IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
APPELLATE SIDE

Present:

The Hon'ble Justice Shampa Dutt (Paul)

WPA 21645 of 2026

M/s. Tata Consultancy Services Ltd.
Vs
The State of West Bengal & Ors.

For the Petitioner	:	Mr. Ranjay De, Sr. Adv. Mr. Basabjit Banerjee, Mr. Adityajit Abel Bose.
For the Private Respondent	:	Mr. Soumya Majumder, Sr. Adv. Mr. Arnab Dutt, Ms. Sanjukta Dutta.
Judgment reserved on	:	01.09.2026/09.09.2026
Judgment delivered on	:	05.10.2026

Shampa Dutt (Paul), J.:

1. The writ application has been preferred being aggrieved by the orders dated 05.03.2026 and 23.06.2026 passed by the Referee under the West Bengal Shops and Establishments Act, 1963.

2. Mr. De, learned senior counsel for the petitioner has placed the letter of employment issued to the private respondent being no. 3 in the present case, wherein it appears that at clause 7 there is a provision for performance pay which is as follows:-

"**PERFORMANCE PAY**

Monthly Performance Pay

1. *You will receive a* ***monthly performance pay of Rs.83,900/-*** *The same will be reviewed on completion of your first Anniversary with the company and will undergo a change basis your own engoing individual performance.*

2. Quarterly Variable Allowance

Your variable allowance will be 23,600/- Per month, and will be paid at the closure of each quarter based on the performance of the company and your unit and to the extent of your allocation to the business unit.

Quarterly Variable Allowance is subject to review on your first anniversary and may undergo a change based on the actual performance of the Company, your business unit and your own ongoing individual performance. The payment is subject to your being active on the company rolls on the date of announcement of Quarterly Variable Allowance.

This Pay/Allowance shall be treated as productivity bonus in lieu of statutory profit bonus."

3. It is further submitted that the said pay is co-related to the performance of the private respondent and **is not a part of the wages** and more specifically **the said clause provides that the said pay and allowance shall be treated as productivity bonus in lieu of statutory profit bonus.**

4. **The definition of wages** under the Payment of Wages Act, 1936 is applicable in respect of the West Bengal Shops and Establishments Act, 1963. The term 'wages' is defined in Section 2(vi) of the Payment of Wages Act and it provides at 2(1) as follows, which is relied upon:-

> ***"(vi)"wages"*** *means all* ***remuneration*** *(whether by way of* ***salary, allowances, or otherwise)*** *expressed in terms of money or capable of being so expressed which would, if the terms of employment, express or implied, were fulfilled, be payable to a person employed in respect of his employment or of work done in such employment,* ***and includes****-*
>
> *(a) any remuneration payable under any award or settlement between the parties or order of a court;*
>
> *(b) any remuneration to which the person employed is entitled in respect of overtime work or holidays or any leave period;*

> ***(c) any additional remuneration payable under the terms of employment (whether called a bonus or by any other name);***
> *(d) any sum which by reason of the termination of employment of the person employed is payable under any law, contract or instrument which provides for the payment of such sum, whether with or without deductions, but does not provide for the time within which the payment is to be made;*
> *(e) any sum to which the person employed is entitled under any scheme framed under any law for the time being in force,* ***but does not include-***
> *(1) any bonus (whether under a scheme of profit sharing or otherwise) which does not form part of the remuneration payable under the terms of employment or which is not payable under any award or settlement between the parties or order of a court;*

5. Mr. De places Section 14 of the Act of 1963, wherein it appears that the Referee under the said Act has the power under the said provision **to consider cases which involve payment and recovery of only "wages". It is stated that the same, does not include bonus**.

