

Form No.J(2)

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
CIRCUIT BENCH AT PORT BLAIR
APPELLATE SIDE**

Present:

The Hon'ble Justice Raja Basu Chowdhury

**WPA 862 of 2022
Shri C. Chitambaram
Versus
The Director of Transport**

For the petitioner : Mr. Gopala Binnu Kumar

For the respondent : Mr. Tulsi Lall

With

**WPA 938 of 2022
The Director of Transport
Versus
Shri C.Chitambaram**

For the Petitioner : Mr. Tulsi Lall

For the respondent : Mr. Gopala Binnu Kumar

Heard on : 12.03.2025, 17.03.2025 & 21.03.2025

Judgment on : **16th June, 2025**

Raja Basu Chowdhury, J:

1. Two separate writ petitions have been filed, one by the workman and the other by the Directorate of Transport, Andaman and Nicobar Islands (hereinafter referred to as the “employer”) both,

challenging the award dated 14th October, 2022 passed in ID Case No. 02 of 2019 by the Labour Court, Andaman & Nicobar Islands at Port Blair. Though, the impugned award is under challenge, the grounds of challenge by the workman and employer are different. The workman contends that the labour court having arrived at a definite finding that the retrenchment/termination of the workman is illegal and unjustified, the labour court was obliged to direct reinstatement of the workman as a natural corollary to the above declaration. The employer would, however, contend that the finding rendered that the retrenchment/termination of the workman is illegal is beyond the scope of reference thus, the same is unsustainable in law and should be set aside.

2. To understand the scope of challenge identified herein, it is necessary to note down the facts giving rise to this case. On the basis of a selection process initiated by the employer, the workman along with others were engaged as daily rated bus drivers under the employer on and from March, 2008 for a fixed tenure. The tenure was, however, extended from time to time until the time hereinafter mentioned. According to the parties, when the workman was posted at the bus terminal, Rangat in the year 2014, on the basis of allegations of pilferage of 20 liters of HSD oil from bus no. 256 driven by the workman, a FIR was lodged against the workman on 17th December, 2014 followed by the arrest of the workman in the criminal case.

3. On 24th December, 2014, the workman was released on bail by the criminal Court and immediately thereafter had approached the employer seeking permission to discharge his duties as bus driver. The employer, however, refused to allow the workman to discharge the duties and responsibilities of bus driver, this prompted the workman to make a representation on 2nd January, 2015, which was followed up by a further representation on 18th May, 2015. From the records available, it would transpire that on 15th July, 2015 a show-cause notice was issued upon the employer by the office of the respondent, wherein it was alleged that the workman was arrested for pilferage of HSD oil from STS Bus no. 256 and was sent to judicial custody at Mayabunder as per the report received from the Assistant Engineer (M) Rangat, and the same tantamount to serious misconduct as per applicable rules and therefore, an opportunity was given to the workman to show cause as to why disciplinary proceeding should not be taken against him as per the relevant rules. Records would reveal that the workman had submitted a reply to the show-cause on 21st July, 2015, wherein he narrated the entire fact leading to criminal proceeding against him and the fact that the workman had previously initiated a complaint against pilferage of HSD oil against one Abdul Rasheed, STS In-charge and one Pavanan, Checking Inspector, and as a counter-blast to the same he was entangled in the aforesaid criminal case. The allegations of pilferage made against him were concocted and

far from truth. In such reply, he has claimed that though the report of the Assistant Engineer (M) Rangat was relied on, copy of such report was not disclosed and as such the show-cause notice should be recalled and the workman should be allowed to discharge his duties and responsibilities as bus driver. It would also transpire that by Office Order no. 3052 dated 1st October, 2015 the workman was disengaged by the employer from the date of his arrest by the police. Records would reveal that the workman had ultimately been acquitted of the criminal charges by the judgment and order dated 14th January, 2018 passed in the above criminal case. Subsequently, a conciliation proceeding was initiated and on the basis of failure report of such conciliation, the appropriate Government by an order dated 14th October, 2019 had referred the following disputes for adjudication to the labour Court. To appropriately understand the scope of reference, the same is extracted hereinbelow:

“Whether the demand of Shri. C. Chitambaram, Ex-DRM (Bus Driver) of the Directorate of Transport to reinstate in the post DRM (Bus Driver) after acquittal of all charges by Hon’ble Chief Judicial Magistrate, Mayabunder is legal and justified. If not what relief the workman entitled to?”

