

IN THE HIGH COURT AT CALCUTTA

Constitutional Writ Jurisdiction

Appellate Side

Present:

The Hon'ble Justice Shampa Dutt (Paul)

WPA 27751 of 2025

With

WPA 27757 of 2025

M/s. Bengal Chamber of Commerce and Industry & Anr.

Vs.

The State of West Bengal & Ors.

For the Petitioner : Mr. Soumya Majumder, Ld. Sr. Adv.
Mr. Bhaskar Mukherjee,
Mr. D. Dutta.

For the Respondent No. 1 & 2 : Mr. Ushanath Banerjee, Ld.Sr. (Spl.) Govt. Pleader
Mr. Debangshu Dinda.

Judgment reserved on : 19.01.2026

Judgment delivered on : 12.02.2026

SHAMPA DUTT (PAUL), J. :

- 1. WPA 27751 of 2025** has been preferred challenging an award dated 22nd July, 2025 passed by the learned Fifth Industrial Tribunal in Case No. 04 of 2009 **under Section 33(2)(b) of the Industrial Disputes Act, 1947.**

2. **WPA 27757 of 2025** has been preferred challenging an award dated 22nd July, 2025 passed by the learned Fifth Industrial Tribunal in Case No. 03 of 2009 **under Section 33A of the Industrial Disputes Act, 1947.**
3. Vide the impugned order dated 22.07.2025, the learned Judge, 5th Industrial Tribunal, Kolkata was pleased to dismiss the petitioner's case under Section 33(2)(b) of the Act on contest without cost.
4. Vide the impugned order dated 22.07.2025 under Section 33A of the I.D. Act, the tribunal on setting aside the order of termination of the employee, granted compensation of Rs. 10(Ten) lakh.
5. The petitioner's case is that the petitioner No.1 is company registered under Section 8 of the Companies Act, 2013, while the Respondent No. 3 is a former employee, who was appointed as a lady stenographer in 1995 and occupied a position of confidence, dealing with confidential administrative matters. Owing to grave misconduct committed by the Respondent No.3, a full-fledged domestic enquiry was conducted, wherein the charges were duly proved against her and she was dismissed from service by a letter dated 10.06.2009. As an abundant precaution, the petitioner no. 1 filed an application under Section 33(2)(b) of the Industrial Disputes Act being Case No. 04 of 2009 on the same date.
6. It appears from the writ applications that considering the grave misconduct of the respondent no. 3 committed on and from 23rd April, 2008 to 29th April, 2008, the petitioner no. 1 issued a charge sheet on 5th May, 2008, noting the charge framed against her.

7. The respondent no. 3 was placed under suspension pending enquiry by the letter of the management of the petitioner no. 1 dated 2nd May, 2001. A domestic enquiry was conducted and the respondent no. 3 was given all reasonable opportunity to defend herself in compliance with the principles of natural justice. She was duly issued notice well in advance for attending enquiry, was allowed to cross examine witnesses produced by the management of the petitioner company and also to lead evidence on her behalf. All the documents placed in the enquiry on behalf of the management was also disclosed to the respondent no. 3 at the beginning, in order to give her ample chance to meet the allegations in the charge sheet.
8. Copies of the day to day proceeding were also supplied to her by the enquiry officer. The enquiry officer ultimately submitted his report dated 4th April, 2009 holding all the charge as framed in the charge sheet as proved. A copy of the enquiry report was also duly forwarded to the respondent no. 3 by a letter dated 23rd April, 2009, calling for her explanation to the said enquiry report. The respondent no. 3 replied to the said second show cause notice by her letter dated 29th April, 2009.
9. Considering the response of the respondent no. 3, the management of the petitioner no. 1 on 10th June, 2009 was compelled to issue a letter dismissing her service from the petitioner no. 1. Simultaneously the respondent No.3 was also paid Rs.8,150/- towards her one month's salary.

10. An earlier purported industrial dispute was referred, vide an **order of reference** under G.O. No. 1552/IR dated **28th December, 2006** at the instance of the respondent no. 4, for adjudication on the following issues:-

a) Whether demand of the union for revision of grade and scale of pay and other service conditions of the lady stenographer i.e., transport subsidy, lunch subsidy, medical allowance, leave transport assistance is justified?

b) What relief, if any, are they entitled to?

11. The learned Tribunal had initiated the adjudication proceeding being **Case No. VIII-02/2007**. Petitioner No. 1 contested the said reference case and raised objection as to the maintainability of the reference, including locus standi of the Union, being the Respondent No. 4 besides other issues. One Mr. S. Singh as the CW-2 had deposed that he was the Secretary in the year 2015 and **the settlement between the management and Union had been arrived at regarding all disputes and Mr. Singh was a signatory for the Union and the Memorandum of Settlement contained the terms that the Union will not pursue any pending dispute before the Tribunal.**

12. As such, the Union was not willing to proceed and pursue the case. He confirmed that the Union, as well as other two lady stenographers had abandoned their claim. The learned Tribunal ultimately on **1st August, 2025** published the award by dismissing the said reference case.

