

18.09.2025
Ct. No. 30
S.L No. **08**
MKP

WPA 21744 of 2025

**M/S Kolkata Hotels Limited
(Holiday Inn Express –Airport, Kolkata).**

Vs

The State of West Bengal And Ors.

Mr. Ranjay De, Sr.Adv.

Mr. Basabjit Banerjee

Mr. Adityajit Abel Bose

.....for the Petitioner

Mr. B.N.Mukherjee

Ms. Jolly Chakraborti

.....for the Respondent No.3.

1. The writ application has been preferred challenging an award dated 07.06.2022, passed by the 4th Industrial Tribunal, Kolkata.

2. Learned Counsel for the petitioner has relied upon the judgment of the Supreme Court in **(2018)4 Supreme Court Cases 483, Kurukshetra University Versus Prithvi Singh** where in the Court held as follows:

*“If the domestic inquiry was held illegal and improper then the next question, which arose for consideration, was **whether to allow the appellant employer to prove***

the misconduct/charge before the Labour Court on merits by adducing independent evidence against the respondent employee. The appellant was entitled to do so after praying for an opportunity to allow them to lead evidence and **pleading the misconduct in the written statement.**”

“Once **the appellant employer was able to prove the misconduct/charge** before the Labour Court, then it was for the Labour Court to decide as to whether the termination should be upheld or interfered by exercising the powers under Section 11-A of the ID Act by awarding lesser punishment provided a case to that effect on facts is made out by the respondent employee.”

“ We are constrained to observe that first, the Labour Court committed an error in not framing a "preliminary issue" for deciding the legality of domestic enquiry and second, having found fault in the domestic inquiry **committed another error when it did not allow the appellant to lead independent evidence to prove the**

misconduct/charge on merits and straightaway proceeded to hold that it was a case of illegal retrenchment and hence the respondent's termination is bad in law."

3. It is submitted that the Learned Tribunal on dismissing the case on the finding that the enquiry was not lawful, proceeded with the case, without permitting the petitioners to adduce evidence to justify their case of terminating the workman.

4. Learned Counsel for the respondent submits that since the passing of the award, the petitioner has stopped paying subsistence allowance and the respondent workman is in great difficulty.

5. On hearing the Learned Counsels for the parties and on perusal of the materials on record, the writ application be listed in the monthly list of November, 2025 and considering that a prima facie case has been made out by the writ petitioner, the impugned order dated 07.06.2022, passed by the Learned Tribunal, 4th Industrial Tribunal, Kolkata, be stayed till 28th of November, 2025, or until further orders, whichever is earlier.

6. Pending hearing of the writ application. The petitioner/company shall continue to pay subsistence allowance to the respondent workman till his date of superannuation, in case he has not already superannuated.

7. Matter be listed in the monthly list of **November, 2025.**

[Shampa Dutt (Paul). J]