4. The parties had subsequently exchanged pleadings, whereupon the learned Labour court by an order dated 14th October, 2022 decided upon the reference and had come to a finding that the

termination/disengagement is illegal and unjustified due to following reasons:

“1. Statement of Shri. Ganesh Kabiraj (DW-2) is not recorded in presence of First Party workman, in the inquiry.

2. There is no document filed by Second Party on record, to show that the First Party workman was given the opportunity to cross-examine such Shri. Ganesh Kabiraj in the departmental inquiry. Clearly, First Party workman was not given the opportunity to cross-examine such Shri. Ganesh Kabiraj in the departmental inquiry. 2nd Party employer has passed termination order in the statement of Shri. Ganesh Kabiraj.

3. The above dis-engagement/termination office Order (Ext.-G) shows that the Second party employer didn't consider or deal with the representations of First Party dated NIL (Ext.-10), dated 18.05.2015 (Ext.-11), dated 06.07.2015, (Ext.-12) and the reply to the show cause dated 21.07.2015 (Ext.-13).

4. 1st Party workman was not given opportunity to lead its evidence or examine its witnesses.

5. Second Party employer didn't follow to the principles of natural justice in the departmental enquiry.”

5. Following the above and by noting that the workman was only a daily wager and is a casual worker and having regard to the judgment delivered in the case of **Secretary, State of Karnatak v. Uma Devi**, reported in (2006) 4 SCC 1, and noting the authority of the employer to retrench a workman, by referring to the judgment delivered in the case of **Hari Nandan Prasad v. Food Corporation**

of India, reported in **(2014) 7 SCC 190**, the labour court was of the view that the workman was only entitled to compensation for mental harassment.

6. Mr. Kumar, learned advocate representing the workman being the petitioner in WPA 862 of 2022 and the respondent in WPA 938 of 2022, would submit that what was before the labour Court was the issue of termination. By drawing attention of this Court to the statement of claim filed by the workman and the prayer made therein, he would submit that a specific prayer had been made for setting aside of the illegal termination of the workman and for reinstatement of the workman in service along with all consequential benefits. In the facts as noted hereinabove, the labour court having concluded that the termination/disengagement of the workman was illegal, as a natural corollary thereto, the labour court was obliged to direct reinstatement. In support of his aforesaid contention, he has placed reliance on a judgment delivered by a Coordinate Bench of this Court at the Principal Bench in the case of **Ramani Mohan Industries Private Ltd. v. Second Industrial Tribunal**, reported in **(1981) 1 LLJ 363**. By referring to the said judgment and the provisions of Section 25F of the Industrial Disputes Act, 1947 (hereinafter referred to as the “said Act”) and the reference made therein, he would submit that if the retrenchment is found to be in violation of the provisions of Section 25F of the said Act, the workman concerned remains an employee of the company

and as such the question of awarding only some compensation regarding wages without granting reinstatement cannot and does not arise. By placing reliance on a judgment delivered by the Hon'ble Supreme Court in the case of ***Surendra Kumar Verma etc. v. The Central Government Industrial Tribunal-cum-Labour Court, New Delhi & Anr.***, reported in **AIR 1981 SC 422**, he would submit that ordinarily if it is found that the retrenchment was illegal though reinstatement is the rule, however, in exceptional circumstances the same can be denied. Such circumstances include, when it is found that the establishment itself has closed down, reinstatement would become impossible. He would submit that it is not the case of the respondent that the workman had not worked for more than 240 days in the preceding 12 months. In this case, the workman having fulfilled the definition of workman and having been in continuous service in terms of the provisions of the said Act, the workman ought to be reinstated. The labour court had erred in denying reinstatement to the workman by treating the workman to be a casual worker and to conclude that the workman had no right to continue in service. The power of the employer to enforce the provisions of Section 25F of the said Act cannot stand in the way of the labour court directing reinstatement. Having regard thereto, he would submit that this Court is competent enough to make available complete relief to the workman, which has been irregularly denied by the labour court notwithstanding there being foundation

for grant of such relief. In such circumstances, he submits that this Court may be pleased to direct the employer being the Directorate of Transport to reinstate the workman.

