

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

WPO/567/2024

SRI RABI SHANKAR DAS

-VERSUS-

UNION OF INDIA AND ORS.

Present :

The Hon'ble Justice Shampa Dutt (Paul)

For the Petitioner : *Mr. Supriyo Chattopadhyay, Adv.*
Mr. Sudip Kumar Maiti, Adv.
Ms. Deborsi Chatterjee, Adv.
Mr. Ankush Majumdar, Adv.

For the Bank : *Mr. Shiv Mandal Singh, Adv.*

For the Union of India : *Mr. Imran Siddiqui, Adv.*
Mr. Amal Kumar Dutta, Adv.

Hearing concluded on : 05.08.2025

Judgment on : 26.08.2025

SHAMPA DUTT (PAUL), J. :-

1. The writ application has been preferred challenging an award dated December 6, 2023 passed by the learned Central Government Industrial Tribunal at Kolkata under Reference No.23 of 2018 and published in the Gazette of India dated February 20, 2024.
2. The petitioner's case is that the Ministry of Labour, Government of India, in exercise of powers conferred by Sections 10(1)(d) and 10(2A) of the

Industrial Disputes Act, 1947 referred a dispute for adjudication before the learned Central Government Industrial Tribunal, Calcutta vide Memo No.12011/28/92(RB) dated April 27, 1992. The issue referred for adjudication is as follows:-

“Whether the demand of All Bank Canteen Employees Union (Calcutta) that canteen staff, employed by the canteen at the premises of Indian Bank, should be given regular appointment in the services of the Bank with minimum salary payable to regular appointment in the Bank, is justified ? If not, to what relief are the workmen concerned entitled ?”

3. During the pendency of the said reference before the learned Tribunal, number of correspondences were made between the Bank and the Indian Bank Employees' Union, which subsequently **culminated into a settlement whereunder the Indian Bank was agreeable to include 91 canteen boys in the panel of temporary sub-staff as one-time measure as per norms prescribed in Co/Personnel Departments' Circular No.24/83 dated March 4, 1983 with relaxation in respect of upper age limit which would be 40 years.** The agreement was submitted before the Learned Tribunal on December 11, 1997 by way of an application containing the terms of the agreement verified by one Shri Dhiren Sil, the Assistant General Secretary of All Bank Canteen Employees' Union. The learned Tribunal took into consideration the said agreement between the Management and the workmen and had been pleased to pass an award dated July 13, 1998 upholding such agreement and observing that the same is legal and fair. Thus, **by an award dated**

July 13, 1998, the Reference dated April 27, 1992 was disposed of and the said agreement was made a part of the award.

4. The Indian Bank, the respondent no.2 herein, challenged the award dated July 13, 1998 by way of a writ petition being WP No.2101 of 1999, which the High Court was pleased to dismiss on February 26, 2002 holding that the award was passed on compromise. It was no more open to be challenged and/or reopened on any ground raised by the writ petitioner (Indian Bank) and the questions raised was no more sustainable.
5. The judgment of the Single Bench was challenged before the Division Bench wherein the judgment and order of the Single Bench was upheld on the observation that management missed the bus by not objecting to such settlement being approved before the learned Tribunal.
6. The Division Bench was pleased to modify the award to the extent that, since the reference was with regard to 41 canteen boys only and not 91 persons named in the list attached with the award, the award, therefore, would be applicable to the original 41 persons who were in service at the time of reference.
7. The Court further directed that *“for the other 50 persons the Union would be entitled to raise similar dispute and such issue can be resolved through reconciliation on the same terms and conditions so that those 50 persons could also be brought within the hotchpots of the settlement to avoid further complication.”*

