IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
ORIGINAL SIDE

WPO/387/2025

HDFC BANK LTD.
Versus
THE UNION OF INDIA AND ORS.

Present :
The Hon'ble Justice Shampa Dutt (Paul)

For the Writ Petitioner : Mr. Soumya Majumder, Sr. Adv.
Mr. Shaunak Mukhopadhyay, Adv.
Mr. Amitava Mitra, Adv.
Ms. Urmi Sengupta, Adv.
Ms. Naman Agarwal, Adv.

For the Respondent No.1 : Ms. Hasi Saha, Adv.

For the Respondent No.2 : Mr. Sarajit Sen, Adv.
Mr. Mrinal Kanti Sardar, Adv.
Mr. Tapas Singha Roy, Adv.

HEARD ON : 12.06.2025
DELIVERED ON : 19.06.2025

SHAMPA DUTT (PAUL), J.:-

1. The writ petition has been preferred praying for direction upon the respondents from giving effect to the award dated 20th August, 2024 passed by the learned Central Government Industrial Tribunal-cum-Labour Court, Kolkata in Reference Case No.41 of 2015.

2. The petitioner/company's case is that vide order No.L-12011/37/2015 – IR(B-I), New Delhi dated 3rd July, 2015, the Ministry of Labour made the following reference:

"No.L-12011/37/2015 – IR(B-I) : WHEREAS the Central Government is of the opinion that an industrial dispute exists between the employers in relation to the management of M/s. S & IB Services Pvt. Ltd., and their workmen in respect of the mattes specified in the Schedule hereto annexed:

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<u>The Schedule</u>

"Whether the action of M/s. S & IB Services Pvt. Ltd., M/s. DCM Vigilance & Maintenance Services Pvt. Ltd., M/s. IB Security & Maintenance Services, M/s. JRM Management & Consultancy Services, M/s. PVS Pvt. Ltd. and M/s. Pathak Enterprise, contractor of HDFC Bank Ltd. is justified in denying the (i) Gun Allowance, (ii) Special Allowance & (iii) Conveyance Allowance to the contractual workmen is legal and/or justified ? If not, what relief the workmen are entitled to ?"

3. The Central Government Industrial Tribunal at Kolkata registered the reference as Reference No.41 of 2015.

4. The Tribunal vide its award dated 20th August, 2024 decided the reference as follows:-

"Therefore, the contractor employers are bound to pay conveyance allowance, gun allowance and special allowance, though which do not form part of wages but were earlier paid to those security personnel and other employees deployed by them in the establishment of principal employer HDFC Bank Ltd. from the date they have stopped payment unilaterally or at the direction of the principal employer till those security personnel or other employees worked for them in the establishment of the Principal Employer and can claim reimbursement of the same from the Principal employer.

In case those contractors fail to pay such due to those security guards and other employees deployed by them in the establishment of HDFC Bank Ltd., then in view of provisions of section 21 (4) of Contract Labour (Regulation & Abolition) Act, 1970 the principal employer who is the ultimate user of the service of those security guards are bound to pay the arrears due to those security guards employed by it through different contractors after verification of their service in its establishment and also after verifying their age slips of September, 2011 onwards till it took their services and recover the same from its contractors from the pending bills, if any, provided it had already paid those allowances to the contractors. In case if it had not paid toward such allowances to its contractors then it is bound to make payment of arrear of conveyance allowance, gun allowance and special allowance to all the security personnel and other contractor employees engaged by it through the above mentioned contractors for the period of contract it had with them or till the period those security personnel and other contactor employees rendered their services to its establishment.

Accordingly, Reference no.41 of 2015 is allowed with the finding that unilateral decision of the contractor employers as well as principal employer HDFC Bank without complying with the mandatory provisions of section 9-A of I.D. Act, in effecting changes in the service conditions of contractor employees by stopping payment of conveyance allowance, gun allowance and special allowance is held to be illegal and they are bound to pay the dues of those workmen from the date, the payment was stopped till their service in the establishment of the HDFC Bank.

Both the principal employer and contractor employers are directed to make payment of the above due within three months from the date of the award, failing which the union or concerned workman shall be at liberty to recover the same according to law."