7. *Per contra*, Mr. Lall, learned advocate representing the employer, would restrict his submission to the issue of the scope of reference. By referring to the terms of reference, he would submit that it was not within the jurisdiction of the labour court to declare that the termination/disengagement letter dated 1st October, 2015 issued by the employer to the workman is illegal and unjustified. According to him, unless, the terms of reference required the labour court to decide on the above issue, the labour court was not competent to decide the same. In support of his aforesaid contention, he has placed reliance on a judgment delivered by the Hon'ble Supreme Court in the case of **Pottery Mazdoor Panchayat v. Perfect Pottery Company Limited**, reported in (1979) 3 SCC 762., and the judgment delivered by the Hon'ble High Court of Delhi in the case of **Municipal Corporation of Delhi v. Sandeep Yadav & Ors.** having neutral citation 2024:DHC:4704. According to him, since, the labour court did not have the jurisdiction to decide whether the letter of disengagement/termination was illegal, having regard to the terms of reference made by the appropriate Government, the above finding rendered by the labour court is *nonest*, beyond jurisdiction and should be set aside.

8. Having heard the learned advocates appearing for the respective parties and having considered the materials on record, I find that two major issues have been raised by the parties.

i. Whether the labour court on the basis of the terms of reference dated 14th October, 2019 issued by the appropriate Government was competent to decide on the legality and/or validity of the final termination/disengagement letter issued by the employer to the workman.

ii. Whether the labour court having returned a finding that the disengagement is illegal having regard to the provisions contained in Section 25B and 25F of the said Act was obliged to direct reinstatement.

9. Admittedly in this case, it is not in dispute that the workman had been engaged by the employer. Though, the tenure of workman was for a specific period, it is not in dispute that the employer had extended the period of employment from time to time, without any break. The workman had remained in continuous employment as a bus driver from March 2008 upto 2015. Incidentally, on 17th December, 2014 on the alleged ground of pilferage of 20 liters of HSD oil from bus no. 256 driven by the workman, FIR was lodged, which followed the arrest of the workman in the criminal case. On 24th December, 2014 the workman was released on bail from the criminal Court, whereupon he had made representations for reinstatement on 2nd January, 2015 which was followed by a

reminder dated 18th May, 2015. Subsequently, he was issued a show-cause on 15th July, 2015 as to why disciplinary proceeding should not be taken against him. The workman filed a response on 21st July, 2015, explaining that the aforesaid allegations of pilferage and the subsequent criminal case instituted against the workman was a counter-blast to the workman lodging a complaint against the STS in-charge and the checking inspector. Subsequently, by an office order dated 1st October, 2015 without holding any formal inquiry and placing reliance on the report of the Assistant Engineer (M) Rangat on the allegations of involvement of the workman in criminal case regarding pilferage of 20 liters of HSD oil, the workman was disengaged from service from the date of arrest by the police. The aforesaid would demonstrate that no independent enquiry had been conducted against the workman. On 14th January, 2018 the workman was acquitted from the criminal charges although, ordinarily, once the workman was acquitted from the criminal charges, the workman ought to have been reinstated, however, in this case, since he was not reinstated, he had approached the office of the Labour Commissioner, Port Blair. In furtherance to the above, a conciliation proceeding was initiated, however, since, the conciliation failed, a failure report was prepared by the Assistant Commissioner conciliation officer dated 20th August, 2019 under the provisions of Section 12(4) of the said Act. From the scope of such conciliation and views of the workman, it

would be amply clear that in paragraphs 5 and 9 thereof, the Labour Commissioner had recorded the prayer of the workman for reinstatement to the post of DRM (Bus Driver) by the management. To morefully appreciate the same the said paragraphs are extracted hereinbelow:

“5. Shri. C. Chitambaram, Ex-DRM (Bus Driver) furnished reply dated 21.05.2015 wherein he stated that he was entangled falsely in said charges and prayer for reinstatement.