6. The petitioner herein had raised the point of maintainability before the respondent no. 2. Vide the impugned order dated 05.03.2026 held as follows:-

> *"..... That whether the* ***performance bonus*** *for the periods as laid down in his application were actually accrued for all that material point of time needs reasonable opportunities of hearing to the subjected upon to the parties concerned together with all that averments submissions..... and written submissions.....”*

7. The Referee condoned the delay and directed evidence to be adduced.

8. Being aggrieved with the said order, the petitioner then filed a separate application challenging the maintainability of the proceedings before the respondent no. 2. As the issue of maintainability raised in the written statement by the petitioner, was decided vide the order dated 05.03.2025, **the respondent no. 2 then vide its order dated**

23.06.2026, relying upon the order dated 05.03.2026 did not consider and decide the issue of maintainability at that stage and finally by the impugned order dated 23.07.2026 though signed on 04.08.2026 directed the parties to proceed for adducing evidence.

9. It appears from the impugned orders that the respondent no. 2 did not consider the issue of maintainability and held that the same shall be considered by adducing evidence.

10. Mr. De raised the issue that the procedure before the respondent no. 2 is a **summary procedure and no evidence can be adduced.**

11. The petitioner relies upon the following judgments:-

i. Bharat Chamber of Commerce & Anr. vs. State of West Bengal & Ors. 2010 SCC OnLine Cal 1380, (Para 9, 11).

> *"9. The position of law appears to be that if there has been ex facie illegal deduction of wages, the Referee can exercise his or her Jurisdiction under section 14 of the 1963 Act. But if the employer seeks to justify deduction of wages on a prima facie legitimate ground then it would not be within the jurisdiction of the Referee to issue recovery order."*
> *"11. This question in my view is a dispute which requires to be determined on the basis of construction of the terms of employment, which may require adjudication on evidence. This has to be done by way of making adjudication of the claims of the respective parties. In my opinion, the Referee does not have jurisdiction to determine this question. I find from the orders impugned that the Referee has come to a finding that supplying tea and drinking water to the staff members of the petitioner No. 1 was not part of the duty of the respondent No. 3. This is impermissible, and adjudication on this count was beyond the Jurisdiction of the Referee. Under these circumstances both these writ petitions are allowed. The impugned orders dated 31st August, 2009 shall stand quashed."*

ii. M/s. The Peerless Inn, Kolkata vs. The State of West Bengal & Ors. in WPA 3515 of 2026 dated 18.02.2026, (Para 6).

> *"6. Learned senior counsel for the petitioner further relies upon the judgment in M/s. Gupta Electric Company & Anr. vs. The learned Chief Judge, Small Causes Court at Calcutta & Ors. reported in 1988 SCC OnLine Cal 192 and submits that in a case of such nature, the authority concerned cannot go into the issue and, as such, the point of maintainability has been decided erroneously."*

iii. M/s. Gupta Electric Company & Anr. Vs. The learned Chief Judge, Small Causes Court at Calcutta & Ors.(Para 3 and 4).

> *"3.Being aggrieved by the order passed by the learned Referee the petitioner company preferred an appeal under Section 14 of the West Bengal Shops and Establishment Act before the learned Chief Judge, Small Causes Court, Calcutta. …….*
> *……. The petitioner challenged the said order of the appellate court below on the ground that the court below had no jurisdiction under section 14(6) of The West Bengal Shops and Establishments Act. The learned Referee had no jurisdiction to enter into any disputed question of fact and law. …….*
> *"4. ……In such circumstances on the ground of expediency the Authority under the Act should not entertain complicated questions of facts and law relating to claim of wages and such claim should be left to be decided by the authority under the Industrial Disputes Act which is a special Act for dealing with all questions between the workmen and the employer……."*

12. Mr. Majumder learned senior counsel appearing for respondent no. 3 that submits to consider whether the employer who seeks to justify deduction of wages, on a prima facie legitimate ground, the referee has the jurisdiction and can proceed by way of taking evidence to adjudicate whether the employer is justified to deduct wages and if held/found

justified, cannot order recovery, **if not** can proceed in accordance with law, but the authority/referee cannot decide both on law and facts on the said issue.

