2025 Dated: 07/05/2025

It is observed that some trade unions have been submitting Annual Returns with defective and unlawful particulars, especially with regard to information on their office bearers.

Sub-section 2 of Section 22 of the Trade Unions Act, 1926, as amended, lays down that retired employees in an industrial establishment are debarred from holding an office in the trade union. Only as an Honorary member, an insider may be considered for a post in the Executive Committee.

In the light of this provision, a person shall cease to remain in the post of or be disqualified for being elected or nominated as or for being, where the registered trade union belongs to organised sector, a Secretary or a Treasurer of the Executive Committee, or the post of the Chief Executive Officer or the Chief Financial Officer by whatever name called, if he is not in employment.

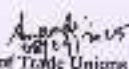
This issues with approval of the competent authority.

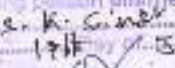
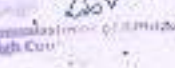

 Registrar of Trade Unions
 West Bengal

Memo No. 41/1(53)/Misc.02/2025 Dated: 07/04/2025

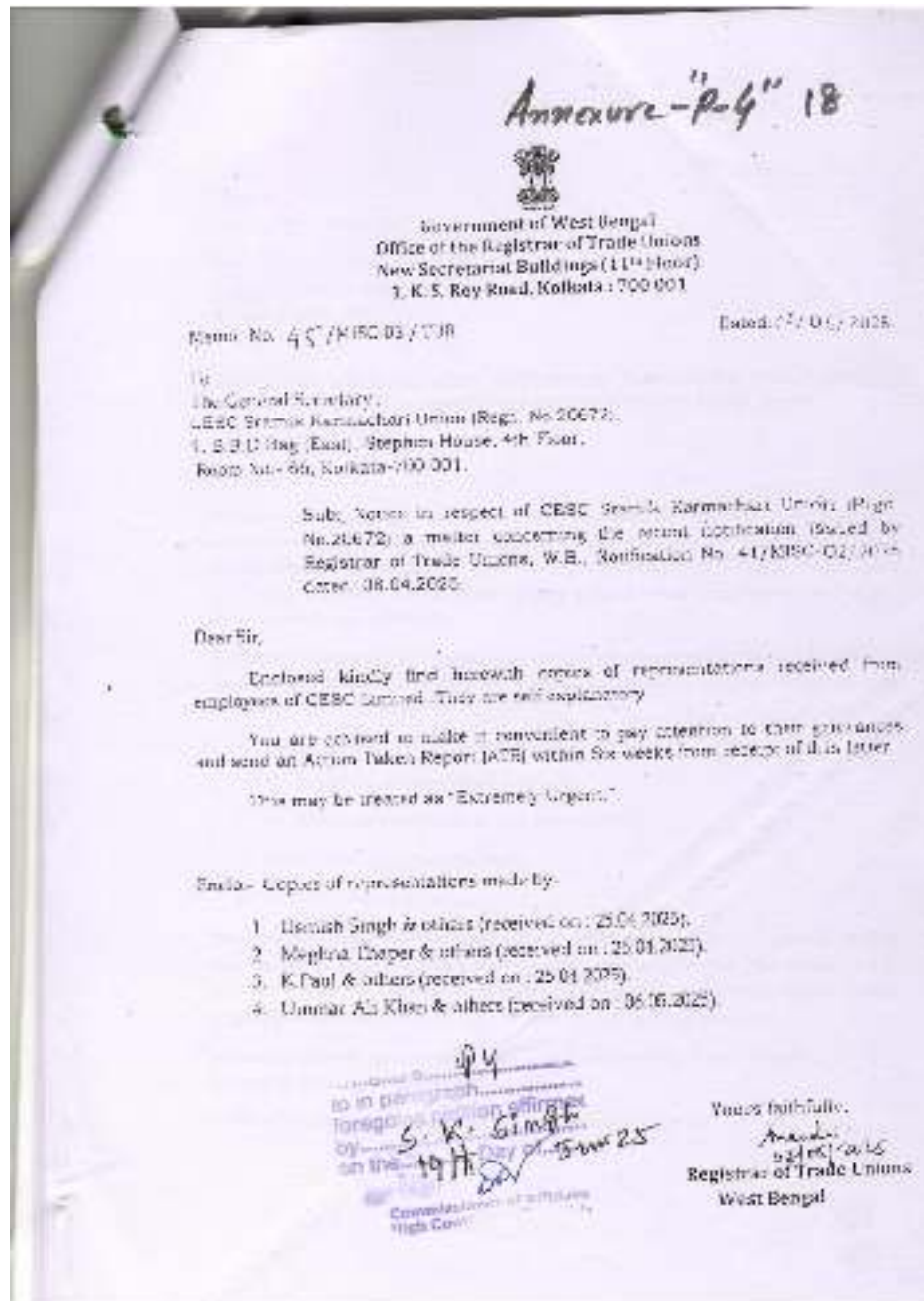
Copy forwarded for kind information to:

1. P.S. to the Hon'ble M.C., Labour Department, Govt. of West Bengal.
2. The P.A. to the Secretary, Labour Department, Govt. of West Bengal.
3. The Labour Commissioner, Govt. of West Bengal.

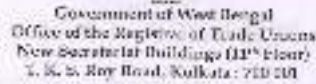

 Registrar of Trade Unions
 West Bengal

to in paragraph
 foregoing petition affixed
 by 
 on the 19th day of May 2025.

 Registrar of Trade Unions
 High Court

ii) The **notice dated 07.05.2025** is as follows:-



iii) Finally the **notice dated 29.05.2025** is as follows:-



Received: 23/05/2008

Sub: Notice in respect of CUSCO Garments Remounted Union (Regn. No.22572) a matter concerning the order notification issued by Registrar of Trade Unions, P.U., Notification No.40/MU/22/2025 dated: 13.04.2025.

With respect to your letter (Ref: 561/2023, Dated: 22/08/2023) the undersigned is to say that the original computer referred to in Memo No. 576/2023/1/L1, dated: 07/07/2023 alleged that it is of Gov. Notice No. 41/2006/2007, dated: 12/04/2007 issued by this office categorically stating that no retired employees could be recruited in the post of Secretary/ Treasurer of a registered trade union till 30 years, you have been circulating as the Secretary of your Union. Your reply dated: 22/08/2023 is silent about your action taken to rectify the said anomaly. Even if the identity and signature of the complainant may be questionable as noted in your said reply, the allegations raised in the complaint still require attention.

This may be treated as "Danceably Urgent."

Registrar of Trade Unions
West Bengal

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- “22. Proportion of office-bearers to be connected with the industry.-** (1) Not less than one-half of the total number of the office-bearers of every registered Trade Union in an unorganised sector shall be persons actually engaged or

employed in an industry with which the Trade Union is connected:

Provided that the appropriate Government may, by special or general order, declare that the provisions of this section shall not apply to any Trade Union or class of Trade Unions specified in the order.

Explanation.- For the purposes of this section, "unorganised sector" means any sector which the appropriate Government may, by notification in the Official Gazette, specify.

(2) Save as otherwise provided in sub-section (1), all office-bearers of a registered Trade Union, except not more than one-third of the total number of the office-bearers or five, whichever is less, shall be persons actually engaged or employed in the establishment or industry with which the Trade Union is connected.

Explanation.-For the purposes of this sub-section, an employee who has retired or has been retrenched shall not be construed as outsider for the purpose of holding an office in a Trade Union.

(3) No member of the Council of Ministers or a person holding an office of profit (not being an engagement or employment in an establishment or industry with which the Trade Union is connected), in the Union or a State, shall be a member of the executive or other office-bearer of a registered Trade Union."

- 35.** Vide the amendment in 2001, the number of members actually engaged or employed, has been increased.
- 36.** After the amendment, the Section provides for unorganized and organized sector, separately and 'explanation' has been provided explaining the status of retired/retrenched employees.
- 37.** Section 22 was amended by the Trade Unions (Amendment) Act, 2001.

