IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
APPELLATE SIDE

Present:

The Hon'ble Justice Shampa Dutt (Paul)

WPA 18575 of 2022

M/s. Kesoram Industries Limited
Versus
Sukhdham Pandey & Anr.

For the Petitioner	:	Mr. Soumya Majumder, ld. Sr. Adv. Mr. Sandip Kundu, Ms. Malay Kr. Seal.
For the Private Respondent	:	Mr. Shamim Ahamed, Ms. Zoya Eram.
Judgment reserved on	:	01.09.2026
Judgment delivered on	:	01.10.2026

Shampa Dutt (Paul), J.:

1. The writ application has been preferred challenging an award dated 29th March 2022 passed by the Learned 2nd Industrial Tribunal, West Bengal.

2. Mr. Majumder, learned senior counsel representing the petitioner, submits that there was no employee-employer relationship between the petitioner and the private respondent and as such, no award could have been passed against the writ petitioner.

3. Drawing the attention of this Court to an order passed under Section 391 (2) and 394 of the Companies Act, 1956 dated 21st September 1999, it is submitted that by the aforesaid order, the entire assets and properties including the employees and other liabilities **of the textile division** of the writ petitioner stood transferred and vested with M/s Kesoram Textile Mills Limited (hereinafter referred to as the scheme of arrangement).

4. Mr. Majumder argues that the private respondent was engaged by the M/s Kesoram Industries and Cotton Mills, whose name was later changed to M/s Kesoram Industries Ltd. Since the private respondent was in the textile division of M/s Kesoram Textile Mill.

5. Consequent upon passing of the aforesaid order, the services of private respondent stood transferred to M/s Kesoram Textile Mills Limited.

6. Mr. Majumder, further submits that the Tribunal did not take into consideration the aforesaid scheme of arrangement sanctioned by this Court, in its proper perspective, notwithstanding that the same is binding on it. In the facts of the present case, he prays that the award passed by the Tribunal be quashed and set aside, being not in accordance with law.

7. Mr. Ahmed, learned counsel appearing for the private respondent submits that the private respondent, at the material point of time, discharged his duties as an employee of the writ petitioner. He was posted at the head office of the writ petitioner.

Drawing the attention of this Court to a certificate dated 3rd February 1995, issued by the Kesoram Industries Limited, he submits that the management of Kesoram Industries, had certified, the private respondent to be working at the head office.

8. According to the private respondent, only those employees who were working at the factory premises of M/s Kesroam Industries Ltd. at 42, Garden Reach road, Calcutta-700 024, were engaged as employees of the textile division, whose services have since been transferred to the Kesoram Textile Mills Limited. He says that there is no irregularity in the order passed by the Tribunal.

9. Parties have filed their written notes.

10. The petitioner's case is that on 20.06.1994 the respondent no.1 was appointed an Assistant in the Textile Division of the petitioner company situated at 42, Garden Reach Road, Calcutta - 700024.

11. Subsequently by reason of **an order of amalgamation, approved by this Court in company jurisdiction under the provisions of Sections 391 of 393 of the Companies Act, 1956,** the Textile Division of KIL as defined in Clause 1. E of the scheme of amalgamation was amalgamated with KTML having it's registered office at 42, Garden Reach Road, Calcutta-700024 with the condition that the employees of KIL engaged in the Textile Division of KIL would be transferred and engaged in KTML.

12. Thus on and from 1st June, 1999, all employees including the Respondent no.1 of Textile Division of KIL became employees of KTML.

13. On 28th February, 2005, Respondent no. 1 resigned from service of KTML and his dues were duly settled.

14. **The said resignation letter was addressed to Kesoram Textile Mills Limited.** Though in course of Examination in Chief, the respondent no.1 himself exhibited the resignation letter before the learned Tribunal and at the time of cross examination, he disputed his signature on the said resignation letter. The respondent no.1 preferred an application seeking examination of the signature in the resignation letter by an expert. However later, the respondent no.1 withdrew such application as "not pressed". Therefore, the respondent no.1 admitted the genuineness of the said resignation letter signed by him.

15. Therefore, it would be evident from the records of the case that the respondent no.1 was an employee of the Textile Division the KIL which subsequently amalgamated with KTML. Thus, on and from 1st June, 1999, the respondent no. 1 became an employee of KTML.

16. The industrial dispute was therefore required to be raised against KTML, and not against KIL.

17. The respondent no. 1's case is that he was always engaged with the petitioner company and never with its textile division. It is

further stated that the said private respondent always worked at the head office of the petitioner and even after amalgamation did not join the textile company.

18. The respondent no. 1's case is that the respondent No. 1 was appointed by the petitioner company (then known as Kesoram Industries & Cotton Mills Limited) as an Assistant vide appointment letters dated 12.04.1994 and 20.06.1994 which expressly provides that on completion of six months' probation, in the absence of either termination or extension in writing, the workman's service "shall be automatically deemed to have been confirmed by the company.

