

IN THE HIGH COURT AT CALCUTTA

Constitutional Writ Jurisdiction

Appellate Side

Present:

The Hon'ble Justice Shampa Dutt (Paul)

WPA 20114 of 2025

M/s. Century Extrusions Limited.

Vs.

The State of West Bengal & Ors.

**For the Petitioner : Mr. Jayanta Dasgupta,
Mr. Balaram Patra.**

**For the Respondent No. 3 : Mr. N. Rakshit,
Mr. Niloy Rakshit.**

**For the State : Mr. Vivekananda Bose,
Ms. Deboleena Ghosh.**

Judgment reserved on : 31.03.2026

Judgment delivered on : 06.05.2026

SHAMPA DUTT (PAUL), J. :

1. The writ application has been preferred challenging an order 17.02.2025 passed by the First Labour Court in Case No. 18 of 2023.

2. Vide the impugned order, the First Labour Court on deciding the challenge as to maintainability of the Order of Reference, relying upon several judgments, was of the view that the Labour Court has “no jurisdiction for adjudicating, the

maintainability of the Order of Reference” before it made by appropriate government and the petition filed by O.P./Company dt. 27.08.2024 stood rejected. The case was fixed for further evidence.

3. The petitioner herein, being the opposite party before the Labour Court challenged the maintainability of the Order of Reference in the present case.

4. It is the order of the Labour Court that has been challenged herein and not the Order of Reference. The petitioner has stated regarding the employment of the respondent no. 3 and his misconduct, leading to the financial loss of the petitioner and as he did not mend himself, a charge sheet was issued and domestic enquiry was conducted.

5. Finally, the respondent no. 3 was dismissed from service on 08.09.2021 and by a letter dated 30.11.2021 the respondent no. 3 was directed to collect all his dues.

6. It is stated that the respondent no. 3 did not challenge the order of dismissal but approached the Deputy Labour Commissioner, Kharagpur and a conciliation proceeding was initiated, which failed. An industrial dispute on the issue of the termination of respondent no. 3 was referred to the respondent no. 2 by the respondent no. 1.

7. The petitioner has challenged the order of the Labour Court which categorically states that the Labour Court does not have the jurisdiction to adjudicate or decide as to the maintainability of the Order of Reference before it made by the appropriate Government.

8. The petitioner states that the Labour Court had the authority to consider the maintainability of the Order of Reference and as such the impugned order not being in accordance with law is liable to be set aside and the Labour Court should decide the maintainability of the Reference on merit being empowered to do so.

9. One of the grounds on which, the petitioner has challenged the impugned order is that the Labour court has erroneously opined and observed that the Labour Court has no jurisdiction for adjudicating the maintainability of the order of reference made before it by the appropriate government, while at the same time the Court rejected the petition filed by OP/ Company dated 27.08.24. Thus, it is argued that the impugned order suffers from self-contradiction and is liable to be set aside.

10. It is further stated that the impugned order is not in accordance with law as the Labour Court upon hearing the parties, decided to hear on the point of maintainability of the

order of reference, first, separately as preliminary issue and fixed dates for hearing for which an application was filed by petitioner but ignoring the earlier orders in a most whimsical manner rejected the application which goes in conflict of the Court's earlier orders and thus cannot be sustained.

11. It is further stated by the petitioner that that the legal point as to whether prior demand before the management is necessary for the purpose of converting a dispute to a valid industrial dispute and consequent jurisdiction of the Respondent No.2 to adjudicate the issues referred as "industrial dispute as raised by the petitioner has not been dealt with and addressed.

12. The petitioner further submits that the Labour Court has completely failed to consider the provision under Section 10(4) of the Industrial Disputes Act, 1947 which confers jurisdiction upon adjudicating authority to adjudicate and decided incidental issues and submits that the impugned order is not legally sustainable as the respondent No.2 committed grave error in law in rejecting the application filed on 27.08.2024.

13. The petitioner has also relied upon the judgments in:-

- i. The Management of Express Newspaper vs Workers and Staff reported in 1962-SCC Online SC 153 Para 10,11,12.***

ii. Mekon Ltd. vs State of West Bengal reported in 2001

CHN(1) 333 para 4,6,9,10.

iii. Webel Nicco Electronics Ltd. vs Anima Roy as

reported in 1997 CHN(1) 454, relevant Para 34.

