

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
Appellate Side

Present:

The Hon'ble Justice Shampa Dutt (Paul)

WPA 16237 of 2025

Gati Express and Supply Chain Pvt. Ltd.

Vs

Pinki Kahar and Anr.

For the Petitioner : Mr. Soumya Majumder, Sr.Adv.
Mr. S.K.Singh,
Mr. Arnab Das,
Mr. Ravi Pandey,
Mr. Rehanuddin Ansari,
Ms. Syeda Romana Sultan.

For the State : Mr. Amal Kr. Sen, AAG
Mr. Lal Mohan Basu.

Hearing concluded on : 21.08.2025

Judgment on : 09.09.2025

SHAMPA DUTT (PAUL), J. :

1. The writ application has been preferred challenging an award dated 12.12.2024, passed by the learned Eighth Industrial Tribunal, West Bengal, at Kolkata, in Case no.VIII 05/2019.

2. The petitioners case is that:-

The Petitioner is a Company incorporated under the Companies Act, 1956.

The Respondent No. 1, Ms. Pinki Kahar, is the former employee of the Petitioner. She was employed by the Petitioner lastly as a Shift In-Charge with supervisory and managerial duties. Such position was acquired by her through 3 promotion orders issued by way of her career growth.

- 3.** That due to her gross negligence and misconduct in performing her duties which caused substantial financial loss and reputational damage to the Petitioner, following a show-cause notice, she was terminated on 11.01.2018.
- 4.** Without raising any dispute with the employer, she approached the Industrial Tribunal, leading to the impugned award now under challenge.
- 5.** The Petitioner is engaged in the business of providing services of delivery of consignment from one point to another and, supply chain management etc. on pan India basis, and also offer supply chain management solutions, helping businesses optimize their logistics processes.
- 6.** The Respondent No. 1 was offered appointment to the post of Associate Service in Level - A II with effect from 02.06.2008 on terms and conditions therein and agreed upon, having gross salary of Rs. 7501/- per month, which she accepted, by acknowledging the same by putting signature on an offer letter dated 19.06.2008. Thereafter the Respondent No. 1 was

confirmed in service with effect from 01.12.2008, and was promoted to A-1 by company's letter dated 10.10.2011 and again to level E-II vide company's letter dated 01.01.2013 as Executive. Later she was again promoted to E-1 "Senior Executive" vide company's letter dated 16.08.2016 and was working as 1st Shift in Charge and/or shift leader.

- 7.** While holding the said post i.e., 1st Shift in Charge and/or shift leader, the Respondent No.1 used to manage all associates/employees working under her. Said associates/employees used to report to shift leaders/shift in charge, which goes to show that the shift leader/shift in charge is responsible for approving leave, performance evaluation and rating, etc. and overseeing the general work & workforce in a shift. The shift in charge maintains the stock of consignments of inbound articles as well as outbound articles during the tenure of the shift. Besides the same, the said managerial and administrative function, the Respondent No.1 had power to command as also to take independent decisions. Furthermore, the Respondent No.1 was drawing a salary of Rs. 30,322/- per month CTC, which is nearly Rs. 3,63,864/- only per annum. The same was much more than the "workman" category of employees in the industry.

8. That due to absolute adamant attitude and illogical demands of the Respondent No.1, the conciliation proceeding failed and no settlement could be arrived at.
9. Ultimately, an order of reference was issued by the Appropriate Government on 15.03.2019 under G.O.no. Labr/29/Lt/(LC-IR)/22015(16)/645/2019 referring the matter before the learned Seventh Industrial Tribunal, West Bengal. Subsequently on 26.07.2019 under G.O. no. Labr./700/(LC-IR)/23099/15/2019 the said dispute was transferred to the Eighth Industrial Tribunal, West Bengal, at Kolkata for adjudication.
10. **On hearing the parties, the learned Tribunal held as follows:-**

“ORDERED

That the applicant workman was not given notice pay and retrenchment compensation before terminating her service and this was a condition precedent. The non-compliance with the condition renders termination of a workman invalid. Accordingly the termination of service of the applicant workman is illegal and invalid and the Tribunal set aside the order of termination.

Since the management has lost its confidence, the Tribunal is of the view that it is not advisable to order reinstatement of the applicant workman and the only course left is to assess the compensation that has to be paid to the applicant workman. As the termination was effected on 12.01.2018, the applicant workman is entitled to get back-wages for the period from the date of termination i.e. 12.01.2018 till the date of award i.e. 12.12.2024.

*The Tribunal is also of the view that the aforesaid **back-wages is inadequate** and instead of reinstatement proper compensation would be justified and the said compensation must be something more than the back-wages as she is entitled till the date of award.*

Considering the residue period of service the Tribunal is of the opinion that the adequate compensation should be given to the applicant workman.

Accordingly, the management is further directed to pay the lump-sum of amount of Rs. 20 Lakhs in addition to the back-wages for the period from 12.01.2018 till the date of award i.e. 12.12.2024 to the applicant workman.....”