13. In dismissing the said reference case, the learned Tribunal had observed that the respondent no. 3 did not establish her membership with the union. The

learned Tribunal further specifically observed that the applicant, i.e., the respondent no. 3 herein could not establish the locus-standi to represent the Union, meaning thereby there was no existing dispute and the said reference case was itself not maintainable.

- 14.** It is further stated by the petitioner that apparently there was no valid "Industrial Dispute" pending adjudication before the Learned Tribunal. However, though the misconducts committed by the respondent no. 3 as framed in the charge sheet dated 5th May, 2008 were wholly unconnected with the purported issues referred before the Learned Tribunal in the reference case no. VIII-02/2007, as an abundant precaution, on 10th June, 2009, the petitioner no. 1 filed an application under Section 33(2)(b) of the Industrial Dispute Act, 1947 before the Learned Tribunal inter-alia seeking for approval of the order of dismissal, which was issued to the respondent no. 3 vide letter dated 10th June, 2009.
- 15.** It is further stated that under Section 33(2)(b) of the I.D. Act, during pendency of any dispute before the Learned Tribunal, the employer can dismiss the workman ***"provided that no such workman shall be discharged or dismissed, unless he has been paid wages for one month and an application has been made by the employer to the Authority before which the proceeding is pending for approval of the action taken by the employer"***
- 16. In the present case,** in due compliance of the conditions under Section 33(2)(b) of the said Act, 1947:-

(i) Wages for one month was duly paid to the workman; and

(ii) On 10th June, 2009 itself, on the day of dismissal of Respondent No.3, an application for approval under Section 33(2)(b) of the I.D. Act was filed before the Learned Tribunal, for approval.

17. Considering the pleadings of the respective parties, the Learned Tribunal framed the following issues:-

a) Whether the application U/S 33(2)(b) of the Industrial Dispute Act, 1947 is maintainable in law or in fact.

b) Whether the management is entitled to get relief of approval regarding dismissal of the workman from her service as prayed for.

c) To what relief, if any, the management is entitled to ?

18. By an order dated 22.07.2025, the learned Tribunal declared that validity of the domestic enquiry had been vitiated.

19. Witnesses were examined. Documents were marked as Exhibits and finally the award was passed.

20. Both parties have filed their respective written notes, along with judgments relied upon. It is argued by the petitioner that the decision on an application under Section 33 (2) (b) cannot be an "award" but an "order". The management submits that Rule 70 of the West Bengal Industrial Disputes Rules 1958 makes the position all the more clear that it is not an award. **The approval application is only for the purpose of lifting the ban. And considering the limited nature and extent of such enquiry, the tribunal can only see as to whether a prima facie case for according approval has been made out or not.**

21. The petitioners state that the purpose of section 33(2)(b) is different from section 10 proceedings, and relies upon:-

a. John D'Suza vs Karnataka State Road Transport Corporation (2019) 18 SCC Page 47 (Para 24, 37, 88) //2020(164) FLR 261 (SC);

b. H.D. Sharma -vs- Northern India Textile Research Association & Anr. (2000) 3 SCC Page 567 (Para 5, 6) // 2000 LLR 581 (SC). (SC).

22. Relying on the said judgments, the petitioners submit that scope of Section 33(2)(b) and the principles governing with question required to be gone into the said provision leaves no manner of doubt that finding of facts arrived at, **has to be on the anvil of review only**. The question of adequacy or sufficiency of evidence are not required to be considered in this **limited jurisdiction**. (*Lord Krishna Textile Mills vs Its workmen 1960 SCC OnLine SC 93 (Para 16, 17)// AIR 1961 SC 860*).

23. It is further stated that the definition of "award" as given in section 2(b) of the I.D. Act is a final determination of an industrial dispute. Since section 33(2)(b) does not finally decide or determine a dispute, such order of approval or disapproval cannot be said to be a final determination of an industrial dispute.

24. **Thus, power exercisable under section 33(2)(b) or under section 33A is only to pass an "order" and not an "award". Section 33(2)(b) only contemplates an approval on prima facie consideration of an application made by the employer.** The requirement of such application with form is specified in Rule 70 of the West Bengal Industrial Disputes Rules.