19. The respondent No. 1 continued thereafter as an employee attached to the petitioner's Calcutta Head Office at Birla Building, 9/1, R.N. Mukherjee Road, Kolkata-700001, as is borne out by:-

(i) the Employment Certificate dated 03.02.1995 (Exhibit 3, Annexure R- describing him as staff "at our Calcutta Head Office," issued on the Petitioner's own letterhead;

(ii) the Identity Card dated 08.07.2005 (Exhibit 2, Annexure R-3) -issued more than six years after the Petitioner's alleged transfer date of 01.06.1999, and more than five months after the alleged resignation date of 28.02.2005;

(iii) the Inter-Office Memo dated 23.03.2000 issued by Sri Sitaram Chamaria (Exhibit 11) directing the

workman to deposit an outstanding sum, and the workman's reply dated 31.03.2000 (Exhibit 12) both directly with the Head Office establishment, years after the purported transfer,

(iv) the Provident Fund statement (Exhibit 4) of Birla Industries Provident Fund reflecting contributions attributable to his employment continuing at least through 2001-2002.

20. It is stated that as a matter of record, and of particular significance, that Sri Sitaram Chamaria, who signed the Inter-Office Memo dated 23.03.2000 to the workman, is the same officer who verified the petitioner company's written statement before the Learned Tribunal on 04.11.2010 confirming continuity of the same establishment and management dealing with the workman throughout.

21. On 30.05.2008, without notice, charge-sheet, enquiry, or compensation, the respondent No. I was physically prevented by security personnel at Birla Building from resuming duty, resulting in his written complaints/FIRs dated 30.05.2008 and 02.06.2008 at Hare Street Police Station. He thereafter addressed representation letters dated 06.08.2008 and 04.09.2008 to the Chairman of the petitioner company seeking to resume duty, to which the petitioner replied on 15.09.2008 stating in terms: "You were never employed by us..."

22. It was only in its subsequent letter dated 26.11.2008 addressed to the Assistant Labour Commissioner after conciliation was set in motion, that the Petitioner for the first time departed from its earlier flat denial of employment and introduced an entirely new and inconsistent case: that the workman had been transferred to Kesoram Textile Mills Limited ("KTML") on 01.06.1999 pursuant to the Scheme of Arrangement and had resigned from KIML on 28.02.2005, and had also received full and final settlement.

23. The respondent further submits that this self-contradiction - from "never employed to a detailed but wholly undocumented transfer-and-resignation narrative, produced only after the workman moved the conciliation machinery was rightly treated by the Ld. Tribunal as indicative that the defence was an afterthought fabricated to meet the claim, and not a truthful account maintained from the outset.

24. On the basis of this record, the Government of West Bengal, by an order dated 01.02.2010, referred the following issues for adjudication before the Ld. First Industrial Tribunal, Kolkata:-

(i) Whether the termination of service of Sri Sukhdham Pandey by way of refusal of employment with effect from 30.05.2008 by the Management is justified?

(ii) What relief, if any, is the workman entitled to?

25. The respondent has thus denied the total case of the petitioner and has prayed for dismissal of the writ application.

26. The respondent no. 1 has filed affidavit-in-opposition along with written notes. This respondent has relied upon the following judgments:-

(i) Reckitt and Colman of India, Ltd. and Fifth Industrial Tribunal and Ors. in the High Court at Calcutta in an Appeal from Original Order No. 344 of 1979 dated 6th December 1979;

(ii) Calcutta Port Shramik Union vs. The Calcutta River Transport Association & Ors. reported in (AIR 1988 SC 2168.

27. The scheme of amalgamation dated 01.06.1999 notes:-

> *"C. **KIL**' means Kesoram ledustries Limited, an existing Company within the meaning of the Companies Act, 1956 having its registered office at **9/1, R. N. Mukherjee Road,** Calcutta - 700 001 in the State of West Bengal.*
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> *D. "**KTML**" means Kesoram Textile Mills Limited, a company incorporated under the provisions of the Companies Act, 1956 having its registered office at **42, Garden Reach Road, Calcutta - 700 024** in the State of West Bengal.*
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> *E. Textile Division means Textile Division of KIL, the factory for manufacture of various types of Textile goods at 42, Garden Reach Road, Calcutta in the State of West Bengal and shall mean and include all the business, properties and liabilities pertaining and relatable to the Textile Division including."*

28. In the **employment letter dated 20.06.94** issued to the private respondent (employee) herein, the letter head is in the name of the original company **'Kesoram Industries & Cotton Mills Limited'** which has both the addresses noted in it.

29. **The Mill** is shown at 42, Garden Reach Road and the Registered and **Head Office** at 9/1, R.N. Mukherjee Road, Kolkata-1.

