

14.08.2025
(D/L-07)
Ct. No.4
(B.K.N.)

W.P.C.T. 177 of 2025

**The Director General, Employees' State Insurance
Corporation and Others
Vs.
Employees State Insurance Corporation Employees
Union Calcutta & Another**

Mr. Bodhisatta Biswas
...for the Petitioners

Mr. Bikash Ranjan Bhattacharyya, Sr. Adv.,
Mr. Sudipta Dasgupta,
Ms. Sinjini Chakraborti
...for the Respondent

Mr. Ajit Kumar Mishra,
Ms. Hasi Saha
...for the Proforma Respondent/U.O.I.

1. Heard learned counsel for the petitioners as well as the learned senior counsel appearing on behalf of the respondent.
2. The respondents have approached the Tribunal questioning the validity of a transfer policy. The Tribunal during pendency of the proceedings granted an interim order. The interim order was earlier assailed by the employer who is the petitioner before this Court, in W.P.C.T. No. 145 of 2025. A miscellaneous application bearing M.A. No. 325 of 2025 filed by the present petitioners, raising an issue of maintainability on the ground that the policy matter regarding a transfer cannot be subject to judicial review, was pending before the Tribunal. In the circumstances and since the matter was to be taken up within a week

from the date on which it was being considered by this Court, we disposed of W.P.C.T. No. 145 of 2025 in the following terms:

“3. We have made a specific query as to whether the pleadings have been exchanged between the parties to which he replies that yes, a reply has been filed to the M.A. 325 of 2025 and rejoinder thereto has also been filed and, therefore, the matter is now ready for consideration on merits. He submits that the next date fixed on the matter is on 17.07.2025.

4. In view of such situation when the matter is to be taken up within a week, we find no reason to interfere with the impugned order disposing of the petitioners’ earlier M.A. bearing no. M.A. 263 of 2025.

5. We only record that it is expected that the Tribunal shall proceed to consider M.A. 325 of 2025 expeditiously without any unnecessary delay or undue adjournments.

*6. The writ petition being **W.P.S.T. 145 of 2025** is **disposed of.**”*

3. The employer has again approached this Court after an order has been passed by the Tribunal on 23.07.2025.

The operative portion of the order reads as follows:

“Ld. Counsel for the applicants submits that WPCT 167/2024 is pending till date before teh Hon’ble High Court. Considering the facts of the case and the issue involved, we are of the opinion that the issue with regard to maintainability and merit of the O.A. vis. a vis. the judicial review of the transfer policy is to be heard in conjunction with the O.A.

Accordingly, we direct that both the M.A., as well as the O.A., be listed for final hearing on 18.08.2025”

4. It is submitted by the learned advocate for the petitioners that since the issue raised by the applicants before the Tribunal is beyond the scope of judicial review, the Tribunal ought to have disposed of the miscellaneous application first. In support of his

submission he has placed reliance on two decisions of the Apex Court. He has relied on ***T.K. Lathika –Vs.- Seth Karsandas Jamnadas*** reported in ***(1999) 6 SCC 632*** as well as ***Gagandeep Pratishthan Pvt. Ltd. and Others –Vs.- Mechano and Another*** reported in ***(2002) 1 SCC 475***.

5. The learned senior counsel appearing on behalf of the respondent has submitted that the issue being raised by the petitioner regarding the subject matter of the Original Application being normally not subject to judicial review raised in M.A is not severable from the main relief in the Original Application. The issue, therefore, has to be considered as a composite. He submits that petitioner has not raised an issue of maintainability on the basis of any bar to filing of the Original Application, to justify reliance placed on the decision in the case of ***T.K. Lathika (supra)*** and ***Gagandeep Pratishthan Pvt. Ltd. and Others (supra)***.
6. Insofar as the judgment in the case of ***Gagandeep Pratishthan Pvt. Ltd. and Others (supra)*** he submits that in that case there is a bar founded on the provisions of limitation and, therefore, the Apex Court held that till such time the limitation is condoned the matter should not have been taken up on merits. Such is not the situation here.

7. The judgment in ***T.K. Lathika (supra)*** arises out of a particular set of facts and circumstances wherein also there was a statutory bar to invoking jurisdiction of the Rent Controller until there is an expiry of one year from the date of the instrument. The writ petitioner in this case has not raised any such bar to filing of the Original Application in the miscellaneous application.
8. We are in agreement with the submissions of the learned senior counsel.
9. Judgment of the Apex Court in the case of ***T.K. Lathika (supra)*** was delivered. Keeping in view the statutory bar to invocation of jurisdiction of the Rent controller until there is an expiry of one year from the date of the instrument. Insofar as the other judgment relied upon in the case of ***Gagandeep Pratishthan Pvt. Ltd. And Others (supra)***, we find that there also the Apex Court was considering the bar in respect of limitation, and the fact that the High Court had not decided the condonation application, but had proceeded to pass an interim order. It was in such context that the Apex Court held that the High Court should have avoided passing orders in the proceedings where the maintainability itself on the ground of limitation was questioned and the issue of condonation of delay was still pending.
10. The facts arising for consideration before the Apex Court in these two judgments are, therefore, essentially

different from the facts arising in the present case. Therefore, the two judgments noted above are not applicable to the facts and circumstances of the present case. The writ petitioner has not relied on any such bar so as to preclude filing or registering of the appeal; or which was required to be lifted before the Tribunal could consider the miscellaneous application and the main application together. Rather it is the case of the writ petitioner in paragraph 3 of the Miscellaneous Application that a policy matter relating to transfer is not open to judicial review or scrutiny before the Tribunal. Paragraph 3 of the M.A. 325 of 2025 reads:

“3. The Petitioners submit that the O.A. is not maintainable, insofar as the same does not impugn any specific action or infraction of ESIC but a policy decision of the organization, which falls within the exclusive domain of ESIC. The Petitioners submit that the Applicant cannot seek quashing of a policy decision of ESIC or call for a judicial review concerning such questions of administrative policy. The Petitioners submit that it is a settled principle of administrative law that when a conscious decision is taken by a body or executive authority, the same being a policy decision cannot be quashed or set aside by this Learned Tribunal.”

11. We, therefore, find no infirmity in order of the Tribunal dated 23.07.2025, extracted above.
12. We make it clear that all issues including this issue raised regarding the matter not being open to judicial review, is left open to be decided by the Tribunal in the pending Miscellaneous Application and Original Application.

13. Our above observations are not to be treated as an expression on the merits of the matter pending either in the Miscellaneous Application No. 325 of 2025 or in the Original Application No. 292 of 2025.
14. The writ petition is dismissed.
15. Urgent Photostat Certified copy of this order, if applied for, be supplied to the parties upon compliance with all necessary formalities.

(Madhuresh Prasad, J.)

(Supratim Bhattacharya, J.)