

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

Present:

The Hon'ble Justice Shampa Dutt (Paul), J.

**WPA 11284 of 2012
M/s. Dolphin Agencies Pvt. Ltd.
vs.
State of West Bengal & Ors.**

with

**WPA 33547 of 2013
M/s. Dolphin Agencies Pvt. Ltd.
vs.
State of West Bengal & Ors.**

For the Petitioner : Ms. Sarmila Das.

For the Respondent no. 3 : Mr. Balaram Patra,
Mr. Suvadip Bhattacharjee.

Hearing concluded on : 14.07.2025

Judgment on : 01.08.2025

Shampa Dutt (Paul), J.:

1. The writ application in **WPA 11284 of 2012** has been preferred challenging an order dated 29.02.2012 passed by the learned Eighth Industrial Tribunal in Case No. VIII-4 of 2004 under Section 10 read with Section 2A of the Industrial Disputes Act, 1947.

2. The writ application in **WPA 33547 of 2013** has been preferred challenging an order dated 27.08.2013 passed by the learned 1st Labour Court, West Bengal in Case No. COMP. 17/2012. Where the tribunal ordered:-

“ORDERED

that the application under Section 33C Clause 2 of the I.D. Act brought by the applicant is allowed on contest without any cost. The applicant do get an order of the amount as claimed against the opposite party i.e. Rs. 7,74805/- and interest to the tune of RS. 79,970/- in total Rs. 8,54775/- (Rupees Eight lakh Fifty Four thousand Seven hundred Seventy Five only). The opposite party M/s. Dolphin Agency Pvt. Ltd. is directed to pay the said amount to the applicant Sri Ajoy Kumar Ray within months positively, failing which the applicant is at liberty to recover the said computed amount as per law.

**Sd/-
Judge
First Labour Court
Kolkata, W.B.”**

3. The petitioners' case herein is that the respondent no. 3 was employed in the service of the petitioner/Company on 20.07.1988 as a Technician on certain terms and conditions, which was accepted by him on 29.07.1988. In the said letter there was a condition, inter alia, in Clause 7 that he would be initially stationed at Calcutta and

might be transferred to any other establishment of the Company at any time decided by the Company.

4. The Management of the petitioner opened a branch in New Delhi where they required a few Technicians. Accordingly the petitioner Company due to exigency of work transferred the Respondent No. 3 by their letter dated 18.12.1995 and asked him to join on 01.01.1996 at its New Delhi Office situated at E-34, 11th Floor, Connaught Circus, New Delhi 110 001.
5. The Respondent No. 3 did not comply with the order of the company for which the company terminated him from service with effect from 01.01.1996 by its letter dated 12.03.1996.
6. The Respondent No. 3 raised an industrial dispute which was referred to the Ld. Eighth Industrial Tribunal, West Bengal, Kolkata by the Government of West Bengal, which was decided by the said Ld. Tribunal, who passed an Award on 28.01.1998, directing the Petitioner to reinstate Respondent No. 3 with full back wages.
7. The petitioner in compliance with the direction made in the Award reinstated the Respondent No. 3 by the letter dated 18.01.1999 and advised him to take up his employment with the Company at New Delhi Office, still being his place of posting.
8. The Respondent No. 3 after receiving the aforesaid letter informed the petitioner by his letter dated 28.01.1999 that he was ready to go to Delhi if the Company gives him an advance of Rs.50,000/-,

provide him an accommodation at Delhi or pay the actual house rent to be paid by him and pay the D.A. as applicable at Delhi.

9. The Respondent No. 3 filed an application u/s 33C(2) of the Industrial Disputes Act, 1947 before the Ld. First Labour Court. The Ld. First Labour Court passed an order for payment of money due, which was duly paid by the Petitioner.
10. Being aggrieved the company filed a Writ Petition being No. W.P. 5818 (W) of 2001 and the Hon'ble High Court was pleased to pass an order dated 13.06.2001 dismissing the writ application.
11. Being aggrieved by the order of transfer by the Company dated 18.01.1999 to its office at New Delhi, the petitioner raised an Industrial dispute which was referred to the Ld. Eighth Industrial Tribunal, West Bengal, Kolkata for adjudication on merit on the following issues:-

“i. Whether transfer of Sri Ajoy Kumar Roy from Kolkata Establishment to New Delhi Establishment by an order dated 18.01.1999 of the Company is justified?