8. The Court further directed that the bank is entitled to follow their regular recruitment rules and procedure while considering the empanelled candidate for regular appointment meaning thereby all those 41 persons would be invited for being considered in the post of sub-staff, as and when vacancy would arise subject to their eligibility with regard to age and qualification. **The Division Bench had been specifically pleased to hold that ‘so long all those 41 persons are not considered and taken, the bank would not be entitled to go for regular recruitment process from outsiders as agreed upon by the parties.**
9. The bank preferred a Special Leave Petition (SLP) before the Hon’ble Apex Court, being SLP (Civil) No.17079 of 2007, assailing the judgment and order dated March 29, 2007 passed by the Division Bench. It is stated by the petitioner that during the pendency of such Special Leave Petition, the General manager and Circle Head of Indian Bank swore and affirmed an affidavit on May 8, 2009 before the Hon’ble Supreme Court thereby stating (in paragraph 4) that *“this Hon’ble Court may be pleased to dispose of the present Special Leave Petition directing both the parties to give effect to the award of the Central Government Labour Tribunal as modified and clarified by the Hon’ble High Court at Calcutta in the impugned judgment.”*
10. The Hon’ble Supreme Court disposed of the SLP on the basis of the said undertaking
11. It is further submitted by the petitioner that in spite of the direction of the Hon’ble Supreme Court, on May 10, 2010, the

management through Memo No.HRM 189/2009-10, by way of a notification declared that 184 sub-staffs have been promoted from sub-staff cadre to clerical cadre on passing requisite examinations, thereby meaning that 184 vacancies have arisen in the post of sub-staff in various branches of the Indian Bank. Out of these 184 vacancies, 25 vacancies were in the Kolkata circle. The Bank was not willing to comply with the directions of the High Court and Supreme Court in spite of the 25 vacancies in the Kolkata Circle.

12. It is submitted that the respondent/Bank authorities issued Memo No. KCO : CB : CIR:028:2010 dated August 9, 2010 which was regarding "Empanelment of persons available out of 41 Canteen boys listed in the award dated 13th July 1998 of Central Government Industrial Tribunal" as modified and clarified by the order dated March 29, 2007 by this Hon'ble Court in the panel of temporary sub-staff as per proceedings dated May 6, 2010 of the Supreme Court.

13. It was stated therein that in compliance to the proceedings of the Supreme Court dated May 6, 2009, the Bank implements the award dated July 13, 1998 as modified by this Hon'ble Court by empanelling 37 out of 41 persons listed in the Award in the panel of temporary Sub-Staff after verification of their credentials to be engaged on temporary basis at various branches on day to day basis as and when need arises and as per requirement of the Bank.

14. The Assistant Director, Ministry of Labour and Employment, Government of India issued a Memo, being No.1-52029/18/2011-IR(Imp-

I) dated August 16, 2011, bearing the finding that the Management of Indian Bank, Zonal Office, Kolkata has not implemented the Award dated July 13, 1998 passed by the learned Central Government Industrial Tribunal as modified by the Hon'ble Division Bench of this Hon'ble Court.

15. In view of the same, the Chief Labour Commissioner was requested to issue directions to the Regional Labour Commissioner, Kolkata, to get the Award implemented or process the case for obtaining sanction for prosecution against defaulting officials in this regard and also to furnish an action taken report to the said Ministry at the earliest.

16. On June 23, 2011 through Memo No.HRM:31/2010-11, the Management by way of a notification declared that 228 Sub-staffs have been promoted from Sub-Staff cadre to Clerical Cadre on passing qualifying test. Thereby meaning that there were 228 vacancies in the post of Sub-staff in various branches of the Indian Bank. Out of these 228 vacancies, 10 vacancies were in the Kolkata Circle.

17. An RTI application was filed by one of the Petitioners on September 16, 2011 wherein he received a reply that there is no vacancy identified by the bank to fill up in the sub-staff cadre. In reply to the second query as enumerated herein above it was stated that "From 13.07.1998 to till date 55 persons have joined various branches as sub-staff in Bhubaneswar, Patna and Kolkata Zones (Eastern Cones)."

18. It is the case of the petitioner that as per the settlement entered into by and between the Management and the canteen workers, the concerned 91 canteen boys were supposed to be absorbed in "permanent

capacity,” as and when vacancy arises and no appointment shall be made in the category of sub-staff from outside this panel till the panel is exhausted and the panel shall remain alive till all the persons named in the list are absorbed against permanent vacancies. It was further mentioned in the settlement that the named 91 canteen boys shall be placed in the panel of temporary sub-staff and shall be absorbed against permanent vacancies in the same order in which their names appear in the list annexed hereto.