13. The respondent no.3 on filing an affidavit of Disclosure of Documents states that as evident from the tracking details corresponding to the delivered Consignment ID - EW466663726IN from India Post's Speed Post tracking site, the service of notice with copies of the writ petition were booked vide Speed Post service on 17th August afternoon and was delivered to the Respondent no. 3's address in the evening of 19th August 2026, whereas the aforesaid matter was listed and heard on court on 19th August 2026 during court hours.

14. The Respondent herein before the Learned Referee in Application No.P-44 of 2025 under Section 14(1) of the West Bengal Shops and Establishment Act, 1963, relied upon several documents filed along with their examination-in-chief on 23rd July, 2026. The said documents shall reveal that outstanding variable allowance/performance bonus as claimed by the respondent no.3 has been treated as part of wages and part of CTC from time to time, as per the documents generated by the petitioner.

15. Copy of the **"pay slips"** in the Affidavit of Disclosure of Documents shows "Variable Allowance" as part of wages.

16. The petitioner's contention is that issue before the Learned Referee relates to 'Performance Bonus' which is not part of the salary and thus not 'wages'.

17. Annual India Gross Salary is as follows:-

Component	Annual Amount (INR)
India Base Salary	1,080,000
** Personal Allowance	1,416,204
Performance Pay	1,004,400
Annual India Gross Salary	3,500,604

18. It is thus noted therein that performance pay includes quarterly **performance pay that will be paid on a monthly basis.**

19. The statement of Full and Final Settlement of the respondent herein shows that 'Performance Pay' is part of salary thus wages.

20. The respondent has relied upon the following judgment:-

(i)M/s. Heinen & Hopman Engineering (I) Pvt. Ltd.- Vs. – The State of West Bengal & Ors. (WPA 1617 of 2025).
(ii) M/s. Heinen & Hopman Engineering (I) Pvt. Ltd.- Vs. – The State of West Bengal & Ors. (MAT 682 of 2025).

21. At this stage the petitioner relies on the judgment in ***Arun Kumar & Ors. Vs. Union of India & Ors.*** reported in **(2007) 1 SCC 732 (Para 74**).

> *"74. A "jurisdictional fact" is a fact which must exist before a court, tribunal or an authority assumes jurisdiction over a particular matter. A jurisdictional fact is one on existence or non-existence of which depends jurisdiction of a court, a tribunal or an authority. It is the fact upon which an administrative agency's power to act depends. If the jurisdictional fact does not exist, the court, authority or officer cannot act. If a court or authority 9 wrongly assumes the existence of such fact, the order can be questioned by a writ of certiorari. The underlying principle is that by erroneously*

assuming existence of such jurisdictional fact, no authority can confer upon itself jurisdiction which it otherwise does not possess."

22. The petitioner thus challenges the claim (a) on the ground of delay (b) that the authority under the Act of 1963 cannot act contrary to Section 14(2) of the said Act as there is "no deduction of wages" by the petitioner.

23. Admittedly the claim is for "Recovery of Wages" being "performance pay" which the petitioner claims requires adjudication by a competent Court of law and not the authority under the Act of 1963.

24. Admittedly in the offer of appointment dated 27.02.2012, terms of employment includes fixed **'monthly performance pay'** subject to yearly review.

25. Thus, the monthly pay (wages) includes "performance pay, as seen from the pay slip and is thus prima facie part of wages.

