

**IN THE HIGH COURT AT CALCUTTA  
CIVIL APPELLATE JURISDICTION  
APPELLATE SIDE**

Present:

**The Hon'ble Justice Lanusungkum Jamir**

**And**

**The Hon'ble Justice Rai Chattopadhyay**

***MAT 1314 of 2025***

With

***CAN 1 of 2025, CAN 2 of 2025***

With

***MAT 1339 of 2025***

With

***CAN 1 of 2025***

**Balaram Agarwal**

**Vs.**

**M/s Jindal India Ltd. & Ors.**

**For the appellant**

: Ms. Sanjukta Dutta

: Ms. Nimisha Agarwal

**For the respondents**

: Mr. Ranjay De, Id. Sr. Adv.

: Mr. S. Choudhury

: Mr. Basabjit Banerjee

: Mr. Adityajit Abel Bose

: Ms. R. Ganguly

**Heard on**

**: 09/02/2026**

**Judgment on**

**: 26/02/2026**

**Rai Chattopadhyay, J. :-**

- 1.** The two appeals as mentioned above arise from orders dated June 17, 2025 and July 01, 2025 of the Hon'ble Single Bench, therefore, have been heard together and are disposed of by dint of this common judgment and order.
- 2.** Orders dated July 01, 2025 and July 01, 2025 of the Hon'ble Single Bench are challenged in the instant appeals.

- 3.** The two appeals as stated above relate to the same writ petition, one that is, (MAT 1339 of 2025) having arisen to challenge the judgment of the Hon'ble Single Judge dated July 01, 2025 and the other that is, (MAT 1314 of 2025) has been filed to challenge an order dated June 17, 2025 passed in an application filed in connection with the said writ petition No. WPA 5182 of 2025 under Section 17B of the Industrial Disputes Act, 1947.
- 4.** Vide order dated June 17, 2025, the Hon'ble Single Judge has found that the present appellant/applicant therein has not been challenged to make out a prima facie case for grant of relief to him under Section 17B of the Industrial Disputes Act, 1947.
- 5.** Vide the order and judgment dated July 01, 2025, the Hon'ble Single Judge has recorded its finding that the Tribunal discarding the evidence in cross-examination by the petitioner on the ground of the same being beyond the pleadings would not be in accordance with law. For this reason, the Hon'ble Single Judge vide the said judgment has set aside the Award of the Tribunal dated December 13, 2024 in case No. 07 of 2021 and directed the Tribunal "To re-hear the case by permitting the parties to make their arguments and then on considering the total materials on record and the evidence on record including the cross-examinations which were discarded earlier by the Tribunal, write a fresh judgment."
- 6.** In MAT 1339 of 2025 challenging the said judgment and order of the Hon'ble Single Judge dated July 01, 2025 the appellant has pleaded the following grounds:-
- 7.** That, the learned Judge has erred in fact and law by coming to the finding that the cross-examination conducted by the Respondent No. 1 was not considered at all by the learned

Second Industrial Tribunal, Kolkata to arrive at the decision rendered in the award dated December 13, 2024.

- 8.** That, the learned Judge has failed to consider the fact that the learned Second Industrial Tribunal, Kolkata considered the cross-examination conducted by the Respondent No. 1.
- 9.** That, the learned Judge has failed to consider the fact that the learned Second Industrial Tribunal, Kolkata only made an observation as to whether the cross-examination could be conducted beyond the pleadings, but nonetheless decided the issue of whether the appellant had been "gainfully employed" or not.
- 10.** That, the learned Judge has failed to consider the fact that the learned Second Industrial Tribunal, Kolkata had considered the Bank Statement and Income Tax Statements of the appellant, as relied on by the Respondent no. 1, in order to come to the finding as to whether the appellant had been "gainfully employed" or not.
- 11.** That, the learned Judge has failed to consider the fact that the learned Second Industrial Tribunal, Kolkata observed that the appellant's pleading at Paragraph No. 8 of his written statement, that he was not gainfully employed after being terminated by the Respondent No. 1, had not been denied by the Respondent No. 1 in its written statement and therefore had been admitted by the Respondent No. 1.
- 12.** That, the learned Judge has failed to consider that the Respondent No. 1 did not challenge Paragraph No. 8 of the written statement of the appellant before the learned Second Industrial Tribunal, Kolkata on any ground.