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

12. The Learned Tribunal was pleased to pass an Award on 29.12.2012 holding, inter alia, that the *"Order of transfer dated 18.01.1999 is not justified and accordingly the workman concerned is entitled to be retained by the Company at his previous place of work along with full back wages. The Company to retain the workman concerned and pay him back wages during the period as mentioned hereinbefore within*

one month from the date of publication of this award after making adjustment of the amount of back wages, if any, already paid to him.

However, such order of retaining the workman at his previous place of work with back wages will not restrain the company under reference from issuing the order of transfer subsequently in the case of exigencies as per the terms and conditions of service on good faith".

13. Parties in the present case, have filed their respective written notes.
14. On hearing the parties and on perusal of the materials placed, it appears that respondent no. 3, Ajoy Kumar Roy was appointed by the petitioner company on 20.07.1988, on certain terms as laid down in the appointment letter.
15. **Clause 7** in the said appointment letter is relevant in the present case and is, thus, reproduced hereunder:-

“7. It is one of the conditions of this appointment that you will be initially stationed at Calcutta and you may be transferred to any other establishments of this company or its associated companies or concerns at any time decided by the company.”

16. It further appears from the order under challenge that the Tribunal held that the Workmen did not categorically refuse to join the assignment in New Delhi but asked for requisite benefits required and entitled to for staying in New Delhi.
17. It appears that the petitioner has filed a copy of the judgment dated 27.08.2014 passed in MAT 614 of 2014 which is relevant in the

present case as one of the parties in the said appeal was the present respondent no. 3 and the Hon'ble Division Bench considered the case of the said workmen. The said order is relevant for adjudication of the present writ application.

18. The findings of the Hon'ble Division Bench therein is as follows:-

“.....Admittedly, the writ petitioner is a workman under the appellant/petitioner Company. While he was in service, he was transferred to Delhi Office in December, 1995. The respondent workman did not report for joining at Delhi Office. Subsequently, his service was terminated by the employer by service of notice of termination dated 12th March, 1996 upon him. His service was terminated with retrospective effect from 1st January, 1996. Such termination of service of the respondent workman was ultimately set aside by the Learned Tribunal by an award passed on 16th November, 1998. The award passed by the Learned Tribunal setting aside termination of service of the respondent workman was accepted by the employer. Thereafter, the appellant Company by its letter dated 18th January, 1999 asked the respondent workman to join the Delhi Office in terms of the transfer order which was served upon him in December, 1995. The respondent workman did not report for joining at Delhi Office. Instead of reporting for joining at Delhi Office, he filed a second reference case before the Learned Tribunal challenging the legality of the transfer order sometime in February, 1999. The transfer order was ultimately set aside by the Learned Tribunal by an award passed on 29th February, 2012.

Having regard to the fact that the transfer order was ultimately set aside on 29th February, 2012, the respondent workman was not required to report for joining at Delhi Office after the passing of the said award in the second reference case.

It is an admitted position that though the issue regarding the legality of the order of transfer which was issued by the appellant company sometime in December, 1995, could have been raised by the

respondent workman in the earlier proceeding before the Learned Tribunal wherein order of termination of his service was under challenge but the said issue relating to legality of his transfer to Delhi, was not challenged by the respondent workman in the said proceeding.

A question may arise in this context as to whether the issue regarding legality of the transfer order can be subsequently raised in a latter proceeding on account of the bar of constructive res judicata.

However since the said issue is not presently before us, we do not like to discuss the said issue herein at length, particularly in view of the fact that a writ petition wherein the legality of the award passed by the Learned Tribunal setting aside the transfer order is under challenge and the said writ petition is still pending for consideration before this court.

Presently we are concerned with the legality of the order passed by the Learned Trial Judge on 26th February, 2014 in W.P. No. 33547 (W) of 2013 whereby the Learned Trial Judge directed the appellant Company to pay the principal dues amounting to a sum of Rs. 7,74,805/- to the respondent in two instalments as assessed by the Learned Labour Court in a proceeding under Section 33 C (2) of the Industrial Disputes Act initiated at the instance of the respondent workman.