26. Mr. Majumder, has placed Section 2(vi)(c) of the Payment of Wages Act, 1936, which defines **"wages"** as follows:-

"Section 2(vi) "wages" means all remuneration (whether by way of salary, allowances, or otherwise) expressed in terms of money or capable of being so expressed which would, if the terms of employment, express or implied, were fulfilled, be payable to a person employed in respect of his employment or of work done in such employment, and includes-
(a) any remuneration payable under any award or settlement between the parties or order of a court;
(b) any remuneration to which the person employed is entitled in respect of overtime work or holidays or any leave period;
(c)any additional remuneration payable under the terms of employment (whether called a bonus or by any other name);

(d) any sum which by reason of the termination of employment of the person employed is payable under any law, contract or instrument which provides for the payment of such sum, whether with or without deductions, but does not provide for the time within which the payment is to be made;
(e) any sum to which the person employed is entitled under any scheme framed under any law for the time being in force;……"

27. Mr. Majumder argues that the said provision is under which the **'performance pay'** in this case is covered, (Section 2(iv)(c)) as the same is **paid on monthly basis and is part of the monthly remuneration.**

28. Mr. De, counters the same and submits that the 'performance pay' in this case is covered under Section 2 clause (1) and is thus not included in "wages".

29. In reply Mr. Majumder submits that a variable performance which includes performance bonus is not covered as claimed by Mr. De, but clearly comes under clause 2(iv)(c) and is thus part of 'wages' and within the jurisdiction of the Learned Referee under the Act.

30. Mr. Majumder relied upon Section 17 of the Income Tax Act which defines "salary", "perquisite" and profits in "lieu of salary". *Explanation 3: -For the purposes of this sub-clause, "salary" includes the pa bonus or commission payable monthly or otherwise or any monetary payment, by called, from one or more employers, as the case may be, but does not include namely:-(a)dearness allowance or dearness pay unless it enters into the c superannuation or retirement benefits of the employee concerned; (b)employer's com provident fund account of the employee; (c)allowances which are exempted from tax;(d)value of the perquisites*

specified in this clause; (e) any payment or expenditure excluded under the proviso to this clause.

31. Admittedly 'Bonus' is taxable under the Income Tax Act.

32. The judgment of the Supreme Court in ***Bala Subrahmanya Rajaram vs B.C. Patil & Ors., 1958 SCC OnLine SC 144,*** is relied upon by the private respondent **(Para 20 & 21),** wherein the Court held:-

> *"20. Now consider this clause by clause.* ***"Wages' means all remuneration."***
> ***Is bonus a remuneration? We think it is.*** *Remuneration is only a more formal version of "payment" and payment is a recompense for service rendered.*
> ***21. Now it is true that bonus in the abstract need not be for services rendered and in that sense need not be a remuneration; for example, there is a shareholder's bonus in certain companies, and there is a life insurance bonus and so forth. But that is not the kind of bonus contemplated here because the kind of remuneration that the definition. contemplates is one that is payable***
> ***"in respect of his employment or of work done in such employment".***
> ***Therefore, the kind of bonus that this definition contemplates is one that is remuneration for services rendered or work done. Accordingly, it is a "remuneration" and as the definition includes all remuneration of a specified kind, we are of opinion that bonus of the kind contemplated here falls within the clause that says it must be "remuneration".***

33. In the present case the 'Performance Bonus' is thus part of monthly remuneration and is paid "in respect of employment or of work done in such employment" and that is clearly within the definition of 'wages'.

34. In view of the judgment in ***Bala Subrahmanya Rajaram (supra)***, the clear definition provided under Section 2(iv)(c) of the Payment of Wages

Act, and the fact that the respondent employee herein is paid the **performance bonus on monthly basis as part of monthly remuneration**, the said performance bonus is part of 'wages' and is thus within the jurisdiction of the respondent authority (Referee) herein, who shall now proceed to adjudicate the petitioner's claim, in accordance with law.

35. The materials on record do not support the petitioner's case as tried to be made out under Section 2(1) of the Act, in view of the findings and the observations in this order.

36. The impugned orders dated 05.03.2026 and 23.06.2026 passed by the Referee under the West Bengal Shops and Establishments Act, 1963 is thus **modified** to the extent that the Ld. Referee shall now proceed on the findings of this Court that the monthly performance pay is bonus covered under the term 'wages' being part of monthly remuneration as per Section 2(iv)(c) of the Act.

37. WPA 21645 of 2026 is dismissed.

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

39. 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.)