IN THE HIGH COURT AT CALCUTTA

CONSTITUTIONAL WRIT JURISDICTION

APPELLATE SIDE

BEFORE:

THE HON'BLE JUSTICE SHAMPA DUTT (PAUL)

WPA 20710 of 2025

M/s. Dr. Reddy's Laboratories Limited

Vs.

The State of West Bengal & Anr.

For the Petitioner	:Mr. Soumya Majumder, Ld. Sr. Adv. Mr. Souvik Mazumder, Adv. Mr. Ratul Das, Adv.
For the State	: Mr. Bikash Ranjan Bhattacharya, Ld. Sr. Adv. Mr. Aninda Lahiri, Adv. Mr. Bikash Chakraborty, Adv.
Judgment reserved on	: 31.08.2026
Judgment delivered on	: 05.10.2026

SHAMPA DUTT (PAUL), J.:-

1. The writ petition is filed **challenging an ex-parte award under section 2A (2) of Industrial Disputes Act, 1947** passed by the Learned Seventh Industrial Tribunal, West Bengal, dated 27th December, 2024, received on 8th January, 2025 **and Order No. 37 dated 10th July, 2025 dismissing setting aside/recalling Application in Case No. 03/2022** (Sudipta Das vs. Dr. Reddy's Laboratories Limited).

2. It is the contention of the petitioner that in ex-parte proceedings, it is the duty of the Court to proceed as if the other side is present. This test has not been applied at all by the Learned Industrial Tribunal. In the pleading of the private respondent, he has never mentioned his designation, at the time of his transfer from service. It is the duty of Quasi-Judicial authority to decide on the question of its own jurisdiction, even if it is a question of jurisdictional fact. **In a proceeding under Section 2A (2) of the ID Act, 1947, only issue of termination from service of a workman can be adjudicated. Transfer is not an issue which can be adjudicated in a proceeding under Section 2A (2) of the ID Act.** (Order dated 03.09.2025 in WPA 20299 of 2025 ***(Merck Specialties Private Limited Vs. Abhishek Datta)).*** Clear refusal to join the transferred place is apparent from the conduct of the Private Respondent. The purported confusion raised by the private respondent with regard to his transferred place of posting, stood clarified on 13th September, 2021 (much before termination). As it is a case of Express

refusal to join the transferred place, the intention of the private respondent is clear that he does not want to work at his place of transfer, though transfer was part of his service condition.

3. Mr. Majumder further argues that this would not require disciplinary proceeding to be initiated, on the basis of misconduct. Compliance of natural justice is to be tested on the anvil of prejudice to be pleaded and proved and in the context of possibility of a different conclusion and relies upon the judgment in ***State Bank Of Patiala v. S.K. Sharma at AIR 1996 SC 1669 at paragraph 31 to 34 and Union of India vs. Alok Kumar reported at (2010) 5 SCC 349 at paragraph 83 to 85, 89 and 92***.

4. It is submitted that by delving into, the question of transfer order, in a proceeding under section 2A (2) of ID Act, 1947 the Industrial Tribunal has caused a grave miscarriage of justice. The Industrial Tribunal itself had not framed issue of justifiability of transfer order, as a matter for adjudication. Even if the termination order would be set aside, the employee having expressed his total lack of interest to join his transferred place of posting, could not have been awarded any amount of back-wages. The leave granted by the Tribunal would, setting aside the termination, allow the employee to choose his own place of posting. Thus, what the employee could not have directly, has been awarded in an indirect manner.

5. The further contention of the petitioner is that the tribunal has completely misconstrued the provision of Rule 27 of the West Bengal Industrial Dispute Rules, 1958. An ex-parte award without notice is a nullity. ***(1980 (Supp) SCC 420, Grindlays Bank Ltd. v. Central Govt. Industrial Tribunal, paragraphs 10 to 14).*** The Learned Industrial Tribunal is incompetent to assess compensation by way of damages or torts. Hence the award of compensation and unreasoned award of costs is ex-facie perverse and without jurisdiction.

