

03.09.2025
Item No.10
Ct. No. 30
Aloke

WPA 20299 of 2025

**Merck Specialties Private Limited (MSPL)
Vs.
Abhishek Datta & Ors.**

Mr. Soumya Majumder, Id. Sr. Adv.
Mr. Saumalya Ganguli
Mr. Gaurav Sharma
... for the petitioner
Mr. Aninda Lahiri
Mr. Bikash Chakraborty
... for the respondent no. 1
Mr. Mrinal Kanti Ghosh
Mr. Kartik Chandra Kapas
... for the State

1. Affidavit-of-service filed be kept with the record.
2. The writ application has been preferred challenging the order dated 16.06.2025 passed by the learned Second Industrial Tribunal, West Bengal in Case No. 09/2023/2A(2)/2023.
3. Learned senior counsel appearing for the petitioner has brought the notice of this Court to the order under challenge, wherein it appears that the learned Judge of the Tribunal was pleased to dismiss the prayer of the petitioner/company herein who had challenged the maintainability of the application under Section 2A(2) of the Industrial Disputes Act.
4. Learned senior counsel for the petitioner has brought the notice of this Court to Section 2A(1) and

(2) of the Industrial Disputes Act which being relevant is reproduced herein:-

“Section 2A(1) *Where any employer discharges, dismisses, retrenches or otherwise terminates the services of an individual workman, any dispute or difference between that workman and his employer connected with, or arising out of, such discharge, dismissal, retrenchment or termination shall be deemed to be an industrial dispute notwithstanding that no other workman nor any union of workmen is a party to the dispute.*

Section 2A(2) *Notwithstanding anything contained in section 10, any such workman as is specified in sub-section (1) may, make an application direct to the Labour Court or Tribunal for adjudication of the dispute referred to therein after the expiry of forty-five days from the date he has made the application to the Conciliation Officer of the appropriate Government for conciliation of the dispute, and in receipt of such application the Labour Court or Tribunal shall have powers and jurisdiction to adjudicate upon the dispute, as if it were a dispute referred to it by the appropriate Government in accordance with the provisions of this Act and all the provisions of this Act shall apply in relation to such adjudication as they apply in relation to an industrial dispute referred to it by the appropriate Government.”*

5. It is submitted by the petitioner that as the workman has neither been discharged nor dismissed

nor retrenched or otherwise terminated from service, an application under Section 2A(2) is not maintainable.

6. Learned counsel appearing for the respondents submits that the workman has been refused 'employment' in the present case and has relied upon the **amendment** to Section 2A of the Act 14 of 1947, which reads as follows:

"In section 2A of the principal Act, (a) after the words "dismisses, retrenches", the words "refuses employment" shall be inserted; (b) after the words "dismissal, retrenchment", the words "refusal of employment" shall be inserted".

7. It is submitted that as he has been refused service, the application before the Tribunal is maintainable and in the alternative has submitted that in case this Court finds that the order of the Tribunal is not in accordance with law, the matter may be remanded back to the Tribunal for hearing on the maintainability point, afresh.

8. On hearing the learned counsels for the parties and on perusal of the materials on record including the relevant provisions of law relied upon by both the parties, it appears that the workman had joined the petitioner's company on 2nd January, 2014 and had suffered an accident on 20th November, 2018. He was under treatment for a considerable period of time. It was in the year 2022 that is after four years of the accident, that the workman was

directed to join his service after undergoing a medical fitness test on 18th January, 2022.

9. A copy of the fitness certificate has been annexed at page 36 of the writ application, wherein it has been noted that the workman had been issued fitness certificate on 07.12.2019 and 25.03.2021. But the same were not placed before the company by the workman.

10. The company on the prayer of the workman by a letter dated 05.12.2021 for resumption of work, asked the workman to appear for a medical fitness test on 18th January, 2022 at R.G. Kar Medical College. On getting the medical fitness certificate on 08.02.2022, the petitioner company directed the workman to join his place of posting at Guwahati or Dibrugarh and asked him to resume his duty on and from 1st April, 2022.

11. The petitioner being aggrieved with the order of transfer, which is part of his service conditions and laid down in his letter of appointment, initiated the dispute being aggrieved with the said transfer and stated that having met with the serious accident, he wanted to continue being posted in the company at its Midnapore Headquarter.

12. It appears that the petitioner was declared medically fit in the years 2019, 2021 and 2022 and it was in the year 2022, when the workman was asked to join his new place of posting, on transfer as there

was no vacancy at Midnapore at that relevant point of time.

13. The workman did not inform the company about his fitness certificate of 2019 and 2021. When finally the company found that the workman is not joining his service, his salary was stopped and it was then that he applied for resuming his services which was considered by the company as discussed above.

14. It has also come before this Court that even for the medical fitness test as asked for by the company, the workman appeared reluctantly and on several dates being fixed for the said test.

15. Be that as it may, from the materials on record it is clear that there was **no refusal of employment to the workman in the present case** and, as such, the workman in the present case, being not discharged nor dismissed nor retrenched or terminated from service and there being no refusal of service, an application as preferred by the workman before the Tribunal under Section 2A(2) of the Industrial Disputes Act is clearly not maintainable.

16. The **order** under challenge **dated 16.06.2025** passed by the learned Second Industrial Tribunal in Case No. 09/2023/2A(2)/2023 being not in accordance with law, is **set aside**.

17. The proceedings pending before the 2nd Industrial Tribunal, West Bengal, being Case No.

09/2023/2A(2)/2023, is hereby disposed of as not maintainable.

18. **WPA 20299 of 2025 stands disposed of.**

19. The workman/employee is at liberty to pray for relief under the appropriate provision of law.

20. Connected application, if any, stands disposed of.

21. Interim order, if any, stands vacated.

22. Let a copy of this order be sent to the 2nd Industrial Tribunal, West Bengal.

23. Urgent Photostat certified copy of this order, if applied for, be given to the parties, upon usual undertakings.

(Shampa Dutt (Paul), J.)