- 38. The said Section prior to the amendment of 2001, was as follows:-**

“S. 22. Proportion of office-bearers to be connected with the industry.

Not less than one-half of the total number of the office-bearer of every registered Trade Union shall be persons actually engaged or employed in an industry with which the Trade Union is connected:

Provided that the appropriate Government may, by special or general order, declare that the provisions of this section shall not apply to any Trade Union or class of Trade Unions specified in the order.”

- 39. No provision/explanation for treating retired/retrrenched employees as not “outsiders” was provided.**
- 40.** Now, considering the said provision of the Act, and its “explanation”, which is absolutely clear without any ambiguity whatsoever, it is totally uncomprehensible as why and how could the Registrar of Trade Union (W.B.) issue such a notice, which is in complete violation of the said provision of the Act.
- 41.** The West Bengal Act XLVIII of 1983, Act did not amend Section 22 of the Trade Unions (West Bengal Amendment) Act, 1983, which came into effect in 1992.
- 42.** There has been no state amendments after the amendment of 2001, bringing in Section 22(2) with an ‘explanation’.
- 43.** As such, as to how did the Registrar of Trade Union acquire the authority to put in such wrong interpretation in a notice on behalf of the government is best known to him.

- 44.** Each and every word in the notice dated 08.04.2025 is in total contradiction to the existing provision of law.
- 45. To put it clearly sub-Section 2 of Section 22,** with “Explanation” in the Trade Unions Act and contents of notice dated 08.04.2025 are placed herein:-

Sub Section (2) with explanation under Section 22 of the Trade Unions Act	Notice dated 08.04.2025 issued by the Registrar of Trade Union (W.B.)
Save as otherwise provided in sub-section (1), all office-bearers of a registered Trade Union, except not more than one-third of the total number of the office-bearers or five, whichever is less, shall be persons actually engaged or employed in the establishment or industry with which the Trade Union is connected. Explanation.- For the purposes of this sub-section, an employee who has retired or has been retrenched shall not be construed as outsider for the purpose of holding an office in a Trade Union.	It is observed that some trade unions have been submitting Annual Returns with defective and unlawful particulars, especially with regard to information on their office bearers. Sub-section 2 of Section 22 of the Trade Unions Act, 1926, as amended, lays down that retired employees in an industrial establishment are debarred from holding an office in the trade union. Only as an Honorary member, an outsider may be considered for a post of the Executive Committee. In the light of this provision, a person shall cease to remain in the post of or be disqualified for being elected or nominated as or for being, where the registered trade union belongs to organised sector, a Secretary or a Treasurer of the Executive Committee, or the

	post of the Chief Executive Officer or the Chief Financial Officer by whatever name called, if he is not in employment. This issues with approval of the competent authority.
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- 46.** In WPA 13542 of 2025, the number of office bearers of the petitioner Union is 51 in the year 2024 out of which 7 are retired/not outsider employees and 1 is an outsider.
- 47.** In WPA 19086 of 2025, the total number of office bearers is 19 out of which 9 are in actual employees, retired 6/not outsider and outsider 4.
- 48.** This fact has not been denied by the respondents.
- 49.** Explanation to sub-Section(2) of Section 22 of the Trade Unions Act is very clear that **“an employee who has retired or has been retrenched shall not be construed as an outsider for the purpose of holding an office in a Trade Union”**.
- 50.** The Supreme Court in **Civil Appeal No. 24190 of 2001 on 10th November, 2003** in ***Bokajan Cement Corporation Employees’ Union vs Cement Corporation of India Ltd, held:-***

“1. The short question for determination in this matter is whether an employee as a result of cessation of employment would lose his right to continue as a member of the trade union.

13. The Constitution of a trade union is not required to be construed as a statute. It deserves to be construed broadly and liberally. The Act and the Constitution of the trade union, unless clearly stipulate otherwise, deserve to be interpreted so as to advance the interest of the trade union and its members. The membership of a trade

union is a valuable right which can be taken away only within the clear parameters of the Act and the Constitution of the trade union.