- 25. The respondent no. 1 & 2** have stated in their written notes, that Section 33 is an independent purposive provision enacted to protect “Workmen” from being victimized during the **“pendency of any disputing proceeding”**. In the premises, it is submitted that once a “Proceeding is pending, irrespective of its merits or final outcome, the employer may only discharge or punish, whether by dismissal or otherwise an “workman” subject to ‘approval’ of the authority before whom the proceeding was/is pending and not otherwise.
- 26.** Thus, admittedly when the purported dismissal of the Respondent No. 3 took place and entire hearing related to its "approval" by the Tribunal, there was a pending Proceeding before the Tribunal, which ultimately culminated in a final Award in Case No. 04 of 2009 along with the final decision of the pending proceeding (Case No. VIII-02/2007).
- 27.** It is further stated that the Tribunal following **detailed scrutiny** of the Evidence, Charge so framed based on a Complaint, **by detailed recorded reasonings**, found series of gross anomalous grounds for setting aside the Termination, as there had been series of gross deficiencies and legal infirmities in conducting the enquiry proceedings.
- 28.** It is stated that a **copy of the complaint was not supplied** to the said respondent no. 3 and the **complaint** based upon which the charges were framed was **not proved at all, as the complainant Mr. Subhodip Ghosh was not available for cross-examination** before the enquiry officer and also did not appear before the Tribunal to prove his complaint. Admittedly, he authorized a person to appear on his behalf and prove the complaint. It is submitted that, as

such right to cross-examine the complainant is a fundamental right, there has been clear violation of natural justice.

29. The respondent submits that in labour law, an "**award**" is a formal, binding decision by a Labour Court, Tribunal, or arbitrator that settles an industrial dispute or a related question, serving as a legal resolution for wages, working conditions, or other employment issues, functioning much like a decree of the Court. An 'Award' is aimed to provide a conclusive remedy to industrial disputes and resolves matters of substance (not just procedural ones) and becomes enforceable ensuring industrial peace and defining rights and obligations.

30. The following judgments have been relied upon by the said respondents:-

a) Union of India & Ors. Vs. Puna Hinda” Reported in (2021) 10 SCC 690, para 24.

b) Chief Executive Officer, Krishan Dist. Cooperative Central Bank Ltd. & Anr. vs K. Hanumantha Rao & Anr., reported in (2017) 2 SCC 528, Para 7.

c) Sarvapalli Ramiah (Dead) vs District Collector Chitoor District & Ors., reported in (2019) 4 SCC 500, Para 43.

d) State of Uttar Pradesh Through Principal Secretary, Department of Panchayati Raj, Lucknow vs Ram Prakash Singh, reported in 2025 SCC OnLine SC 891.

31. The respondent no. 3 further submits that the authority while deciding a case under Section 33(2)(b) of the I.D. Act has to find out whether a proper domestic enquiry was held and whether the action of the employer was malafide or was

an act of victimization or unfair labour practice. The authority may approve the action of discharge or dismissal of the workman or grant permission to do so, provided the conditions laid down under proviso to section 33(2)(b) are satisfied.

32. The applicant/ management has filed the application against the workman, the respondent No.3 herein, before the Learned Fifth Industrial Tribunal, West Bengal under section 33(2)(b) of the Industrial Disputes Act, 1947, seeking approval of the order of dismissal of opposite party/ workman from service w.e.f. 10.06.2009, during the pendency of the reference case being No. VIII-02/07 pending before the Learned Fifth Industrial Tribunal, West Bengal, Kolkata, as the service condition had been changed.

33. It is the case of the respondent no. 3 employee, that the management of the company petitioner herein conducted an eyewash enquiry by an outsider expert and legally qualified Enquiry Officer and during the proceedings, the Enquiry Officer behaved like a prosecutor with glaring partiality and bias, not like an umpire and followed empty formalities against natural justice, for which the Learned Tribunal was pleased to pass an order being order No.81 dated 30.09.2021, holding inter alia that the domestic enquiry report dated 04.04.2009 in connection with case No.3/2009 under section 33A and case No. 04/2009 under section 33(2)(b) of the I.D. Act, 1947, is not valid and is perverse and in violation of rule of principle of natural justice and it is not binding upon the charge sheeted workman.

34. It is also submitted that the charge sheet had been prepared on the basis of a note sheet dated 19th April, 2008, written by the alleged complainant, which

reads as a note for Secretary General and did not bear the seal of the company and designation of Subhodip Ghosh.

35. It is thus submitted, that the same is not a proper complaint and that the ground for dismissal was bad, illegal and unjustified. The learned Tribunal rightly passed an award with an observation that no approval for dismissal of the workman from service is accorded and dismissed the application under Section 33(2)(b) on contest without any cost. The judgment of Bombay High Court passed in ***Duncan Engineering Ltd. Versus Ajay C. Shelke in Writ Petition No. 93088 of 2020*** is relied upon.