- 19.** While giving regular appointment in the services of the bank, the employees should be fixed at the minimum salary to the equal rank of bank. The aforesaid terms of settlement has been upheld by the learned Tribunal, the Hon’ble High Court at Calcutta as well as the Hon’ble Apex Court.
- 20.** It is stated that the Management has kept the 41 empanelled members of the respondents/applicant union as temporary sub-staffs, but no appointment letters have been issued to any of them. Moreso, the payment made to the said temporary sub-staffs are not backed by way of pay slip and are paid on a day to day basis and are only used for leave vacancies.
- 21.** The actions of the respondent authorities are de hors the terms of the settlement, wherein it was agreed by the parties to such settlement that the empanelled persons will be given appointment against vacant posts as and when the same arise, as permanent sub-staff.

22. Finding no other alternative, on May 30, 2016 the petitioners raised a dispute before the Chief Labour Commissioner (Central) at Delhi. After conciliation proceedings having failed, the respondent authorities issued an order dated November 30, 2018 being No.L-12012/19/2018 (IR)(BII). The Schedule of the reference is as follows:

“Whether, the action of the management of Indian bank in denying absorption of Rabi Shankar Das and Shri Prasanta Debnath in service of the Indian Bank legal and/or justified ? If not, to what reliefs the workmen are entitled ?”

Reference no.23/18 was registered before the learned Central Government Industrial Tribunal at Calcutta. The present petitioner along with one Prasanta Debnath, who subsequently expired, filed a settlement of claim before the learned Tribunal on January 2, 2019.

23. The Award was passed by the learned Tribunal on December 6, 2023 dismissing their case. Being dissatisfied with the said award, the present writ application has been preferred.

24. The Tribunal vide award dated 6th December, 2023 held as follows:

“Be that as it may, the concerned workman has failed to prove that there exists a vacancy in the permanent post of Sub-staff in Indian Bank and he possesses all the qualification to be appointed as sub-staff. That apart, he may be a casual employee of the bank but in order to get a job against the permanent vacancy he is to fulfill all the criteria and procedure established for regular recruitment as per recruitment rules applicable. Therefore, this Tribunal holds that on the basis of an award dated 13-07-1998 passed in Reference Case no.47 of 1992 (Exb. W-1),

Order passed in W.P. No.2101 of 1999 on 26-02-2002 and which has been modified vide Exb. No.W-4/A in APM No.480 of 2002, the workman cannot claim that they stand on the same footings with those 41 Canteen Boys whose services have been regularized by virtue of the order of the Hon'ble Division Bench of Calcutta High Court passed in APM No.480 of 2002 and in view of the order of the Hon'ble Supreme Court being SLP No.17079 of 2007 dated 08-05-2009 (Exb.W/5). Accordingly, the concerned workmen Sri Rabi Shankar Das and deceased Prasanta Debnath are not entitled to regularization against a permanent post in the Indian Bank. Accordingly, Reference Case No.23 of 2018 is dismissed and award to that effect is passed.

- 25.** One of the findings of the Tribunal being relevant is reproduced herein :

“The workmen have failed to produce a single piece of document to prove indeed they were appointed as Canteen Boys either by the bank directly or through its contractor or by the Canteen Committee. It is interesting to note that the workmen have failed to produce the list of the workmen attached with the order of reference in Reference Case No.47 of 1992 or any order of the Tribunal whereby their names have been added as parties to the Reference Case no.47 of 1992 and to show that they stand on the same footing with those 41 workmen whose services have been directed to be regularized by the Hon'ble Division Bench of Calcutta High Court in APM No.480 of 2002.”

- 26.** Both parties have filed their written notes of argument. The contention of the petitioner/workman is that the petitioner is one of the

persons empanelled in the list of 91 Canteen Boys (now the remaining 50) as such he is entitled to the same benefits as that of the 41 Canteen Boys who have been absorbed on the basis of the settlement, which was accepted in the award passed in respect of a reference relating to the said 41 Canteen Boys, out of the said 91 Canteen Boys.