The Learned Trial Judge also made it clear in the impugned order that the appellant is required to pay a sum of Rs. 5 lakhs towards the first instalment on or before 26th March, 2014 and the balance amount is to be paid on or before 30th April, 2014. The Learned Trial Judge also directed that in default of payment of any of the instalments, the writ petition will stand dismissed, with this rider that in the event the order is complied with, realisation of interest will remain stayed. Unconditional stay of the order passed by the Learned Labour Court in the said proceeding under Section 33 C (2) of the Industrial Disputes Act, was granted by the Learned Trial Judge till 24th March, 2014.

The legality and/or propriety of the said order is under challenge before us in this writ petition.

Before entering into the merit of the impugned order, we like to keep it on record that the entire dues of the respondent workman upto 18th January, 1999 in terms of the order passed by the Learned Single Judge of this court on 13th June, 2001 in W.P. No. 5818 (W) of 2001 have been paid to the respondent workman by the appellant Company. Since nothing has been paid to the respondent workman for the subsequent period, the respondent workman initiated the said proceeding under Section 33 C (2) of the Industrial Disputes Act before the Labour Court for computation of his legal entitlement during the disputed period.

The Learned Labour Court was pleased to allow the said proceeding and held that a sum of Rs. 7,74,805/- and interest to the tune of Rs. 79,970/- i.e. a total sum of Rs. 8,54,775/- is due and payable by the appellant Company to the respondent workman as per law. Accordingly, direction was given upon the appellant Company to pay the said amount to the respondent workman within a time bound period.

We have considered the provision under Section 33 C (2) of the Industrial Disputes Act, 1947. On plain reading of the said provision, it appears to us that entitlement of the workman is to be computed by the Learned Labour Court under the said provision.

Thus, to decide such a proceeding the Learned Labour Court, in our view, first of all is required to consider as to whether the workman is at all entitled to receive any payment from the employer during the disputed period and if it is ultimately found that he is entitled to receive any payment from the employer during the disputed period, then the amount of money which the company is required to pay, is required to be computed by the Labour Court.

Here is the case where on perusal of the order passed by the Learned Labour Court, we find that the Learned Labour Court quantified the amount payable to the respondent workman by the Company without

deciding the issue as to whether the respondent workman was at all entitled to receive any payment from the employer Company during the disputed period.

Admittedly, the order of transfer was issued by the appellant Company sometime in December, 1995 by which the respondent workman was directed to report for joining at Delhi Office. The said order of transfer was not challenged till the second reference case was initiated at the instance of the workman on 11th February, 1999. Even after initiation of the second reference, no prayer was made by the respondent workman for stay of the operation of the order of transfer. Admitted position is that the order of transfer which was served upon the said workman in December, 1995, was never stayed by any forum either by the Tribunal or by the High Court. As such, the order of transfer remained valid and was in operation until the order of transfer was set aside by the Learned Tribunal on 29th February, 2012.

Thus, we have no hesitation to hold that until the order of transfer was set aside, the respondent workman was required to report for joining at Delhi Office which having not been done by the respondent workman, in our prima facie view he is not entitled to get or receive any amount from his employer till 29th December, 2012. Even thereafter nothing has been placed before us to show that the respondent workman made any effort to join the Kolkata Office and that he was prevented by the employer.

As such, we are of the view that since he did not join the Kolkata Office even after the transfer order was set aside by the Tribunal, he is not entitled to get any amount from the employer.

Accordingly, we are unable to maintain the direction which was passed by the Learned Trial Judge, regarding payment of a sum of Rs. 7,74,805/- by two installments in the impugned order dated 26th February, 2014.

The impugned order thus, stands set aside.....”

19. It is also important to discuss that admittedly the respondent did not raise the issue of transfer in the first reference. Only the order of termination was challenged. And while considering the legality of the termination, which was done as the petitioner did not join his place of posting on transfer, the tribunal while adjudicating the reference of termination also considered the issue of transfer on which the termination was effected.