14. The petitioner/company herein has challenged the maintainability/validity of the reference before the labour court on the ground that the order of reference is not maintainable in as much as no proper dispute has been raised with the company before seeking intervention of the conciliation officer/labour commissioner, which is mandatory.

15. On this issue the petitioner relies upon the judgment in **Sindhu Resettlement Corporation Ltd. vs Industrial Tribunal of Gujarat & Ors. 1967 SCC OnLine SC 98.**

16. The respondent no. 3 on filing written notes has argued, relying upon the judgment in **Sambhu Nath Goyal vs Bank of Baroda reported in 1978 2 SCC 353**, wherein the Supreme Court has held:-

“5. A bare perusal of the definition would show that where there is a dispute or difference between the parties contemplated by the definition and the dispute or difference is connected with the employment or non-employment or the terms of employment or with the conditions of labour of any person there comes into existence an industrial dispute. The Act nowhere contemplates that the dispute would come into existence in any particular, specific or prescribed manner. For coming into existence of an industrial dispute a written

demand is not a sine qua non, unless of course in the case of public utility service, because Section 22 forbids going on strike without giving a strike notice. The key words in the definition of industrial dispute are “dispute” or “difference”. What is the connotation of these two words? In Beetham v. Trinidad Cement Ltd. [(1960) 1 All ER 274, 279 : 1960 AC 132] Lord Denning while examining the definition of expression “Trade dispute” in Section 2(1) of Trade Disputes (Arbitration and Inquiry) Ordinance of Trinidad observed:

“By definition a ‘trade dispute’ exists whenever a ‘difference’ exists; and a difference can exist long before the parties became locked in a combat. It is not necessary that they should have come to blows. It is sufficient that they should be sparring for an opening.”

17. In para 5 of the said judgment it is clearly stipulated that before raising dispute to the conciliation officer, **written demand to the company is not required at all.**

18. This Court is of the view that as the workman had been dismissed from service on completion of enquiry/disciplinary proceedings, no purpose would be served approaching the company prior to raising the dispute.

19. The next ground on which the issue of maintainability has been raised is that the workmen concerned was dismissed from service on 08/09/2021 after due process of law and thus the dispute is stale one and not maintainable.

20. Considering the said ground as alleged, the said issue is for the learned labour court to decide, while deciding the reference.

21. The further challenge to the maintainability/validity of the reference and the jurisdiction of the labour Court to decide the said reference is that:-

- a) That the Conciliation Officer in a cavalier fashion sent a failure report and likewise the appropriate government sent the order of reference.***
- b) That such reference do not confer any jurisdiction to the Ld. Court to adjudicate the issues referred.***
- c) That the above preliminary points go to the very root of the maintainability of the Order of Reference and as such a date may be fixed first for hearing on the preliminary points before going into the merits of the case.***

22. The issue(s) in the order of reference are as follows:-

- 1) Whether the termination of service of Sk Sakim w.e.f. 08/09/2021 by the management of M/s Century Extrusions Ltd., WBIIDC Industrial Growth Centre, Plot No. 7A, Sector B, Nimpura, P.O. - Rakhajangle, P.S. - Kharagpur Local, Dist. - Paschim Medinipur, Pin - 721301 is justified?*

2) To what relief, if any, is he entitled?

23. The **respondents/State** on filing written notes has argued that the Learned labour Court cannot go into the question of validity of reference and as such the Learned Labour Court had rightly passed the order impugned dated 7th February 2025.

24. The law laid down in ***National Engineering (Supra)*** has been affirmed by the Hon'ble Supreme Court in **Prabhakar Versus Joint Director, Sericulture Department and Another (Paragraph 25, sub paragraph 8)** and has been held to apply for the Learned Labour Court as well. Industrial Tribunal being the creation of statute gets jurisdiction of the basis of reference and thus cannot go into the question of validity of reference.

25. It is further stated that the Learned Labour Court /Industrial Tribunal can only adjudicate the maintainability of a dispute on anvil of existence of a relationship of a employer and employee between the parties (***Mecon Ltd versus State of West Bengal and Others (Supra)***). Such a case has not been made out and infact a contrary case i.e., the Private Respondent being employed under the Petitioner has evidently been admitted by the Petitioner.

