

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

Present:

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

WPO 231 of 2016

**BIDHU BHUSAN SARKAR
vs.
UNION OF INDIA & ORS.**

For the Petitioner : Mr. Bidhu Bhusan Sarkar (in person).

For the Respondent no. 1 : Mr. Sounak Bera,
Mr. Tapan Bhanja.

For the Respondent no. 2 : Mr. Suysanta Pal,
Mr. Pradipta Basu.

Hearing concluded on : 10.07.2025

Judgment on : 17.07.2025

Shampa Dutt (Paul), J.:

1. The writ application has been preferred praying for direction upon respondent no. 3 to cancel, set aside and rescind Order dated July 30, 2015 in Comp. Case No. 35 of 2002 whereby the learned Judge was pleased to dismiss the case under Section 33-C (2) of the Industrial Disputes Act, 1947.
2. The petitioner's case is that he was a permanent employee of the respondent no. 2, being employee no. 561 and he was posted in

the Behala Unit at 25, Ho Chi Minh Sarani, P. S. Thakurpukur, Kolkata – 700 061, Dist. South 24 Parganas. On 4th April, 1998, the employer company issued a purported charge sheet to the petitioner with mala fide intention and on 7th June, 1999 the respondent company filed a purported application before the learned Tribunal under Section 33(2)(b) of the Industrial Disputes Act, 1947 for approval of the said dismissal of the petitioner.

3. The application under Section 33(2)(b) of the Industrial Disputes Act, 1947 was heard by the learned 8th Industrial Tribunal, West Bengal and on contested hearing, the learned Tribunal by an Order No. 71 dated 09.08.2002 was pleased to dismiss the application of the company, holding inter alia that the petition does not lie in accordance with the provision of Section 33(2)(b) of the Industrial Disputes Act, 1947 and was also pleased not to confirm the dismissal of the petitioner.
4. The petitioner then filed an application under Section 33-C(2) of the Industrial Disputes Act, 1947 for back wages including ancillary benefits and sent a letter dated 12/08/2002 to the said company demanding immediate reinstatement in service with full benefits.
5. The respondent company herein sent a letter to the petitioner on 28/08/2002, wherein the company stated that the Tribunal has no authority to grant any approval of the action taken against the workmen by the company in respect of dismissal from his service

and as such the request made by the petitioner to allow him to join in his post and to pay him his back wages does not arise and thus the Order of dismissing the petitioner from the service of the company vide letter dated 07/06/1999 still stands and is in force.

6. The order in respect of the application under Section 33-C(2) of the I.D. Act. is under challenge in the present writ application.
7. The petitioner has appeared in person.
8. The findings of the learned Judge, 1st Labour Court, in the order under challenge, is as follows:

*“Going through the entire order it is fully clear that the Ld. Tribunal by virtue of the Order No. 71. dt. 09.08.2002 did not write a single word against the order of dismissal dt. 07.06.1999 against the applicant, Shri Bidhu Bhusan Sakar. Under such circumstances, it can safely be said that whether the order of dismissal dt. 07.06.1999 is illegal or unjustified has not been adjudicated by any court of law till now. **Then undoubtedly the said order of dismissal dt. 07.06.1999 against the applicant Shri Bidhu Bhusan Sarkar stands.** Unless and until the order of dismissal is set aside by any court of law, the instant Order No.71, dt. 09.08.2002 cannot be the basis of the instant claim. Till today the order of dismissal stands. So, the applicant has no basis to claim any back wages. Coming here, I am compelled to form my opinion that the applicant has been continuing his case to base upon an order about which the applicant is fully under misconception. Besides the above, the applicant filed a writ petition No.1365 (W) of 2002 during pendency of the instant case to base upon the Order No.71, dt. 09.08.2002, but the said writ petition was dismissed as not pressed.*

Now, in the light of the aforesaid discussions and going through the entire case

record, I am of the view that the case is not maintainable at all and as such, the applicant is not entitled to get any relief as sought for. Accordingly, both the issue are decided against the applicant. In the result, the applicant fails. Hence,

Ordered

That the case u/s. 33 C (2) of The Industrial Disputes Act, 1947 be and the same is dismissed on contest. There is no order of any cost.