36. Heard the parties and considered the materials on record including the judgments relied upon.

37. Section 33 of the Industrial Disputes Act, lays down:-

“[33. Conditions of service, etc., to remain unchanged under certain circumstances during pendency of proceedings. -(1)During the pendency of any conciliation proceeding before a conciliation officer or a Board or of any proceeding before [an arbitrator or] a Labour Court or Tribunal or National Tribunal in respect of an industrial dispute, no employer shall-

(a)in regard to any matter connected with the dispute, alter, to the prejudice of the workmen concerned in such dispute, the conditions of service applicable to them immediately before the commencement of such proceeding; or

(b)for any misconduct connected with the dispute, discharge or punish, whether by dismissal or otherwise, any workmen concerned in such dispute,

save with the express permission in writing of the authority before which the proceeding is pending.

(2)During the pendency of any such proceeding in respect of an industrial dispute, the employer may, in accordance with the standing orders applicable to a workman

concerned in such dispute [or, where there are no such standing orders, in accordance with the terms of the contract, whether express or implied, between him and the workman]-(a)[alter, in regard to any matter not connected with the dispute, the conditions of service applicable to that workman immediately before the commencement of such proceeding; or

(b)for any misconduct not connected with the dispute, discharge or punish, whether by dismissal or otherwise, that workman:

Provided that no such workman shall be discharged or dismissed, unless he has been paid wages for one month and an application has been made by the employer to the authority before which the proceeding is pending for approval of the action taken by the employer.

.....”

38. Section 33A of the Industrial Disputes Act provides:-

“[33A. Special provision for adjudication as to whether conditions of service, etc., changed during pendency of proceedings.-Where an employer contravenes the provisions of section 33 during the pendency of proceedings [before a conciliation officer, Board, an arbitrator, a Labour Court, Tribunal or National Tribunal], any employee aggrieved by such contravention, may make a complaint in writing, ²in the prescribed manner,--

(a) to such conciliation officer or Board, and the conciliation officer or Board shall take such complaint into account in mediating in, and promoting the settlement of, such industrial dispute; and

*(b) to such arbitrator, Labour Court, Tribunal or National Tribunal and on receipt of such complaint, the arbitrator, Labour Court, Tribunal or National Tribunal, as the case may be, **shall adjudicate upon the complaint as if it were a dispute referred to or pending before it, in accordance with the provisions of this Act and shall submit his or its award to the appropriate Government and the provisions of this Act shall apply accordingly.]”***

39. Section 33A talks about **contravention** of the provisions of Section 33, during pendency of proceedings ((herein case no. VIII-02) 2007 before the 5th Industrial Tribunal, Kolkata).

The contravention which the provision talks of in the present case is the non compliance of the proviso to Section 33(2)(b) of the Act.

40. **In the present case**, admittedly the respondent/employee has been paid wages for one month and an application has also been made by the employer to the authority before whom the earlier proceeding was pending for approval of their action of dismissal on the basis of an enquiry proceedings.

41. Therefore, in respect of an application under Section 33A of the Act, there has been no prima facie contravention of Section 33 of the I.D. Act in this case, as the proviso to Section 33(2)(b) of the I.D. Act has been duly complied with. **Section 33(2)(b) does not talk of either success or failure of such application for approval of action taken, before the tribunal.** As such, to maintain a complaint under Section 33A, there has to be a contravention of Section 33 of the I.D. Act, which in this case is prima facie absent.

42. **Grant of approval** means that an authorized person, committee, or agency has officially agreed to a request, proposal, or project, allowing it to proceed. It signifies that required, formal, or regulatory permission has been granted, **often following a review process.** This phrase represents the final, official go-ahead for an action.

43. The tribunal while disposing of the application under Section 33A of I.D. Act held:-

“.....Hence, it is,

ORDERED

That the charge against the applicant Piyasa Bhowal has not been proved accordingly the termination of service of the applicant Piyasa Bhowal is illegal and invalid and the Tribunal set aside the order of termination.

Since the management has lost its confidence, the Tribunal is of the view that it is not advisable to order for reinstatement of the applicant workman and the only course left is to award a lump sum compensation to the applicant workman to the extent of Rs.10 (Ten) Lakh.

Accordingly, the management is further directed to pay the lump-sum amount of Rs. 10 lakhs to the applicant workman within one month from this date.

Dictated and corrected and Award Delivered by

*Sd/-
Judge, 5th Industrial Tribunal, Kolkata”*

- 44. In the present case, the tribunal in the proceeding under Section 33A of the I.D. Act granted compensation of Rs. 10 lakhs based on its findings in the proceeding under Section 33(2)(b) of the Act.**
- 45. In respect of the decision of the tribunal in respect of the application for approval under Section 33(2)(b) of the Act, the tribunal held as follows:-**

“.....That apart, when a person personally attempted to talk to his office colleague without being moved by an official communication that attempt to talk to the office colleague should come within the purview of his personal affair and that should not be allowed to treat the same as an official interaction in between the MW-4 and the said Piyasa Bhowal. That apart the MW4 admitted during cross examination that he did not make any communication before the Management regarding the incident dated 23.04.2008, 28.04.2008 and 29.04.2008 and accordingly unilateral approach of MW-4 towards Piyasa Bhowal was a personal and private affairs and should not be a subject matter of charge for levelling the same against Piyasa Bhowal allegedly for insulting the MW-4.

