

03.03.2025
Sl. No. 18
AMR
Ct.No.-30

WPA No. 30769 of 2024

**M/s. Shree Gouri Shankar Jute Mills Limited
Vs.
The State of West Bengal & Ors.**

**Mr. Ranjay De, Sr. Adv.
Mr. Basabjit Banerjee
Mr. Adityajit Abel Bose**

...for the petitioner.

**Ms. Sutapa Sanyal
Mr. Ritesh Kumar Ganguly**

...for the respondent No. 2

**Mr. Swarup Paul
Mr. Molly Das
Mr. Anish Roy**

...for the Respondent No. 3.

The present writ application has been preferred against an order dated 08.02.2023 passed by the Judge Second Industrial Tribunal, Kolkata in Case No. VIII-26/2008.

By the said order under challenge, the Tribunal granted interim relief to the opposite party/worker herein. It is the case of the petitioner/company that the respondent no. 2/workman submitted a written resignation on 8.2.2006. The said resignation letter has been challenged by the workman on the ground that it is fabricated and forged and that he has not resigned from service, but was terminated.

Both the sides have filed their written notes along with judgment relied upon. Learned counsel for the petitioner has relied upon the judgment of the Supreme Court in case of **Bangalore Metropolitan Transport Corporation vs. T.V. Anandappa** reported in **(2009) 17 SCC 473** wherein the Court held as follows:

"7. The learned counsel for the appellant submitted that being Badli worker the question of any protection under the Act does not arise. The Labour Court seems to have proceeded on the basis that since the medical certificates were submitted, he should not have been removed. Admittedly, his name was struck off on 19.12.1995. For the first time a grievance was raised in 1999. The respondent filed claim statement and ultimately arguments were heard and reference was made. The learned counsel for the respondent supported the judgment of the Labour Court as affirmed by the High Court. The learned counsel for the appellant is right in his submission that there was no protection available under the Act to the respondent.

8. In view of what has been stated in Karnataka SRTC v. S.G. Kotturappa the respondent had no right under the Act. The Labour Court should not have therefore adjudicated the dispute. In essence, the reference made to the Labour Court was incompetent".

On the other hand, learned counsel for the respondent/worker has relied upon the judgment of

the Supreme Court in **H.D. Singh vs. Reserve Bank of India & Ors.** decided on 10.09.1985. It is the contention of the respondent no. 2/workman that he is entitled to the relief and he is also entitled to all the benefits to which a worker is entitled to as he has put in 240 days of work each year. The judgment relied upon is in respect of the said contention of the respondent/workman herein.

The State of West Bengal has filed a report stating that they are not necessary party in this case.

Learned counsel for the petitioner has submitted that in view of the judgment relied upon the respondent no. 2 admittedly being a 'Badli' worker has no right under the Industrial Disputes Act (**Bangalore Metropolitan Transport Corporation (supra)**).

It appears that at the time of deciding the prayer of the worker for interim relief, the Court did not consider the point of maintainability which was not seriously agitated by the petitioner herein before the Tribunal, but as issue of maintainability goes to the root of every case, the said issue is to be decided in accordance with law prior to disposing of the case on merit.

Accordingly, the writ application is disposed of with the liberty granted to the petitioner to raise the

issue of maintainability relying upon the judgment of the Supreme Court in **Bangalore Metropolitan Transport Corporation (supra)**, which the Tribunal shall consider and decide within a period of thirty days from the date of communication of this order on granting an opportunity of hearing to all the parties.

Pending hearing of the maintainability application, the petitioner in the interest of justice is directed to continue paying the interim relief to the extent of Rs. 4,875/- per month on and from January, 2025.

It is made clear that this Court has not gone into the merit of the order under challenge. The interim order shall be subject to the decision of the Tribunal, in respect of the point of maintainability.

With these observations, the writ petition stands disposed of.

There will be no order as to costs.

Urgent Photostat certified copy of this order be given to all the parties upon usual undertakings.

[Shampa Dutt (Paul), J.]