Let necessary copies of the order be sent to the concerned authority to the Govt. of West Bengal.

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

9. The learned Judge, 1st Labour Court also took into consideration observations of the learned Tribunal who disposed of the application filed by the company under Section 33(2)(b) of the Industrial Disputes Act, 1947 which for its relevancy is also quoted hereinbelow:-

“Ld. Tribunal observes in the said Section 33(2)(b) of The Industrial Disputes Act, 1947 states that “during the pendency of any such proceeding in respect of an industrial dispute, the employer may, in accordance with the Standing Orders applicable to a workman concerned in such dispute, for any misconduct not connection with the dispute, discharge or punish whether by dismissal or otherwise that workman shall be discharged or dismissed unless he has been paid wages for one month's and an application has been made by the employer to the authority before which the

proceeding is pending for approval of the action taken by the employer." Keeping in view of the said definition Ld. Tribunal observed that "I have gone through the document and the list of documents filed by the company and failed to find any such document to show that a reference was pending either against this concerned workman or against the union, where this workman was connected. In this circumstances, I do not find any nexus with the case under reference and the present case. I have gone through the documents filed by the company which has been marked Ext. L series. These are the dismissal order wherein a Pay order of Rs. 7830/- as one month's wages has been referred. A copy of the Cheque has also been filed by the company. This shows that the concerned workman accepted the order of dismissal along with the cheque of Rs.7830/-. According to the provision of Sec. 33 (2) (b) of The Industrial Disputes Act the date of issue of dismissal order and the date of issue of one month's salary should be one date as also the date of filing of the application before the Tribunal for approval. In the present case all these dates are all as on 07.06.99. Therefore, this Tribunal has no hesitation but to hold that compliance of the provision of Sec. 33 (2) (b) of the I. D. Act has rightly been done by the company."

Ld. Tribunal further observed in the said order that "Now Ld. Lawyer for the workman has contended that the amount sent to the workman is not full amount of one month's salary as mentioned by the Hon'ble Court in a decision reported in 1990 S. C. C. L & S, p. 255 and 1988 Lab. I. C., p. 219. I have gone through both the decisions and found that the Hon'ble Court has held that all the allowances including the original salary is to be paid by the company. I have gone through the written objection filed by the workman and failed to find that the concerned workman has not pleaded which allowance he was not paid by the company. I have also gone through the evidence as P.W. 1, wherein he has stated that his last drawn salary was in between Rs. 8000/- to Rs.9000/- per

month. In the circumstances the workman has also not pleaded during his evidence which allowance was not paid by the company. However, when I have held that there is no nexus in between the reference case as mentioned by the petitioner-company and the present application filed by the company, I do not find any necessity to discuss as to whether there is any prima facie case against the concerned workman and as such this Tribunal has no authority to grant any approval of the action taken against the concerned workman by the company in respect of dismissal of service of the concerned workman.....

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

- 10.** By the order under challenge, the Labour Court came to the finding that the order of dismissal of the petitioner was still in force and unless the same is set aside, the claim of the petitioner cannot be considered and dismissed the claim of the petitioner filed under Section 33(2)(b) of the Industrial Disputes Act, 1947.
- 11.** Learned counsel appearing for the Respondent/Company has relied upon Section 33-C(2) of the Industrial Disputes Act, 1947 and submits that this Section is applicable only in respect of any money due to a workman from an employer under a settlement or an award.
- 12.** It is stated that in the present case, as there is neither any settlement nor any award, the said provision is not applicable and the learned Labour Court rightly dismissed the application under

Section 33-C(2) of the Industrial Disputes Act, 1947 filed by the petitioner.

- 13.** The learned Labour Court thus rightly interpreted the relevant provision being Section 33-C(2) of the Industrial Disputes Act, 1947 and on the finding that the dismissal order of the petitioner being still in force, the application of the petitioner was misconceived, dismissed the same.
- 14.** Accordingly, the order under challenge being, in accordance with law, requires no interference.
- 15. WPO 231 of 2016 is thus dismissed.**
- 16.** There will be no order as to costs.
- 17.** 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.)