14. Clause 5 is also not a provision which provides for the circumstances under which a member would lose his membership. It provides eligibility/conditions for becoming member of the union. Regarding Section 6(e) its only effect is that the rules of a trade union have, inter alia, to provide for the admission of those who are actually engaged or employed in industry as ordinary members so as to entitle a trade union to seek registration under the Act. Section 6(e) does not provide that on cessation of employment, an employee would cease to be a member. On the aspect of cessation of membership of the trade union, the trade union can make a provision in its Constitution. It is one thing to say that the Constitution of a trade union shall provide that those actually engaged or employed would be entitled to be admitted as members of the trade union and it is altogether a different thing to say that they would cease to be members once they are not actually engaged or employed. The latter is not what Section 6(e) contemplates. Likewise, clause 5 of the Constitution of the trade union provides for all workers employed by Cement Corporation of India, directly or indirectly, throughout to be eligible for the membership of the trade union on acceptance of the other part of the said clause. The expression 'throughout' in clause 5 only shows that all through the said eligibility condition will continue. Again, clause 5 is not a provision for cessation but is a provision for eligibility to become a member. As already stated, these clauses are not required to be construed as a statute. The apprehension of Mr. Reddy that non-acceptance of his contention would result in a situation of 'once a member-always a member', is not of any significance since that depends upon the Constitution of a trade union. If a trade union accepts that once a member would always continue to be a member, there is nothing in the Act which mitigates against it. A trade union may provide under which circumstances a member would lose the membership.

15. Apart from clause 9 reproduced earlier, there is no other clause which provides for cessation of the membership of the trade union. It is not the case of the respondent that the member in question ceased to be a member of the trade union having suffered disqualification under clause 9. **Clause 9 does not stipulate cessation of memberships on cessation of employment.** Further, Section 15 of the Act permits a

trade union to spend its funds on the unemployment of its members. Section 15 of the Act, inter alia, provides that the general funds of a registered trade union shall not be spent on any other objects other than ... (f) allowances to members or their dependents on account of death, old age, sickness, accidents or unemployment of such members. Clause 11 of the Constitution of the trade union in question contemplates the application of the funds of the union for all or any of the purposes as envisaged in Section 15 of the Act provided that the total expenditure in any one month shall not exceed 10% of the total gross annual income. Clause 12(iii)(a) of the Constitution of the trade union provides that a member of the union who is dismissed for joining the union or promoting or actively participating in its activities, shall be entitled to victimization benefits in accordance with the rules laid down by the Executive Committee of the Union. Clause 12(iii)(b) entitles a member to legal aid in proceedings which arise out of his relations with the employer. It reads:

"A member of the Union who has paid the subscription of previous one year, shall be entitled to legal aid in all proceedings which arise out of his or her relations with the employer provided that this clause does not apply to the newly-appointed employee."

16. There is no provision in the Act or the Constitution of the trade union providing for automatic cessation of membership on cessation of employment.

17. In view of the provisions in the Constitution of the trade union and in absence of any provision providing for cessation of membership as a result of cessation of employment, it cannot be held that an employee would cease to be a member of the trade union on termination of his employment.

18. Reliance has, however, been placed on behalf of the respondent upon the decision of this Court in **State Bank of India Staff Association and Anr. v. State Bank of India and Ors., [1996] 4 SCC 378** where it was held that the management was not supposed to negotiate with the retired employee as General Secretary of the Banks Staff Association since he ceased to be an employee of the Bank after retirement. In the said case, the relevant Rules and Constitution of the State Bank of India Staff Association provided that after retirement from Bank's service, ordinary members shall not continue to be such members. Considering the said Rules, it was held that :

"A cursory look at Rule 5 will make it clear that to become an ordinary member of the Association one has to be a permanent employee of the State Bank of India and at the same time not below the age of 18 years whereas Rule 6 provides that a person who is not a permanent employee of the Bank as contemplated under Rule 5 but has some sympathy with the objects and spirits of the Union he may be elected honorary member at the triennial or special meeting of the General Council etc convened for the purpose. Further, according to Rule 9 ordinary members after retirement from the Bank's service shall not continue to be such members while clause (a) of Rule 9 provides that an ordinary/honorary member of the Association will be eligible to occupy or continue in any post in the Central Committee/Central Working Committee/Circle Committee/Unit Committee but such ordinary/honorary member of the aforesaid committees will forthwith cease to be such member if he ceases to be an ordinary/honorary member, notwithstanding anything contained to the contrary in the Rules."