20. The order in the first reference is dated 16.11.98 and the relevant finding of the tribunal therein is as follows:-

“..... At the outset it is to be mentioned that the matter regarding transfer is not the issue here and both sides have admitted this position. The matter regarding transfer will come up only incidentally while deciding the issue under reference. The issue under reference is whether termination of the workman is justified with effect from 1.1.96.....”

21. Thus, the order of transfer was not challenged in the first reference. Only the order of termination was challenged. The workman's contention was that he was willing to join his place of transfer on being granted some financial assistance to reside in a place like Delhi. But without being granted his prayer his service was terminated.

- 22.** As such the question of 'res judicata' does not arise in the second reference and is thus not applicable to the award under challenge.
- 23.** The findings of the tribunal in the award under challenge is as follows:-

*".....But what is most pertinent here to mention is that the attitude of the company in passing the order of transfer at a time when there was litigation pending initiated by the company in respect of the payment of backwages as per the award passed by this Tribunal in the earlier case. Had it been a case that the company reinstated the workman concerned at the office where he was working earlier and thereafter for exigencies and in accordance with the terms and condition of service he was transferred to any place without putting the workman in uncomfortable situation, such question regarding the propriety of the order of transfer could have hardly been raised. But by transferring the workman concerned to the same place for which the company had to terminate the service of the workman concerned earlier for non-compliance, the bonafides of the company in issuing the transfer order can easily draw flak from the other side. **When the order of reinstatement had been passed by this Tribunal in the earlier case it would have been bonafides on the part of the company to reinstate him in the service at the place***

whether he was working prior to the order of transfer. From that point of view, even if it cannot be considered as illegal can hardly be held to have been issued on good faith and justified.....

**Sd/-
Judge
8th Industrial Tribunal”**

- 24. Unfortunately, the tribunal while giving the said findings failed to keep in mind that as the “issue of transfer” was not under reference in the previous award, the tribunal has directed only his reinstatement, by setting aside the order of termination.**
- 25. As such the order of transfer remained in force and the respondent was required to join his place of transfer and not his initial place of posting as held by the tribunal.**
- 26. The tribunal thus clearly erred in its findings that the respondents should have been allowed to join his initial place of work.**
- 27. The order of transfer dated 18.01.1999 having been issued as per terms and conditions in the appointment letter (clause 7) and **not set aside in the 1st reference** is in accordance with law and as such the findings of the tribunal (in 2nd reference) that the transfer is not justified, being erroneous is liable to be set aside.**
- 28. The workman was duty bound to join his place of work (at Delhi) on transfer, on his reinstatement (1st reference), before the transfer order was set aside in the 2nd reference and should have joined **the Kolkata Office after the transfer was set aside.****

- 29.** Thus, the respondent having not joined his place of transfer in spite of the order being in force, having not been set aside by the tribunal vide its award dated 16.11.1998 and a further order passed by the company on 18.01.1999, directing the respondent to join his place of transfer at New Delhi, which was still in force, **the respondent/workman is not entitled to any back wages/consequential benefits** as directed by the tribunal in the award under challenge an order dated 29.02.2012 passed by the learned Eighth Industrial Tribunal in Case No. VIII-4 of 2004 under Section 10 read with Section 2A of the Industrial Disputes Act, 1947 and **is thus set aside, being not in accordance with law.**
- 30.** Consequently, the order dated 27.08.2013 passed by the learned 1st Labour Court, West Bengal in Case No. **COMP. 17/2012**, arising out of the reference case **is also set aside.**
- 31.** The petitioner was duty bound to join his place of transfer in view Clause 7, in the appointment letter which specifically lays down the clause of transfer. The contention of the workman that the place of posting was not in existence when the appointment letter was issued, has no merit and, thus, requires no consideration.
- 32. WPA 11284 of 2012 along with WPA 33547 of 2013 are allowed.**
- 33.** Connected applications, if any, stand disposed of.
- 34.** Interim order, if any, stands vacated.

- 35.** Urgent certified photostat copy of this Judgment, if applied for, shall be given to the parties as expeditiously as possible on compliance of all necessary formalities.

(Shampa Dutt (Paul), J.)