When the MW-4 admitted that he did not make any complaint about the incident for those three days, interaction in between Piyasa Bhowal and MW-4 is safely presumed to be a private and unofficial interaction and accordingly if MW-4 feels insulted that was not an outcome of any official activity or communication and as such that should not be a ground of charge levelled against the delinquent employee.

The evidence of MW-2 reflects that the charge was on the basis of lodging of complaint by the then Assistant Secretary who did not prove the complaint to prima facie establish the charge against Piyasa Bhowal.

In view of above materials on records, it appears that the evidence adduced by the Management is not convincing to prove the charge against the employee Piyasa Bhowal.

In view of above discussion it appears that the ground for dismissal was bad and as such no approval for dismissal of the workman from the service is accorded.

Hence

It is ordered that the application Under Section 33(2)(b) is dismissed on contest without cost.

Sd/-

Judge, 5th Industrial Tribunal, Kolkata”

46. From the impugned order under Section 33(2)(b) of the I.D. Act and the documents filed, it appears that the charge sheet dated 5th May, 2008 shows that among other charges, **charge no. 3** is as follows:-

*“On 28th April 2008 at about 1.15 p.m. as **Mr. Venugopaalan**, Financial Advisor came out of his cabin on seeing him, you started hollering. **When he stopped and questioned you as to what was happening you curtly told him to mind his own business.**”*

47. Major misconducts attributed to the respondent/employee in the charge sheet are as follows:-

“The above acts alleged to have been committed by you constitute the following major misconducts, amongst others:-

- (i) Disorderly and indecent behaviour, unbecoming conduct and insubordination in the Chamber premises*
- (ii) Acts subversive of discipline or good behaviour.*
- (iii) Causing disturbance and annoyance at work place.*
- (iv) Conduct which is highly prejudicial to the reputation image of the Chamber and peaceful condition in the work place.*
- (v) Unruly, boisterous and indisciplined behaviour at the work place.*
- (vi) Shouting at the top of your voice and using abusive, vulgar and defamatory language and vituperative remarks against the Management.”*

48. The tribunal vide the impugned award under Section 33(2)(b) of the I.D. Act, on the following findings and observation dismissed the petitioners application:-

“.....That apart, when a person personally attempted to talk to his office colleague without being moved by an official communication that attempt to talk to the office colleague should come within the purview of his personal affair and that should not be allowed to treat the same as an official interaction in between the MW-4 and the said Piyasa Bhowal. That apart the MW4 admitted during cross examination that he did not make any communication before the Management regarding the incident dated 23.04.2008, 28.04.2008 and 29.04.2008 and accordingly unilateral approach of MW-4 towards Piyasa Bhowal was a personal and private affairs and should not be a subject matter of charge for levelling the same against Piyasa Bhowal allegedly for insulting the MW-4.

When the MW-4 admitted that he did not make any complaint about the incident for those three days, interaction in between Piyasa Bhowal and MW-4 is safely presumed to be a private and unofficial interaction and accordingly if MW-4 feels insulted that was not an outcome of any official activity or communication and as such that should not be a ground of charge levelled against the delinquent employee.

The evidence of MW-2 reflects that the charge was on the basis of lodging of complaint by the then Assistant Secretary who did not prove the complaint to prima facie establish the charge against Piyasa Bhowal.

In view of above materials on records, it appears that the evidence adduced by the Management is not

convincing to prove the charge against the employee Piyasa Bhowal.

In view of above discussion it appears that the ground for dismissal was bad and as such no approval for dismissal of the workman from the service is accorded.

Hence

It is ordered that the application Under Section 33(2)(b) is dismissed on contest without cost.

Sd/-

Judge, 5th Industrial Tribunal, Kolkata”

49. From the materials on record the following is evident:-

(i) Both the respondent/employee and tribunal have raised the issue of the complaint (note sheet) in the present case. A copy of the same has also admittedly been provided to the respondent/employee.