26. It is further stated that thus, the challenge to maintainability of the proceedings before the Learned Labour

Court not being made on the question of existence of employer-employee relationship, the Learned Labour Court had rightly rejected the challenge for lack of jurisdiction. The order impugned thus does not call for any interference and this Hon'ble Court may be pleased to dismiss the matter.

27. The respondent no. 3 has also relied upon the judgment reported in 1983 LAB. I.C. 1629 D.P. ***Maheswari -Vs- Delhi Admin and Ors.*** (Larger Bench), wherein the Court clearly opined inter alia that it is better that Tribunals, particularly those interested with the task of adjudicating labour disputes, where delay may be lead to misery and jeopardised industrial peace, **should decide all issues in dispute at the time without taking some of them as preliminary issue.**

28. Considering the arguments adduced by the parties herein and the judgments relied upon, the judgment in ***Sambhu Nath Goyal (Supra)*** takes care of the first ground, that is without first approaching the company, no industrial dispute could be raised.

29. The principle judgment applicable in this case is the judgment in ***Mecon Ltd. Vs State of West Bengal and others 2001(2) L.L.N. 304***, wherein the issue before the Calcutta High Court was similar to the issue in the present case, only difference being that **in the present case, the employer-**

employee relationship is admitted, which thus gave rise to a valid industrial dispute.

30. Para 13 in **Mecon Ltd. (Supra)** reproduced herein, is very clear on the said point:-

“13. But when specific defence taken by the company is that there existed no relationship of employer and employee, it is for the Tribunal to decide such question after materials are placed before Tribunal. After all, the Tribunal is to come to a definite conclusion whether there existed any industrial dispute within the meaning of the Act. In the case of Express Newspapers Pvt. Ltd., the Apex Court specifically approved such course. Moreover, as pointed out by the Bench decision of the Apex Court consisting of five Judges in the case of the Madras State v. C.P. Sarathy (supra), it is always open to a party seeking to impugn the resulting award to show that what was referred by the Government was not an industrial dispute within the meaning of the Act and therefore the Tribunal had no jurisdiction to make the award. Thus, the authority of the Tribunal to decide such preliminary fact as regard its own jurisdiction is beyond any doubt.”

31. Another contention has been raised by the workman in this case, which is similar to the issue in **Mecon Ltd. (Supra)** and answered by the **Court therein:-**

“4. First, Mr. Sengupta has contended that there was no sufficient material before the appropriate

Government to refer the dispute to the Tribunal under Section 10 of the Act.

6. It is now settled position of law that in making a reference under Section 10 of the Act, the appropriate Government does an administrative act and the fact that it has to form an opinion as to the factual existence of an industrial dispute as a preliminary step to the discharge of its function does not make it any the less administrative act. The Court cannot therefore canvass the order of reference closely to see if there was any material before the Government to support its conclusion as if it was a judicial or quasi judicial determination. See The State of Madras v. C.P. Sarathy, [A.I.R. 1953 S.C. 53].”

32. As such from the issue of maintainability as raised by the petitioner herein, it is prima facie clear that the said issue does not exist in the present case and has been raised with the sole intention to delay the proceedings before the trial Court, thus causing prejudice to the workman.

33. Such conduct of an employer should not be tolerated, considering that the whole process herein has been framed keeping in mind the beneficial legislation being applied.

34. The learned labour court being competent has the authority to decide such preliminary fact as regard its own jurisdiction and in the present case the Court has wrongly held that the Court has no jurisdiction.

35. Thus the impugned order in this case dated 17.02.2025 passed by the First Labour Court in Case No. 18 of 2023, being

not in accordance with law, is **set aside** and **as the issue of maintainability has been decided herein, the labour Court shall proceed to dispose of the case, in accordance with law, expeditiously, preferably within 3 months from the date of this order.**

36. WPA 20114 of 2025 is thus disposed of.

37. Connected application, if any, stands disposed of.

38. Urgent Photostat certified copy of this judgment, if applied for, be supplied to the parties expeditiously after due compliance.

[Shampa Dutt (Paul), J.]