6. Therefore, it was incumbent on the Tribunal to return a finding as to whether the company had actually been served with a notice before proceeding ex-parte. Presumption of good service can only be made, if a communication is sent to a correctly recorded address. ***(Sunil Kumar Sambhudayal Gupta v. State of Maharashtra (2010) 13 SCC 657 at paragraphs 53 to 56).***

7. Rule 27 of WBID Rules, 1958 with sub-clauses, thereunder, only refer to review on merit, or as contemplated in Rule 27 (1) and (ii), whereas Rule 27 (iii) is independent of the situations conceived of in Rule 27 (1) and (ii), and it confers wide power on the Learned Tribunal to review any ex-parte award or an award, on the footing that Industrial Dispute no longer exists. Thus, Rule 27 (iii) is restricted to a review on merit and not a procedural review. It is settled law that the Learned Tribunal does not become functus officio merely because the award has come into force and can exercise its inherent powers for recall of an ex-parte award even

after award has come into force. Power of procedural review or recall is inherent in every court or tribunal, whereas a power to review on merit is statutory. No order can be reviewed on merit.

8. The petitioner relies upon the judgments in:-

i) Mahavir Prosad Choudhury v. Octavius Tea & Industries Ltd. Reported in (2019) 2 SCC 476 at paragraphs 12, 14, 16 and 18.

ii) Grindlays Bank Limited vs. Central Government Industrial Tribunal reported at 1980 Supp SCC 420 at paragraphs 10, 11, 12 and 14.

iii) Hindustan Tobacco Company vs. the First Labour Court, West Bengal reported at (1995) 1 CHN 398 at paragraphs 7 to 9, 12 and 13.

iv) Haryana Suraj Malting Limited vs. Phool Chand reported at (2018) 16 SCC 567 at paragraphs 21, and 37.

9. In the context of Rule 27 of WBID Rules, the following judgments, lay down, that there can be no limitation adhered to:-

(i) Eagle Wood Agencies Private Limited vs. State of West Bengal reported at (1990) 1 CHN 57 paragraph 18.

(ii) Haran Chandra Naskar vs. State of West Bengal reported in 2003 (1) Cal LT 228 at paragraphs 13 to 17, 19 to 24 and 27 to 30.

10. Affidavits were exchanged by the parties in the present case. The case of the **respondent no.2/employee** is that there is no provision as such for assailing the contested/ex-parte Award before the Learned Tribunal, by way of filing a Misc. Petition. Rule 27 of the West Bengal Industrial Dispute Rules 1958 unequivocally says in terms of the correction of error and review of an award. The Labour Court, Industrial Tribunal or Arbitrator may-

i) correct any clerical or arithmetical mistake arising from an accidental slip or omission in any award made by it or him, and

ii) review an award on the ground of some mistake or error apparent on the face of the record, either of its/his own motion or on the application of any of the parties,

iii) **for sufficient cause** set aside, after notice to the opposite party or parties as the case may be, the ex-parte award or an award on the footing that the industrial dispute under reference is no longer in existence either of its/his own motion or on the application of any of the parties.

11. Mr. Bhattacharya, learned senior counsel submits that 2nd proviso of Sub-Rule (iii) Rule 27 clearly mandates that no application for Review under the above clause shall be entertained on the expiry of the 15th day from the date of the Award. Here in this case the petitioner did not file any review application within 15th day of passing the award. So the

application filed by the petitioner assailing the award itself is not maintainable and the learned Tribunal has rightly rejected the same.