5. **The petitioner/company's contention** against the said award is as follows:-

i) The concept of "industrial dispute" does not recognize a dispute between a principal employer and a contractor's employee, and in the instant proceeding, it is the admitted case of all the parties that the concerned workmen are contract labours.

ii) Restructurisation of wages in an employer -employee contract cannot attract an industrial dispute between a principal employer and the contract labours, if at all.

iii) That decision of the service providers to stop Special Allowance and Gun Allowance and restructurised payment by making additional release of salary through revision cannot be the subject matter of an industrial dispute between the bank and the trade union representing the contractors' employees.

iv) There can be no scope of violation of Section 9A of the Industrial Disputes Act, 1947 at the behest of the petitioner bank against the employees of the service providers since admittedly there has been no establishment of employer employee relationship between the bank and the employees of the contractors.

v) The learned Tribunal failed to appreciate that principal employer cannot give notice under Section 9A of the Industrial Disputes Act, 1947, and hence the very foundation of passing the award and granting relief was erroneous and perverse.

vi) The learned Tribunal also failed to appreciate that the provisions of Section 21(4) of the Contract Labour (Regulation & Abolition) Act, 1970 has no manner of application in the facts and circumstances of the case.

6. Admittedly, the petitioner Bank herein is the principal employer.

7. The referee order dated 3rd July, 2025 states the opinion **"that an industrial dispute exists between the employers in relation to the management of M/s. S & IB Services Pvt. Ltd., and their workmen. …"**

8. The "employers" in relation to the management of M/s. S & IB Services Pvt. Ltd. includes the principal employer being the petitioner/Bank herein, which has admittedly employed the said contractors.

9. The management of M/s. S & IB Services Pvt. Ltd. is the contractor, whereas the petitioner/Bank herein is the principal employer and the learned Tribunal rightly held that the workers through their contractor were in the service of the petitioner/Bank carrying out all duties related to the smooth functioning of the Bank.

10. The service conditions of the workers were also as per the requirement of the petitioner/bank and not the contractor through whom the workers were employed and as such any change in service condition is the change in requirement of the petitioner/Bank, which directly effects the workers, who carried out and/or put in such service.

11. The denial of (i) Gun Allowance, (ii) Special Allowance and (iii) Conveyance Allowance to the said contractual workers is directly related to the services which are being specifically provided by the workers only to the petitioner Bank and none else.

12. About the application of Section 9A of the Act. Section 9A of the I.D. Act provides as follows:-

> ***"9A. Notice of change.***
>
> *- No employer, who proposes to effect any change in the conditions of service applicable to any workman in respect of any matter specified in the Fourth Schedule, shall effect such change,*
>
> *-(a) without giving to the workmen likely to be affected by such change a notice in the prescribed manner of the nature of the change proposed to be effected; or*

(b) within twenty-one days of giving such notice:

Provided that no notice shall be required for effecting any such change-

(a) where the change is effected in pursuance of any [settlement or award] [Substituted by Act 46 of 1982, Section 6, for certain words (w.e.f. 21.8.1984).]; or

(b) where the workmen likely to be affected by the change are persons to whom the Fundamental and Supplementary Rules, Civil Services (Classification, Control and Appeal) Rules, Civil Services (Temporary Service) Rules, Revised Leave Rules, Civil Service Regulations, Civilians in Defence Services (Classification, Control and Appeal) Rules or the Indian Railway Establishment Code or any other rules or regulations that may be notified in this behalf by the appropriate Government in the Official Gazette, apply."

13. The copies of **"Service Agreement"** between the Bank (principal employer) and the contractors clearly show that the agreements relate to the services to be provided to the petitioner/Bank, the principal employer herein and as **such any change in service conditions done in this case is also as per requirement of the petitioner/Bank, the principal employer,** who as per agreement has changed the service conditions of the workers herein and is thus responsible, as rightly held by the Tribunal.

14. In the present case the "employer" herein is the "principal employer" as the change in the condition of service herein is directly related to the "principal employer" who exclusively availed of such service. The contractor herein is only the provider and is bound by the terms and conditions imposed by the "principal employer", i.e., petitioner/Bank herein and the petitioner is thus liable under Section 9A of the Act, which was rightly held by the Tribunal.

15. Regarding the contention that the relief granted is beyond the reference, as it does not include the petitioner/Bank, it is observed that "Employer of the Management of ..." includes the petitioner/Bank who has employed the workers through the contractors for solely doing the duties of Bank.

16. Regarding the part of the referee "if not, what relief the workmen are entitled to", the Tribunal rightly applied Section 21(4) of the contract to provide relief prayed/entitled for/to and found fit to give to the workers and there is thus no irregularity in the said order.

17. The reference relates to the year 2015. Award was passed in 2024. 10 (ten) long years have passed, and the workers are still fighting for their lawful dues under a beneficial legislation. End of justice requires immediate implementation of the award dated 20th August, 2024.

18. The writ petition (WPO/387/2025) is thus dismissed. The award of the Tribunal under challenge be implemented **within six weeks** from the date of this order. All dues be paid with interest @ 10% per annum till date of payment as directed.

19. In case this order is not complied with, as directed, the dues will have to be paid with enhanced interest @18% per annum till payment.

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

(SHAMPA DUTT (PAUL), J.)