

18.03.2025
Item No. 2
Ct. No. 30
Aloke

WPA 23155 of 2023

**M/s Kamala Tea Company Ltd.
Vs
The State of West Bengal & Ors.**

Mr. Srijib Chakraborty
Mr. Aditya Mondal
... for the petitioner

Mr. Rajarshi Basu
Mr. K.M. Hossain
... for the State

1. The present writ application has been preferred against an award dated 31.01.2019 and orders dated 06.04.2022 and 19.06.2023 respectively passed by the learned First Labour Court, West Bengal. Further direction upon the respondent no. 2 has been prayed for in respect of the notice dated ref. 1593/1(21)/6-71/23/EL/LC dt. 31.07.2023 and a notice in ref. application under Section 33 (C) (2) of the Industrial Dispute Act, 1947 vide ref. 566/LT dt. 15.05.2023.
2. The petitioner herein has raised the **point of jurisdiction** of the Labour Court who has passed the order challenged herein. The order challenged has been passed by the Judge, 2nd Labour Court, Calcutta on 31.01.2019 wherein the 2nd Labour Court allowed the

workmen's petition under Section 10 (1B)(d) of the Industrial Disputes Act, 1947.

3. Written notes along with the following judgments have been filed and relied upon on behalf of the petitioner:-

- i. ***Sahu Minerals & Properties Ltd. vs Presiding Officer, Labour Court & Ors., (1976) 3 SCC 93, (Para 7).***

- ii. ***U.P. Electric Supply Co. Ltd. vs R.K. Shukla & Anr., (1969) 2 SCC 400, (Para 14).***

4. It is submitted on behalf of the petitioner that the workmen sought to make out a case of simple termination which amounts to 'retrenchment' and, as such, as the said termination amounts to retrenchment the same falls under the 3rd Schedule of the Act which is within the jurisdiction of the Tribunal and the 2nd Labour Court has no jurisdiction to entertain the said application.

5. It appears from the order dated 31.01.2019 that the Court did not decide on the point of jurisdiction. Vide another order dated 19.06.2023 the said Labour Court disposed of the OP/petitioner's petition dated 30.06.2022. The said application was for reconsideration and review of the order dated 06.04.2022 wherein the Labour Court dismissed the

petition filed by the petitioner dated 20.03.2019 regarding admissibility or setting aside of the award passed by the Court. The prayer for review of the said order has also been dismissed by the order dated 19.06.2021.

6. The respondent workmen's case before the Labour Court is that he was engaged as a driver by the petitioner company in the year 1985 and was working under the petitioner herein till 26.06.2006.
7. It is his case that the petitioner herein that suddenly the workman w.e.f. 26.06.2006 stopped reporting for work. On the other hand, the private respondent's case is that he was not permitted to join his duties, without assigning any reasons, only by a verbal order. There was no charge-sheet, no domestic enquiry nor was he given any benefits while his service was stopped.
8. The petitioner/company has filed its written statement before the Labour Court wherein their contention is that their case is divided into four parts which is as follows :

"Part-I:

Relates to question of Law of Limitation.

Part-II:

Deals with the aspect of maintainability and jurisdiction of the Learned Court/Tribunal.

Part-III:

Deals with the opposite party company's case, if the Learned Court condone the delay, the opposite party company craves leave to the Learned Court for hearing preliminary points relating to the maintainability of the application at first prior to entertain the merits of this case.

Part-IV:

Deals with the merits of the case relating to the "said statement" filed by the applicant/workman."

9. Part I, III and IV shall be considered after disposal of the issue raised in part-II, that is maintainability/jurisdiction of the learned Labour Court.
10. The specific case of the company/petitioner herein is that in May, 2005 the workman verbally informed the company that he will not be able to continue his job from June, 2005 and if company desires the Maruti Alto LX, Car No. WB 02R 6708 may be given for his use, then he will not claim any dues after his resignation. But thereafter the workman has never come to the office (stopped voluntarily) and also did not return the aforesaid car to the company.
11. The petitioner/company has denied that the services of the workman was terminated and has stated that the workman was retrenched.
12. It appears that it is the case of the petitioner company that the services of the workman was never terminated. It is their case that since

June, 2005 the workman stopped coming to the office voluntarily.

- 13.** Section 2(OO) of the Industrial Disputes Act defines 'retrenchment'.

*"2(oo) "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 –*
(a) Voluntary retirement of the workman;
or
(b) retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf;....."

- 14.** Learned counsel for the petitioner has relied upon the sentence "for any reason whatsoever." It is thus submitted that as the said termination is a 'retrenchment' the same is subject to the jurisdiction of the Industrial Tribunal and not the Labour Court.

- 15.** The jurisdiction of the Labour Court has been put down in the **2nd Schedule** which reads as follows:-

"1. The propriety or legality of an order passed by an employer under the standing orders;
2. The application and interpretation of standing orders;

3. Discharge or dismissal of workmen including reinstatement of, or grant of relief to, workmen wrongfully dismissed;

4. Withdrawal of any customary concession or privilege;

5. Illegality or otherwise of a strike or lock-out; and

6. All matters other than those specified in the Third Schedule.”

16. The jurisdiction of the tribunal under The

Third Schedule:-

“1. Wages, including the period and mode of payment;

2. Compensatory and other allowances;

3. Hours of work and rest intervals;

4. Leave with wages and holidays;

5. Bonus, profit sharing, provident fund and gratuity;

6. Shift working otherwise than in accordance with standing orders;

7. Classification by grades;

8. Rules of discipline;

9. Rationalisation;

10. Retrenchment of workmen and closure of establishment; and

11. Any other matter that may be prescribed.”

17. From the materials on record it appears that

there was no formal termination of the workman in the present case. **It is the case of**

the workman that all on a sudden by a

verbal order he was removed from his work

and not permitted to join. On the other

hand, it is the contention of the company

that the workman stopped coming

voluntarily and was thus not reporting for

his work since June, 2005.

18. It is the company's case that this is a termination amounting to retrenchment which as per their submission is within the jurisdiction of the Industrial Tribunal.
19. Considering the submissions of the parties, the pleadings on record, the relevant provisions of law and the judgments relied upon, it appears that **point no. 3 to the Second Schedule of the Act relates to discharge or dismissal of workmen including reinstatement of, or grant of relief to, workmen wrongfully dismissed.**
20. Considering that there is no documents to show that the workmen has been terminated and also the contention of the company that the workman voluntarily stopped coming and the counter contention of the workman that he was stopped by a verbal order from joining his work, this Court finds that this is a case where **the workman in this case was discharged/dismissed/wrongfully dismissed from his service.**
21. The fact that the workman was employed with the company has not been denied.
22. **Thus in view of point no. 3 of the second Schedule, the Labour Court has the jurisdiction to decide the dispute in the present case.**

- 23.** The point of maintainability and jurisdiction as raised and challengd by the petitioner company herein having no merit stands rejected.
- 24.** Let the matter be fixed for final hearing on merit in the monthly list of May, 2025.
- 25.** Urgent photostat certified copy of this order, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(Shampa Dutt (Paul), J.)