30. The scheme of amalgamation took effect on 1st June, 1999 when two companies were formed (i) Kesoram Industries Limited at 9/1, R.N. Mukherjee Road, Calcutta-700001. (ii) Kesoram Textile Mills Limited at 42, Garden Reach Road, Calcutta- 700 024.

31. **Clause B(1) of the employment letter notes:-**

> *"B. (1) You shall report for duty on 1.7.94. and* ***serve the company at any of its units, Undertakings or works or serve any of its subsidiary companies at any of its Units, Undertakings of Works*** *for a minimum period of five years commencing from the date of your Joining the services during which period you shall not leave the Company/Subsidiary Company or any of its units of your own accord. The Company shall, however, be entitled to exercise its discretion to terminate your services at any time under any of the provisions hereinafter stated or other Rules and Regulations that may be in force for the time being."*

32. Letter dated 1st October, 2006 shows that the employee was also engaged in another unit being Kesoram Insurance Management Ltd. and received his remuneration from them.

33. The signature in the resignation letter is addressed to KTML but addressed at R.N. Mukherjee Road, Kol-1 and is challenged.

34. **The undated receipt of full and final settlement appears to have been issued by KIL Limited Kol-1, but the receipt by the employee** is also denied and signature therein is also challenged.

35. The Bank passbook shows C/o KIL and the address at Kol-1.

36. The workman's evidence before the tribunal being relevant is reproduced herein (examination in chief on 20.04.2012):-

> *".....I worked in this company for about 16 years. I was working as an Assistant in various Departments of the company as per direction of the higher authority.* ***Even I was also instructed to work as an Assistant in other company of B.K. Birla Group like Kesoram Textile Mills Limited. Kesoram Insurance Management Limited and Vasavadatta Service Limited.*** *I used to put my signature in the Attendance Register regularly but it was not maintained in any printed form of attendance nor the name of the company, found place on the cover page of the register.* ***Kesoram Industries used to check up the said register and on the basis of our attendance salary used to be paid.*** *Salary used to be paid sometimes by cheque and sometimes by cash. On 03.02.95 this company issued one employment certificate in my favour. This is the copy of said certificate wherein it has been certified that I am the employee of Kesoram Industries Limited at their Calcutta Head Office. The certificate is (annexed Ext. 3). Provident Fund used to be deducted from my salary and the P.F. Account is maintained by Birla Industries P.F. This is the Xerox copy of my P.F. slips from 2001 to 2002 which is (marked Ext. 4). I was terminated from service on 30.05.2008....."*

37. It appears from the impugned award that the tribunal totally overlooked this relevant piece of evidence.

38. It appears that as per the terms and condition at clause B(1) of the employment letter and this piece of evidence, the employee was deputed and thus worked in the other units functioning under KIL Limited, including Kesoram Textile Mills Ltd. (evidence).

39. Thus though the respondent workman alleges "refusal of employment" stating that he was not allowed to join at KIL's head office Kol-1 on 30.05.2008, **there is nothing on record to show that he approached KTML at 42, Garden Reach Road or any of the other units where he had worked earlier and was not allowed to join. If so it would have substantiated his case of 'refusal of work/employment'.**

40. The reference in this case is dated 01.02.2010 and decided on 29.03.2022.

41. Thus the conduct of the employee clearly shows abandonment of service and thus no refusal of work/employment. There is no letter of termination till date.

42. In ***Nagar Parishad Bilaspur v. Bone Ram and Another, (2005) II LLJ 123***, wherein it was held that where a workman remains absent from work for more than two years without leave or any communication to the employer, such conduct amounts to **abandonment of service,** and **the service stands automatically terminated in law,** not falling within the definition of retrenchment at all. In the present case, where the workman remained absent for a substantially long, unexplained period before raising any dispute. It is settled principal of law, wherein it has been held that a workman cannot automatically be granted back wages, and that the onus to establish continuous unemployment and entitlement thereto lies upon the workman.

43. The findings of the tribunal that the termination (by way of refusal of employment) of the employee was bad in law for non compliance of Section 25F of the I.D. Act is thus clearly perverse misreading of facts, considering that there has been no termination by way of retrenchment in this case as seen from the record.

44. The impugned award dated 29th March 2022 passed by the Learned 2nd Industrial Tribunal, West Bengal, is **set aside** as there is absence of legal evidence and the award/order is clearly erroneous and thus bad in law.

45. The employee herein entitled to his lawful benefits and dues for the period from 18.04.1994 till 30.05.2008.

46. WPA 18575 of 2022 is allowed.

47. Applications, if any, connected thereto stand disposed of consequently.

48. Interim order, if any, stands vacated.

49. Photostat certified copy of this Judgment, if applied for, be given to the parties on priority basis upon compliance of all formalities.

(Shampa Dutt (Paul), J.)