(ii) The tribunal's finding on the said issue is as follows:-

“The evidence of MW-2 reflects that **the charge was on the basis of lodging of complaint by the then Assistant Secretary who did not prove the complaint to prima facie establish the charge against Piyasa Bhowal.**”

(iii) **The tribunal further held:-**

“.....is prima facie erroneous considering the fact that **charge sheet in this case was not on the basis of lodging of complaint by the then Assistant Secretary. As such the examination of the Assistant Secretary was not necessary to prove the complaint to prima facie establish the charge against the respondent/employee.**”

(iv) It appears that nowhere in the charge sheet dated 05.05.2008, it has been stated that complaint filed by the Assistant Secretary was the basis of the

charge. **As such the said finding of the tribunal appears to be erroneous.**

50. The respondent/employee herein in her explanation dated 9th May, 2008 on denying the charge against her **admitted that there was a talk between her and Shri. M. Venugopaalan, Financial Advisor when he allegedly intervened in their discussion. The respondent has stated that “she simply told him not to intervene in her personal discussions”**. This kind of statement by a person in the rank of a stenographer, to an officer in the rank/position of a Financial Advisor is prima facie a case of insubordination/mis conduct. The employee also made counter charges and stated that he had intervened in her discussions.
51. **The respondent/employee during the enquiry proceeding stopped participating** midway on the plea that the enquiry should be recorded in Bengali language, after the evidence on the management side had been closed.
52. The said respondent/employee in her evidence before the tribunal admitted that she **worked as an English Stenographer**. As such the reason for insisting that rest of the enquiry proceeding to be conducted in Bengali is unjustified.
53. The said respondent for the same reason also refused to examine any witness on her behalf, even though before the tribunal in her evidence/cross examination, she has admitted that **she is an English stenographer**.
54. **Before the tribunal**, not only was the Financial Advisor Mr. Venugopaalan examined and cross examined, three other witnesses were also examined by the management in support of their case.

55. **The enquiry officer was admittedly an outsider and not a person of the management and as such the principle of natural justice was followed in this case.**
56. In her cross examination, the respondent/employee also admitted that she had encashed the cheque which was annexed with the dismissal letter.
57. **The office “note sheet” (alleged complaint) before the tribunal was never the part of the enquiry proceeding or the charge sheet. The conduct of the respondent no. 3 towards MW 4 was the basis of the charge sheet (charge no. 3) enquiry and MW 4 was duly examined and also cross examined.**
58. Thus the tribunal (erroneously) accepted the evidence of M.W. 2, and stated in the impugned order that:-
- “MW-2 further admitted during cross examination that he did not lodge the written complaint **rather the complaint letter dated 29.04.2008 (Exhibit-K) was the basis for charge sheet was the complaint and that has not been proved by the author of the complaint.**”*
59. **It is clear from the charge sheet that it was not based on a complaint against Piyasa Bhowal by Subhodip Ghosh. Thus the said new finding (beyond the enquiry) of the tribunal is not based on the materials on record and is thus an abuse of the process of law, being not in accordance with law and also beyond the limited scope of review in such cases under Section 33(2)(b) of the Act by the tribunal.**
60. It is the contention of the petitioner that the learned tribunal has decided a proceeding under Section 33(2)(b), like a proceeding under Section 10 of the

Industrial Dispute Act, and did not consider the same in accordance with the provision of Section 33(2)(b) of the Act.

61. It is also stated that:-

*“Scope of section 33(2)(b) and the principles governing with question required to be gone into the said provision leaves no manner of doubt that finding of facts arrived at has to be on the **anvil of review only**, but the question of adequacy or sufficiency of evidence are not required to be considered in this limited jurisdiction.”*

62. In **Lord Krishna Textile Mills vs Its workmen, 1960 SCC OnLine SC 93**, the Supreme Court held:-

*“16. In view of the limited nature and extent of the enquiry permissible under Section 33(2)(b) all that the authority can do in dealing with an employer's application is to consider whether a prima facie case for according approval is made out by him or not. If before dismissing an employee, the employer has held a proper domestic enquiry and has proceeded to pass the impugned order as a result of the said enquiry, **all that the authority can do is to enquire whether the conditions prescribed by Section 33(2)(b) and the proviso are satisfied or not.** Do the standing orders justify the order of dismissal? Has an enquiry been held as provided by the standing order? Have the wages for the month been paid as required by the proviso?; and, has an application been made as prescribed by the proviso? This last question does not fall to be decided in the present appeal because it is common ground that the application has been properly made. Standing Order 21 specifies acts of omission which would be treated as misconduct, and it is clear that under 21(s) threatening or intimidating any operative or employee within the factory premises is misconduct for which dismissal is prescribed as punishment. This position also is not in dispute. There is also no dispute that proper charge-sheets were given to the employees in question, an enquiry was properly held, and opportunity was given to the employees to lead their evidence and to cross-examine the evidence adduced against them; in other words, the enquiry is found by the Tribunal to have been*

regular and proper. As a result of the enquiry the officer who held the enquiry came to the conclusion that the charges as framed had been proved against the workmen concerned, and so orders of dismissal were passed against them. **In such a case it is difficult to understand how the Tribunal felt justified in refusing to accord approval to the action taken by the appellant.**