11. In the award under challenge, learned Tribunal while considering the issue as to whether the respondent employee was a workman or not discussed the argument and materials on record of both the parties. Wherein, the case of the petitioner was recorded as follows:-

“.....Here in this particular case the company raised a preliminary point whether Pinki Kahar is an workman or not as per Section 2(s) of the Industrial Disputes Act, 1947. Smt. Pinki Kahar although admitted in her W/S that her designation was an Senior Executive -I by supporting a pay slip (having level Code E-I, not covered under ESI, as not workman), exhibit 8/1 (4 sheets), but she was not a workman interims of Section 2(s) of I.D. Act in as much as her nature of duty was neither, manual, skill unskilled nor technical. She used to work as

supervisory through her staffs as admitted in her reply to show cause dated 11.01.2018 having Ext. 10.....”

- 12.** The Tribunal also considered the judgments relied upon by the parties and considering the evidence on record which were discussed in detail by the Tribunal. The Tribunal’s finding on the said issue was restricted to the findings as follows:-

“When as per settled law and / or reported judgments (as relied by your petitioner) the burden of proof is upon the employee and not upon the employer (as stated in Para – ‘t’. page 6) has failed to prove the same and the O.P.W.-1 has no adequate knowledge with regard to the Act and Rules).”

- 13.** In ***Lenin Kumar Ray vs M/s. Express Publications (Madurai) Ltd., in Civil Appeal No. 11709 of 2024, decided on October 21, 2024,*** the Supreme Court held:-

“10. At the outset, it is pertinent to point out that the Industrial Disputes Act, 1947, was enacted by the legislature to settle the industrial disputes. It was brought with the object to ensure social justice to both the employers and employees and advance the progress of industry by bringing about the existence of harmony and cordial relationship between the parties.

11. Section 2(s) of the I.D. Act defines “workman”, which is quoted below for ready reference:

“2(s) "Workman" means any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational,

clerical or supervisory work for hire or reward, whether the terms of employment be express or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person—

(i) who is subject to the Air Force Act, 1950 (45 of 1950), or the Army Act, 1950 (46 of 1950) or the Navy Act, 1957 (62 of 1957); or

(ii) who is employed in the police service or as an officer or other employee of a prison; or

(iii) who is employed mainly in a managerial or administrative capacity; or

(iv) who, being employed in a supervisory capacity, draws wages exceeding [ten thousand rupees]¹³ per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature.”

As per the above provision, a person to be qualified as a “workman” has to do any work of manual, unskilled, skilled, technical, operational, clerical or supervisory in nature. But, the latter part of the section excludes four classes of employees including a person employed in a supervisory capacity drawing wages exceeding Rs.10,000/- after amendment (Rs.1,600/- before amendment) per month or exercises functions mainly of a managerial nature. In this legal backdrop, let us first examine, whether the employee falls within the definition of “workman”.

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.”

14. In ***Lenin Kumar Ray vs M/s. Express Publications (Madurai) Ltd., (Supra)***, the Court held that the determinative factor for workman as:-

“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.”

15. **Learned Senior Counsel appearing for the petitioner submits that the Tribunal did not adjudicate the preliminary issue raised by the petitioner stating that the reference is bad in view of the fact that the respondent employee is not a “workman” as defined under Section 2(s) of the Industrial Disputes Act.** It is further submitted that without the preliminary issue being adjudicated the Tribunal could not have gone into the issue of the dismissal of the respondent employee. In view of the fact that if it is proved that she is not a workman then the reference is bad in law.
16. Admittedly, the Tribunal has not decided the said issue in accordance with law and the same is apparent on the face of the record. After having discussed the arguments of the parties, the Tribunal only on the findings as noted above has held that the

petitioner herein has “no adequate knowledge with regard to the Act and Rules”.

17. Admittedly, there is no finding of the Tribunal regarding the preliminary issue as to whether the respondent is a “workman” or not.

18. Accordingly, the preliminary issue is to be decided first by the tribunal before proceeding to decide the reference. The order of the Tribunal being erroneous and thus not in accordance with law, is liable to be set aside and is accordingly **set aside as a whole.**

19. The matter is remanded back to the Tribunal who shall first adjudicate the preliminary issue and pass a reasoned order based on the evidence already record and come to a specific findings regarding the status of the respondent employee and as to whether the employee is covered under the definition under Section 2(s) of the Industrial Disputes Act.

20. On deciding the said preliminary issue, as to the whether the said reference is maintainable or not and considering the preliminary issue raised by the petitioner that the respondent employee is not a ‘workman’ within the definition of Section 2(s) of the Industrial Disputes Act being in a supervisory category and that if being so, the reference would not lie, the Tribunal shall proceed with reference in accordance with law, if the

maintainability/preliminary issue is decided in the positive on the same being decided, in accordance with law by passing a well reasoned order.

21. Needless to say in case the preliminary issue is decided in favour of the petitioner herein, the reference shall be decided accordingly.

22. Writ application is disposed of.

23. All connected application, if any, stands disposed of.

24. Interim order, if any, stands vacated.

25. 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]