12. Mr. Bhattacharya further states that the service in the present case was duly made and in spite of proper service, the petitioner failed to appear and contest the case. Relying upon order 9 Rule 13, 2nd Proviso of the Code of Civil Procedure which provides that even if summon is not served, and the parties have notice, then no ex parte decree can set aside. It is submitted that the tribunal rightly proceeded to hear the case ex parte as per Rule 21 of the West Bengal Industrial Disputes Rule 1958 and the respondent pray for dismissal of the writ application relying upon the following judgments:-

i. ***Ranigunje Chemical Works Mazdoor Sangh reported in 1998 (79) FLR 133.***

ii. ***North Bengal State Transport Corporation & Ors. v. Sanjoy Kundu reported in 2022(175) FLR 417.***

13. From the materials on record, it is evident that:-

I. **An ex parte award under Section 2A(2) of the I.D. Act was passed on 27th December, 2024 as follows:-**

> ***"Order***
>
> *that the instant case being No. 03/2022 u/s. 2A(2) of the Industrial Disputes Act, 1947 be and the same is allowed exparte with costs of Rs. I Lac (Rupees One Lac only) against the OP/Company. The letter of termination dated 30.11.2021 (Exhibit-8) is set aside being bad, illegal and unjustified.*
>
> *The OP/Company is directed to reinstate the applicant/ workman in service with full back wages*

along with all other consequential benefits thereto arising out of such reinstatement and continuity of service and the service of the applicant/workman shall be deemed to be continuous service without any break.

The OP/Company is also directed to further pay a sum of Rs. 2 Lacs (Rupees Two Lacs) as compensation to the applicant/ workman for the applicant's mental agony and unnecessary harassment arising out of this litigation.

The OP/Company is also directed to pay all the dues and outstanding as directed by this Tribunal with interest @ 10% per annum within thirty days from the date of this order.

The OP/Company is directed that while calculating the arrears payments and all other consequential benefits thereto and while fixing the present pay of the applicant/ workman, the applicant/ workman shall not be deprived from any such benefits which are paid to the similar workman who joined on the similar post at the then time.

The aforesaid is the Award of this Tribunal passed in this instant case no. 03/2022/2A(2).

The case no. 03/2022/2A(2) stands disposed of ex parte."

14. It appears that the tribunal held the termination to be bad as the petitioners without initiating a disciplinary proceeding against the respondent/employee as per clause 28 in the letter of appointment, proceeded to terminate him.

15. The tribunal also held the termination to be bad for non compliance of Section 25F of the Industrial Disputes Act.

16. Section 25F of the Act is applicable in a case of 'retrenchment' which is defined under Section 2(00):-

> *"Section 2(00) "retrenchment" means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include - ....."*

17. In the present case **the retrenchment/termination was admittedly, otherwise than as a punishment inflicted by way of disciplinary action.**

18. The tribunal has taken note of the fact that:-

> *"the OP/Company terminated the services of the applicant/workman by letter dated 30.11.2021 (Exhibit-17) by paying one month notice pay as stated in the said letter."*

19. This shows/proves that the provision of Section 25F of the Act has been prima facie complied with as seen from the termination letter.

20. This thus appears to be a case of termination by way of retrenchment and thus is covered under Section 2A of the Act and as such the proceedings before the tribunal appears to be maintainable in it's present form.

21. But the tribunal's finding the termination to be bad under **two contradictory circumstances one** being non compliance of Section 25F of the Act which relates to retrenchment (2(00)) of the Act, where the termination is for any reason other than a punishment by way of disciplinary action **and another,** that termination without initiating a disciplinary proceedings as per clause 28 of the appointment is also bad.

22. **The tribunal cannot hold a termination to be bad under two contradictory circumstances,** when a due compliance of a provision of the Act being 25F herein makes the termination to be in accordance with law.

23. Thus without going into the validity of the order refusing to set aside an ex parte award, **the ex parte award also being under challenge on merit is set aside,** considering that impugned (ex parte) award dated 27.12.2024 being perverse, erroneous and bad in law **is set aside.**

24. As clause (b) and (c) to Section 25F have also to be complied with, the petitioner shall comply with the same within 30 days from the date of this order, if not already complied with, along with interest at the statutory rate from the time of retrenchment till payment.

25. **WPA 20710 of 2025 is thus allowed.**

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

27. 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.)