- 13.** That, the learned Judge has failed to consider the finding of the learned Second Industrial Tribunal, Kolkata that the Respondent No. 1 did not challenge Paragraph No. 8 of the written statement of the appellant nor take any plea in its written statement regarding the issue of gainful employment, yet proceeded to ask questions to the appellant on the said issue at the time of cross-examination, with *mala fide* intent to deny the appellant the opportunity to deal with the said documents and contentions.
- 14.** That, the learned Judge has failed to consider the fact that the learned Second Industrial Tribunal, Kolkata had applied the decisions of the Hon'ble Supreme Court reported in (2018) 12 SCC 663 and (2019) 18 SCC 814, and then came to the finding that Respondent No. 1 did not produce any evidence to prove that the appellant was gainfully employed after termination, and therefore was not entitled to claim the relief of back wages.
- 15.** That, the learned Judge has failed to consider the fact that no pleadings were made regarding the income earned by the appellant from stock trading in the written statement and affidavit in chief of the appellant or the written statement of the Respondent No. 1, yet, the issue was raised at the time of cross-examination for the first time and therefore the questions in that respect travelled beyond the scope of the pleadings and were liable to be disregarded as the appellant was not afforded any opportunity to deal with the same.
- 16.** That, the learned Judge has failed to consider that the learned Second Industrial Tribunal, Kolkata had come to a finding that the onus of proving whether the appellant had earned enough money through stock trading after termination of service to

maintain his family is on the Respondent No. 1, and the Respondent no.1 failed to do so.

17. Mr. Nimisha Agarwal, learned advocate appearing for the appellant has submitted that the order of the Hon'ble Single Judge as impugned in the instant appeal has erroneously and without application of settled principles of law considered the judgment pronounced by the Second Industrial Tribunal as mentioned above to be a result of non-application of mind and illegality. He submits that, cross-examination of the present respondent/company is based on records and documents not even pleaded by the said respondent. Therefore, the cross-examination by the O.P. company is beyond any pleadings or records. According to Ms. Agarwal, learned advocate in that view of the fact the Tribunal has declined to rely on the same though the decision of the Tribunal has later on erroneously overturned by the Hon'ble Single Judge in the impugned judgment. Therefore, the same is a product of non-application of mind and impropriety, appreciation of the law in the factual context of the instant case. It is submitted that the Tribunal considered the bank statement and income tax return of the appellant to find income of him after his termination, though insufficient. Ms. Agarwal has submitted that, it is an undisputable fact in the instant appeal that, the O.P. company has not produced any document or proved the same to substantiate its plea that the appellant was gainfully employed after his termination. It is submitted that the Hon'ble Single Bench has not considered the legal implication of violation of Section 25F of the Industrial Disputes Act, 1947 in case of the present appellant and erroneously relied on the judgment of **Mohammed Abdul Wahid Vs. Nilofer and Another** in **Special Leave Petition (Civil) No. 14445 of 2021** vide order dated December 14, 2023. Hence, in this appeal, Ms. Agarwal has submitted that the

impugned judgment of Hon'ble Single Judge is liable to be set aside.

**18.** In the Appeal No. MAT 1314 of 2025, the petitioner's contention is that, the statutory benefit under Section 17B of the Industrial Disputes Act is mandatorily to be provided to a workman during pendency of the writ petition. It is further submitted that, not any remuneration but only adequate remuneration is the yardstick provided in the statute which can prompt a Court not to consider such prayer of a person and otherwise not. Ms. Agarwal, learned advocate for the appellant has submitted that, in view of such settled proposition of law so far as benefit under Section 17B of the Industrial Disputes Act, 1947 is concerned, the finding of the Hon'ble Single Judge in its order dated June 17, 2025 is only unsustainable being irrational and illegal. In support of her contentions she has referred to the following two judgments of the Hon'ble Supreme Court:-

i) ***Dena Bank Vs. Kiritikumar T. Patel*** reported in **(1999) 2 SCC 106**

ii) ***Dena Bank Vs. Ghanshyam*** reported in **(2001) 5 SCC 169**

**19.** Mr. Ranjay De, learned senior advocate for the respondent/company has taken this Court through the documents thoroughly to submit that since after termination, the petitioner has been gainfully earning, in order to sustain himself.