27. It is the case of the respondent in their written notes that in compliance of aforesaid order of the Hon'ble Apex Court, 41 canteen boys were absorbed by the respondent bank (out of 41 canteen boys, the actual absorption was only 36 since four canteen boys on serial no. 16, 29, 31 and 41 of the list has been delisted due to irregularities in their School Leaving Certificate and one canteen boy serial no. 25 (U.S. Roy) expired and it is their stand since admittedly the petitioners do not fall within the list of 41 Canteen Boys in terms of the award modified by the Hon'ble Division Bench of this Court and attained its finality before the Hon'ble Apex Court in S.L.P. (Civil) No. 17079 of 2007, the petitioners moved the Central Government Industrial Tribunal at Kolkata in Reference No. 23 of 2018 to get the benefit in terms of the said award dated July 13, 1998 passed by the Central Government Industrial Tribunal at Calcutta in reference No. 47 of 1992.

28. On hearing the learned Counsels for the parties and on perusal of the materials on record, it appears that in reference case no. 47 of 1992 an award was passed by the Central Government Industrial Tribunal, Kolkata wherein the reference was as follows:-

“Whether the demand of All Bank Canteen Employees Union (Calcutta) that canteen staff, employed by the canteen at the premises of Indian Bank, should be given regular appointment in the services of the Bank with minimum salary payable to regular employees of the Bank, is justified? If not, to what relief are the workmen concerned entitled?”

29. A settlement was entered into and an award was passed accepting the said Terms of Settlement laid down in the settlement out of which two are as follows:-

- a) *Canteen Boys as per list annexed hereto will be included in the panel of temporary sub-staff as one time measure as per norms prescribed in Co-Personal Department's Circular No. 24/33 dated 04.03.83 with relation in respect of appear are limit which will be 40 years. They will be absorbed in permanent capacity as all when Tenancy Sri and no appointment until be in the category of sub-staff from outside this penal till the penal is exhausted and the penal shall remain alive that all the persons noted in the list are absorbed against permanent vacancies. The above 91 Canteen boys shall be placed in the panel of temporary sub-staffs and shall be absorbed against permanent vacancies in the same order in which their comes appear in the list annexed hereto giving regular appointment in the services of the Bank, the employee would be fixed at the minimum salary to the equal rank in bank. On such inclusion in the panel of temporary sub-staff on Canteen Boys will not have any claim on the Bank pertaining to absorption outside the terms therein contained.*
- b) *Indian Bank Employees' Union (W.B.) and all Bank Canteen Employees' Union agreed for secure of the Canteen moreover functioning all over the Calcutta zone.”*

30. The said agreement/settlement is not disputed. The said award was passed on July 13, 1998 on the basis of the said agreement between the parties in accordance with the terms thereof. The award was subsequently challenged before the High Court. The award challenged was passed with no objection from the bank and the terms of settlement were accepted being held to be legal and fair. Admittedly, **the writ application was dismissed on the ground that the award passed was on compromise and was not open to be challenged or reopened as the High Court sits in supervisory jurisdiction and not in appeal.** In appeal by the bank, the Division Bench clarified the award under challenge as follows:

*“With regard to 91 canteen boys, we are of the view that the Tribunal lacked inherent jurisdiction to consider all those 91 persons since the reference was related to 41 persons only and not 91 persons named in the list attached to the award. The award, therefore, would be applicable in case of original 41 persons whose names are appearing in the order of reference. **For the other 50 persons the Union would be entitled to raise similar dispute and such issue can be resolved through reconciliation on the same terms and conditions so that those 50 persons could also be brought within the hotchpot of this settlement to avoid further complication.**”*

31. In the award under challenge, the Presiding Officer observed that the petitioner joined the bank as a canteen boy on 18 June, 1994 and deceased workman Prasanta Debnath joined on 13th April, 1993. Both

claimed they were among the 91 canteen boys and also were parties to the reference which culminated in an award of compromise dated 13th July, 1998, wherein the Tribunal had directed the bank to absorb all 91 canteen boys *including the present workman*. The Court disagreed with the case made out by the petitioner therein and observed as follows:

*“However, the concerned workman in para – 5, 6 and 7 of his evidence-in-chief on affidavit has stated that compromise award dated 13.7.1998 was passed in connection of Reference Case no.47 of 1992. So, a question arises in the mind of this Tribunal, how the present workman including the deceased could be parties to the Reference Case no.47 of 1992 when W.W. No.1, one of the workmen in paragraph 3 of this evidence in chief on affidavit admitted that he joined as Canteen Boys in the bank on 18.06.1994 and deceased workman on 13.4.1993 i.e. much after the initiation of the reference case. **So, prima facie, it is seen that they joined as Canteen Boys as alleged after the reference of the dispute in respect of 41 Canteen Boys in the year 1992. So, it is not known how the present workmen could claim that they were parties to the Reference Case no.47 of 1992 when they were not even in the service of the bank in whatever capacity as a temporary or casual.***

- 32.** The tribunal found that no list of 91 canteen boys had been attached to the documents in Reference Case no.47 of 1992. The Tribunal then, on the finding that the petitioners were not part of the list of 91 canteen boys, proceeded to dispose of the reference on merit regarding the regularization of the petitioners and held that the

concerned workmen could not prove that there exist a vacancy in the permanent post of sub-staff in the Indian Bank or that they had the qualification to be appointed as sub-staff and held that the petitioners were not entitled to the benefit which the 41 canteen boys had got as they were not on the same footing and dismissed the reference.

33. Considering the claim and from the materials on record it appears that:-

- i) The issue in reference of 1992 was as follows:

“Whether the demand of All Bank Canteen Employees Union (Calcutta) that canteen staff, employed by the canteen at the premises of Indian Bank, should be given regular appointment in the services of the Bank with minimum salary payable to regular appointment in the Bank, is justified ? If not, to what relief are the workmen concerned entitled.”

- ii) The reference did not mention the number Canteen Staff (workmen) but at the time of reference, only 41 canteen boys were employed at the premises of Indian bank through the State (West Bengal) and the demand was made by the All Bank Canteen Employees’ Union (Calcutta). The number “91 Canteen Boys” is part of the settlement terms and the award. **(The strength having increased).**
- iii) It was during pendency of the reference that a **settlement** was entered into between the Bank and the Union in respect

of 91 Canteen Boys which included the earlier 41, which was submitted before the Tribunal on 11th December, **1997**.

- iv) An **award** dated 13th July, **1998** was passed on the basis of the said settlement, on the petition of the union dated 30th June, 1998.
- v) The Division Bench of this Court in appeal (APO No.480 of 2002) on 29th March, 2007 modified the award and made the award applicable in respect of 41 Canteen Boys (who were in service when the reference was made) out of the 91 Canteen Boys named in the list attached granting liberty to the remaining 50 boys to raise a dispute for claiming the benefit.
- vi) **It appears from the list of 91 Canteen Boys at page 47 of the writ application that the petitioner herein is named at number 51 as Rabi Das and the deceased workman Prasanta Debnath is at number 42.**
- vii) The tribunal has clearly overlooked the said fact.
- viii) The tribunal also erroneously held that, as the petitioner was not in service in the year 1992, when the reference was made, their claim is not tenable.
- ix) **The petitioner joined his service on 18th June, 1994 and the deceased workman, Prasanta Debnath, on 13th April, 1993, and as such both were in service on the date of submitting the settlement on 11th December, 1997 and thus also on the date of award on 13th July, 1998.**

- x) As such the findings in the award of the tribunal under challenge being not in accordance with law, **the award dated 6th December, 2023** passed by the Central Government Industrial Tribunal, Kolkata along with the Gazette notification dated 20th February, 2024 **are set aside.**

34. The action of the management of Indian Bank in denying absorption of Shri Rabi Shankar Das and Shri Prasanta Debnath in the service of the Bank, is neither legal nor justified.

35. The petitioner herein (at no.51) and the deceased workman Prasanta Debnath (at no.42), are also entitled to the benefit as per the terms and conditions in the award on settlement dated 13th July, 1988, being empanelled in the list of 91 Canteen Boys, annexed to the settlement/compromise petition and the same be provided by the Indian Bank as per the said terms and condition in the petition of compromise at the earliest.

36. The writ petition is accordingly allowed.

37. Interim order, if any, stands vacated.

38. Connected applications, if any, also stands disposed of.

39. Urgent certified website copy of this judgment, if applied for, be supplied expeditiously after complying with all, necessary legal formalities.

(SHAMPA DUTT (PAUL), J.)