19. State Bank of India Staff Association's case (1996) 4 SCC 378 does not lay down that clause (e) of Section 6 provides for cessation of membership. In our view, it only provides for admission of membership. In the absence of any provision in the Constitution of the trade union for automatic cessation of membership as a result of cessation of employment, it cannot be held that an employee would cease to be a member of the trade union in such an eventuality."

51. This judgment in **Bokajan Cement Corporation Employees' Union vs Cement Corporation of India Ltd, (Supra)** was taken into consideration by the Division Bench in **UCO Bank vs All India UCO Bank Officers Federation and Ors. (Supra) (Para 6)** relied upon by the petitioners.

52. In *UCO Bank vs All India UCO Bank Officers Federation and*

Ors., (Supra), the Court held:-

*“6. Mr. Kar, learned Senior Counsel assisted by Mr. Majumder, learned Counsel submitted that the right to form Trade Union is a fundamental right under Article 19(1)(c) of the Constitution of India. By referring to the definition of “Trade Union” in Section 2(g) of the 1926 Act, Mr. Kar contended that negotiation has been recognized as the right of the Trade Union through such statute. He further submitted that once a Trade Union is registered in accordance with the 1926 Act, management of the Bank cannot put any fetter on the right of the Trade Union and its members to participate in negotiations with the management. He further submitted that the impugned policy of the Bank interferes with the Constitution of the Trade Union by way of unreasonable encroachment on the democratic and fundamental rights of members of the Trade Union to elect their office-bearers. He submitted that Section 22 (2) of the 1926 Act, provides for the proportion of existing employees to be the office-bearers. According to Mr. Kar, if the provisions of the 1926 Act, with regard to electing the office-bearers is complied with, the management of the Bank cannot impose upon the Trade Union a condition for negotiations which will have the effect of forcing the members to elect only serving employees as office-bearers. By referring to a decision of the Hon’ble Supreme Court in the case of (2004) 1 SCC 142 in the case of **Bokajan Cement Corporation Employees’ Union vs. Cement Corporation of India limited**, Mr. Kar submitted the Hon’ble Supreme Court in that decision explained the case of *State Bank of India Staff Association vs. State Bank of India* reported at 1996 (4) SCC 378. Mr. Kar further referred to a decision of the Hon’ble Madras High Court in the case of *L. Balasubhramaniam & Anr. vs. Indian Overseas Bank & Ors.* (Writ Appeal No. 2137 of 2013 dated 09.01.2014) and contended that honorary members acting as office-bearers of the union even after their superannuation can represent the majority union and are entitled to participate in the negotiations and discussion with the management of the Bank pertaining to employer-employee relationship. Mr. Kar thus, concluded by submitting that the impugned policy of the Bank*

should be struck down and the Cross-Objection be allowed.

19. *Therefore, Section 22 (2) read with the explanation does not prohibit a retired employee from holding an office in a Trade Union provided the proportion of office-bearers as laid down in Section 22(2) is not violated.*

22. *Thus, it is evident from the aforesaid Rules of the respondent no. 1 Federation that in case the ordinary member happens to be an office-bearer of the association, the Central Executive Committee may allow such ordinary member to continue as office-bearers of the Federation even after his retirement from service. Similarly, a life member may also be allowed to continue as office-bearers in the same position as is/was held by them prior to their retirement from Bank's service till next Triennial Conference.*

23. *In a democratic set up, the members of an association have a right to elect from amongst them the office-bearers of the association upon whom management of the affairs of the Federation shall be entrusted. The members of the Federation are the best persons to decide as to who are competent to manage the affairs of the Federation.*