**20.** He submits that firstly, there is suppression of this material fact by the present appellant, before the tribunal. Secondly, that the proposition relied on by the learned tribunal, is unheard of, in so far as questions to be put in cross-examination based on the examination in chief could not have been assumed beforehand

and pleaded. He says that, it is settled law that what is not pleaded cannot be argued, as for the purposes of adjudication, it is necessary for the other party to know the contours of the case it is required to meet. It is equally well-settled that the requirement of having to plead a particular argument does not include exhaustively doing so. In this regard he has relied on the Supreme Court judgment in **Mohammed Abdul Wahid vs Nilofer** reported in **[(2024) 2 SCC 144]**. He submits that cross examination is mandatorily to be considered. In this regard he refers to the Supreme Court judgment in **State of Rajasthan vs Heem Singh** reported in **[2021 12 SCC 569]** in which the Court relies on a previous case in **P. John Chandy and Co. (P) Ltd. vs John P. Thomas** reported in **(2002) 5 SCC 90**, in which the Court has stated that cross examination is an important part of the statement of witness. Similarly, the Court has further held that whatever is stated in the examination in chief stands tested by cross examination. Lastly, the judgment of Supreme Court in **North East Karnataka Road Transport Corporation vs M. Nagangouda** **[2007 10 SCC 765]** has been referred to in order to buttress his argument the gainful employment includes self-employment, wherefrom income is generated.

- 21.** Mr. De for the respondent/company has supported the impugned judgment and order and seeks that no interference be made therein in these appeals.
- 22.** This Appeal Court finds that, in the impugned judgment and order dated July 01, 2025, the Hon'ble Single Judge has remanded the matter before the Second Industrial Tribunal for consideration afresh, after setting aside of the Award of the Tribunal dated December 13, 2024. The Court finds that, neither of the parties should be aggrieved as regards this order. It is a fact that, none of the parties has raised any objection as

to the direction of the Court for sending back the dispute for hearing by the Tribunal again.

- 23.** A minute disputed issue in this regard is whether the Court has directed the Tribunal to hear the dispute de novo or not. According to the appellant, it is the direction of the Court upon the Industrial Tribunal to re-hear the case meaning thereby hearing afresh from the beginning. Per contra, it is the submission of the respondent/company that the Court in the impugned judgment has remanded back the matter with the direction to hear the arguments of the parties and pass an Award afresh on the basis of existing pleadings, deposition and records.
- 24.** In view of Paragraph 9 of the judgment of the Hon'ble Single Judge as above, this Court is in no two opinion that the Court's order is enough comprehensible. The matter has been remanded back for the parties to make their arguments. The Tribunal has been directed to consider materials on record and evidence on record including the cross-examinations, which were earlier discarded by the Tribunal, the arguments of the parties and write a fresh judgment thereon. Therefore, this Court refrains itself to go into the merits of the instant appeal any further but thinks it proper to affirm the judgment as impugned in the instant appeal of the Hon'ble Single Judge dated July 01, 2025 and remand back the dispute before the Tribunal as per direction of the Hon'ble Single Bench.
- 25.** Needless is to mention that, unless there is a writ petition/appeal pending, there is no scope for the other appeal being No. MAT 1314 to remain pending in this Court. Hence, the same also stands disposed of, along with the other appeal.

- 26.** Accordingly, this appeal is disposed of affirming the judgment of the Hon'ble Single Judge dated July 01, 2025 in WPA 5182 of 2025 and directing the Industrial Dispute No. 7 of 2021 to be remanded back to the Tribunal. The Tribunal shall duly comply with the direction of the Hon'ble Single Judge as made in Paragraph 9 of the said impugned judgment within a period of six (06) weeks from the date of communication of copy of this judgment to the Tribunal.
- 27.** Both the Appeal Nos. MAT 1314 of 2025 and MAT 1339 of 2025 are disposed of with the direction as above.
- 28.** Urgent certified copies of this judgment, if applied for, be supplied to the parties upon compliance with all requisite formalities.

**(Lanusungkum Jamir, J.)**

**(Rai Chattopadhyay, J.)**