17. It has been urged before us by the appellant that in holding the present enquiry the Tribunal has assumed powers of an appellate court which is entitled to go into all questions of fact; this criticism seems to us to be fully justified. One has merely to read the order to be satisfied that the **Tribunal has exceeded its jurisdiction in attempting to enquire if the conclusions of fact recorded in the enquiry were justified on the merits.** It did not hold that the enquiry was defective or the requirements of natural justice had not been satisfied in any manner. On the other hand it has expressly proceeded to consider questions of fact and has given reasons some of which would be inappropriate and irrelevant if not fantastic even if the Tribunal was dealing with the relevant questions as an appellate court. "The script in which the statements have been recorded," observes the Tribunal, "is not clear and fully decipherable". How this can be any reason in upsetting the finding of the enquiry it is impossible to understand. **The Tribunal has also observed that the evidence adduced was not adequate and that it had not been properly discussed. According to the Tribunal the charge-sheets should have been more specific and clear and the evidence should have been more satisfactory. Then the Tribunal has proceeded to examine the evidence, referred to some discrepancies in the statements made by witnesses and has come to the conclusion that the domestic enquiry should not have recorded the conclusion that the charges have been proved against the workmen in question. In our opinion, in making these comments against the findings of the enquiry the Tribunal clearly lost sight of the limitations statutorily placed upon its power and authority in holding the enquiry under Section 33(2)(b). It is well known that the question about the adequacy of evidence or its sufficiency or satisfactory character can be raised in a court of facts and may fall to be considered by an appellate court which is entitled to consider facts; but these considerations are irrelevant where the jurisdiction of the court is limited as under Section 33(2)(b). It is conceivable that even in holding an enquiry under Section**

33(2)(b) if the authority is satisfied that the finding recorded at the domestic enquiry is perverse in the sense that it is not justified by any legal evidence whatever, only in such a case it may be entitled to consider whether approval should be accorded to the employer or not; **but it is essential to bear in mind the difference between a finding which is not supported by any legal evidence and a finding which may appear to be not supported by sufficient or adequate or satisfactory evidence.** Having carefully considered the reasons given by the Tribunal in its award under appeal, we have no hesitation in holding that the appellant is fully justified in contending that the Tribunal has assumed jurisdiction not vested in it by law, and consequently its refusal to accord approval to the action taken by the appellant is patently erroneous in law.”

63. It is further argued by the petitioner that:-

“It is settled law that the standard of proof before a quasi-judicial Industrial Tribunal has to be the same as in enquiry proceeding, and **appellate jurisdiction is not to be exercised.** The test is of preponderance of probability.”

64. The petitioner has also relied upon the judgment in **High Court of Judicature at Bombay Vs. Uday Singh, (1997) 5 SCC 129 (para 10)**, wherein the Supreme Court held:-

“10. It is seen that the evidence came to be recorded pursuant to the complaint made by Smt Kundanben, defendant in the suit for eviction. It is true that due to time-lag between the date of the complaint and the date of recording of evidence in 1992 by the Enquiry Officer, **there are bound to be some discrepancies in evidence.** But the disciplinary proceedings are not a criminal trial. Therefore, the scope of enquiry is entirely different from that of criminal trial in which the charge is required to be proved beyond doubt. **But in the case of disciplinary enquiry, the technical rules of evidence have no application. The doctrine of “proof beyond doubt” has no application.** Preponderance of probabilities and

*some material on record would be necessary to reach a conclusion whether or not the delinquent has committed misconduct. **The test laid down by various judgments of this Court is to see whether there is evidence on record to reach the conclusion that the delinquent has committed misconduct and whether a reasonable man, in the circumstances, would be justified in reaching that conclusion.** The question, therefore, is whether on the basis of the evidence on record, the charge of misconduct of demanding an illegal gratification for rendering a judgment favourable to a party has been proved.....”*

65. Judgment in ***State of Bihar -vs- Phulpari Kumari reported in (2020) 2 SCC 130 (para 6.1, 6.2)*** and ***Allahabad Bank & Ors. -vs- Krishna Narayan Tiwari reported in (2017) 2 SCC 308 (Para 7, 8)*** is relied upon by the petitioners in support of their argument that adequacy or sufficiency of material including the charge is beyond scrutiny.
66. As such, considering the materials on record including the evidence recorded, enquiry report, charge sheet and the impugned order/award, **it appears that the learned tribunal:-**
- (a) Looked for additional (new) evidence being the letter of complaint (note sheet), which was admittedly not even part of the charge sheet nor the enquiry proceeding and enquiry report and on considering the said fact rejected the application under Section 33(2)(b) of the Act.
 - (b) The tribunal also did not take into consideration that the respondent/employee being a English stenographer, did not participate, in part of the enquiry proceeding stating that she would not attend if it was not done in Bengali, when admittedly half the proceedings had already been

conducted in English and the respondent/employee had already participated without raising any objection.