24. *Neither the 1926 Act nor the Constitution of the respondent no. 1 Federation prohibits a retired employee from continuing as well as performing the duties as an office-bearer of the respondent no. 1 Federation. The policy decision of the Bank is inconsistent with the provisions of the 1926 Act and this Court, therefore, holds the same to be an arbitrary one."*

53. The judgment in ***Bokajan Cement Corporation Employees' Union vs Cement Corporation of India Ltd, (Supra)*** was passed prior to the amendment of 2021, which introduced an 'Explanation' to explain the status of a retired/retrenched employee.
54. The judgment in ***Bokajan Cement Corporation Employees' Union vs Cement Corporation of India Ltd, (Supra)*** clearly provides the 'Explanation' in the negative, regarding automatic cessation of membership as a result of cessation of employment.

55. In the present cases too, neither the 1926 Act nor the Constitution of the Petitioner no. 1 Unions prohibit a retired employee from continuing as well as performing the duties as an office-bearer of the Petitioner no. 1 Unions. The Order of the Registrar of Trade Union under challenge is totally inconsistent with the provisions of the 1926 Act.
56. As such, when the number of outsider in this case is 1 (one) out of 51 office bearers, WPA 13542 of 2025 and 4 (four) out of 19 office bearers in WPA 19086 of 2025, the constitution of the office bearers of the union is in due compliance of sub-section 2 of Section 22 and its 'Explanation' of the Trade Unions Act and also in tune with the decision in ***Bokajan Cement Corporation Employees' Union vs Cement Corporation of India Ltd. (Supra)***.
57. **The notice dated 08.04.2025 stating that retired employees are debarred is beyond the scope of the provision of the Act and thus not in accordance with law.**
58. Sub-Section 2 to Section 22 of the Act clearly talks about the numbers of office bearers, who shall be persons actually employed or engaged and also clearly provides for the number and proportion which can be persons **not actually** engaged or employed in the establishment and explains that a retired or retrenched employee **shall not be construed as outsider** for the purpose of holding an office in a trade union (***Bokajan Cement Corporation Employees' Union vs Cement Corporation of India Ltd. (Supra)***).

59. **The interpretation given by the Registrar of Trade Union is not only erroneous but also beyond his powers.**
60. **A piece of legislation is not for the executive to distort according to their whims to suit their purpose best known to them.**
61. The stand taken by the respondents that retired employees or persons not in employment as office bearers of the union shall be to the detrimental of the workers led by the union is **totally unfounded**, considering the fact that the **legislation in its wisdom** has provided for **only** one third of the total number of the office bearers or five **whichever is less**, who may be persons not in **actual** employment/outside/retired/retrenched employees.
62. The category of office bearers as per the said section are - (i) employees in actual employment and (ii) retired/retrenched employees (not outsiders) ***Bokajan Cement Corporation Employees' Union vs Cement Corporation of India Ltd. (Supra)*** and (iii) outsiders.
63. **“Explaining”** the same, it provides that retired or retrenched employee are not to be treated as outsiders ***(Bokajan Cement Corporation Employees' Union vs Cement Corporation of India Ltd. (Supra))***.
64. Accordingly the constitution of office bearers in the petitioner unions in both the writ petitions are in accordance with Section 22(2) and its “explanation” of the Trade Unions Act, as amended in 2001 and also as per the decision of the Supreme Court in ***Bokajan***

Cement Corporation Employees' Union vs Cement Corporation of India Ltd. (Supra).

- 65.** The notice dated 08.04.2025 specifying that if an person is not in employment, he shall cease to be a officer bearer of posts as mentioned is also bad in law, being beyond the scope of the said provision of the Act and thus also, the powers of the Registrar of Trade Union, as the said provisions of law/Act does not state about any such specifications relating to the post of office bearers.
- 66. The writ petitions are thus allowed.**
- 67.** The notice dated 08.04.2025, 07.05.2025 and 29.05.2025 issued by the Registrar of Trade Unions, West Bengal, are hereby **quashed and set aside.**
- 68.** All connected application, if any, stands disposed of.
- 69.** Interim order, if any, stands vacated.
- 70.** 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.)