

19.08.2026
Item No.8
Court No. 30
Aloke

WPA 21645 of 2026

M/s. Tata Consultancy Services Limited
-vs-
The State of West Bengal & Ors.

Mr. Ranjay De, Id. Sr. Adv.
Mr. Basabjit Banerjee
Mr. Adityajit Abel Bose
... for the Petitioner

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. Learned senior counsel Mr. De 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 ongoing 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.”

2. It is further submitted that the said pay is co-related 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.

3. **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(i) is as follows :

*“(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 s 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;

4. 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 **for payment and recovery of only “wages”, which does not include bonus.**

5. 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 and written submissions.....”*

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

7. 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 05.03.2026. **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.**

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

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

10. The petitioner relies upon the following judgments :

i) *Bharat Chamber of Commerce & Anr. vs. State of West Bengal & Ors. 2010 SCC OnLine Cal 1380;*

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

11. Considering the facts as noted, this Court finds that the petitioner has made out an arguable case and, as such, the matter is required to be heard on merit.

12. Pending hearing the impugned orders dated 05.03.2026, 23.06.2026 and 23.07.2026, passed by the Referee under the West Bengal Shops & Establishments Act, 1963, Bidhannagar, North 24 Parganas, the respondent no.2, be stayed till 30th November, 2026 or until further orders whichever is earlier.

13. Matter be listed for further hearing on **1st September, 2026.**

(Shampa Dutt (Paul), J.)