- (c) The tribunal relied upon the evidence of M.W. 2 and took into evidence the note sheet of complaint dated 29.004.2008 (Exhibit K) written by Assistant Secretary Subhodip Ghosh, **when admittedly it was neither part of the charge sheet nor the enquiry proceedings and its report.**

Admitting into evidence, materials which are not part of the enquiry proceeding is beyond the scope of power of the tribunal, who in the present case has made out a case of fresh evidence or its absence (note sheet as complaint) against the petitioners.

- (d) The order/award of rejection passed by the tribunal under Section 33(2)(b) of the I.D. Act is based on the alleged complaint, and the tribunal has totally ignored that there are eye witnesses and also the Financial Advisor, Mr. Venugopaalan (who even faced cross examination) against whom the respondent had misbehaved.
- (e) The tribunal also chose to ignore the admission of the respondent/employee who stated/deposed that **she had asked her senior officer, the financial advisor (MW 4) not to interfere in their discussion.** This Act (admitted) itself proves insubordination.
- (f) All the management witnesses were duly cross examined including Mr. Venugopaalan (MW 4), by the charge sheeted employee.
- (g) The tribunal again went beyond its powers, giving his (presiding officer's) personal opinion (Para 1 and 2 of Page 5 of the impugned order under

Section 33(2)(b) of the Act) as to the verbal interaction between the chargesheeted employee and the financial advisor, who is the person against whom the charge sheeted employee misbehaved.

- (h) The charge sheeted employee did not choose to produce any witness either in the enquiry proceeding or before the tribunal, in spite of being given sufficient opportunity to do so and having attended part of the proceeding (in English), insisted that rest of the proceeding be conducted in Bengali, even though she was employed as an “English stenographer”.

67. In *John D’Suza vs Karnataka State Road Transport Corporation (Supra)*, the Supreme Court also held:-

“33. It, thus, stands out that though the Labour Court or the Tribunal while exercising their jurisdiction under Section 33(2)(b) are empowered to permit the parties to lead evidence in respect of the legality and propriety of the domestic enquiry held into the misconduct of a workman, such evidence would be taken into consideration by the Labour Court or the Tribunal only if it is found that the domestic enquiry conducted by the management on the scale that the standard of proof required therein can be “preponderance of probability” and not a “proof beyond all reasonable doubts” suffers from inherent defects or is violative of principles of natural justice. In other words, the Labour Court or the Tribunal cannot without first examining the material led in the domestic enquiry jump to a conclusion and mechanically permit the parties to lead evidence as if it is an essential procedural part of the enquiry to be held under Section 33(2)(b) of the Act.”

68. In the present case, the tribunal in its limited jurisdiction under Section 33(2)(b) of the I.D. Act has led evidence against the legality and propriety of a domestic enquiry, by allowing and accepting evidence, which was neither part of the charge sheet and the enquiry report. The tribunal was also in the error, by

making a detailed scrutiny of the evidence before the tribunal, other than adding to it (note sheet as complaint).

- 69.** The enquiry proceedings was conducted by following the principles of natural justice, giving sufficient opportunity to the charge sheeted employee. The witnesses were examined and cross examined and standard of proof was that there was sufficient evidence to support the “preponderance of probability” in the enquiry proceedings *(John D’Suza (Supra) Para 33)*, there being no inherent defects and nor any violation of principles of natural justice, in the said enquiry.
- 70.** Thus the impugned order/award dated 22nd July, 2025, passed by learned Fifth Industrial Tribunal in Case No. 04 of 2009 and 03 of 2009 being beyond the scope of power and authority of the tribunal, and thus being not in accordance with law **are set aside. The award under Section 33A of the I.D. Act being based on the decision of the tribunal in the case, under Section 33(2)(b) of the Act and there also being no contravention of Section 33 of the Act, is also not in accordance with law and thus set aside.**
- 71.** **The tribunal was in error in not granting the approval as prayed for under Section 33(2)(b) of the I.D. Act as the essential legal requirements were clearly on record to grant such approval.**
- 72.** As submitted by the learned counsel for the petitioner, recourse to Section 10 of the I.D. Act is always open to respondent/charge sheeted employee.
- 73.** **WPA 27751 of 2025 with WPA 27757 of 2025 are allowed.**

- 74.** The impugned order/award dated 22nd July, 2025 passed by the learned Fifth Industrial Tribunal in Case No. 04 of 2009 under Section 33(2)(b) of the Industrial Disputes Act, 1947 and order/award dated 22nd July, 2025 passed by the learned Fifth Industrial Tribunal in Case No. 03 of 2009 under Section 33A of the Industrial Disputes Act, 1947 **are Set aside.**
- 75.** Connected application, if any, stands disposed of.
- 76.** Interim order, if any, stands vacated.
- 77.** Urgent Photostat certified copy of this judgment, if applied for, be supplied to the parties expeditiously after due compliance.

[Shampa Dutt (Paul), J.]