9. Shri. C. Chitambaram, Ex-DRM (Bus Driver) raised the instant industrial dispute under ID Act over non-consideration of his prayer for reinstatement in the post of DRM (Bus Driver) by the Management.”

10. Having regard thereto, the appropriate Government by an order dated 14th October, 2019 had recorded the disputes between the parties by formulating the terms of reference as detailed hereinabove. Before the Labour Court, the workman had filed a statement of claim. In paragraph 12 of the statement of claim the workman had claimed that the workman had worked for more than 240 days continuously under the employer and therefore the employer ought not to have terminated the service of the workman without following the mandatory provisions of the said Act. In the light of the above, the workman had sought for the following relief:

“i. An award be passed setting aside the illegal termination of the First party and directing the Second party to reinstate the First party/workman in service with

back wages and all consequential benefits to the first party workman.

ii. Any other order/orders or relief/relief's as this Hon'ble Court deem fit and proper in the interest of justice."

11. The employer had contested the proceeding by filing its written objection. In the written objection, it was categorically stated that the disengagement of service of the workman was affected owing to the involvement of the workman in criminal case and that his reinstatement in service was not considered as he was disengaged due to his involvement in a criminal case and another person has been engaged by the department against the vacant slot of DRM, though no particulars of such person had been disclosed. On the basis of the records of the proceedings available before the labour court, the labour court came to a finding that the final termination/disengagement of the first party is illegal and unjustified. The reasons for holding the same were also set forth in the award, which are extracted hereinbelow:

"1. Statement of Shri. Ganesh Kabiraj (DW-2) is not recorded in presence of First Party workman, in the inquiry.

2. There is no document filed by Second Party on record, to show that the First Party workman was given the opportunity to cross-examine such Shri. Ganesh Kabiraj in the departmental inquiry. Clearly, First Party workman was not given the opportunity to cross-examine such Shri. Ganesh Kabiraj in the departmental inquiry. 2nd Party

employer has passed termination order on the statement of Shri. Ganesh Kabiraj.

3. The above dis-engagement/termination Office Order (Ext.-G) shows that the Second Party employer didn't consider or deal with the representations of First Party dated NIL (Ext.-10), dated 18.05.2015 (Ext.-11), dated 06.07.2015, (Ext.-12) and the reply to the show cause dated 21.07.2015 (Ext.-13).

4. 1st Party workman was not given opportunity to deal its evidence or examine its witnesses.

5. Second Party employer didn't follow to the principles of natural Justice in the departmental enquiry.

Thus, the termination/dis-engagement is not legal and justified.”

12. In the light of the above, it is necessary to consider whether the labour court had exceeded its jurisdiction in returning the finding that the disengagement/termination of the workman was illegal. Having regard to the reference made by the appropriate Government, it would be apparent that the appropriate Government was conscious of the fact that in order to consider the demand made by the workman for reinstatement in service after acquittal of the charges, it would be necessary for the labour court to return a finding whether the disengagement was valid or not and to ascertain whether any inquiry had been held against the workman independent of the criminal proceedings and if, no such inquiry was held, to test out whether the prayer for reinstatement was justified. Admittedly, in this case, no independent enquiry had been held by

the employer against the workman. The workman had admittedly been disengaged by reasons of the criminal proceedings. Although, on the acquittal of the workman a right accrues upon him to be reinstated, however, such right may not be absolute as the same may be a subject to a domestic enquiry, to be initiated by the employer against the workman since, the standard of proof in a criminal case is different from the standard of proof in a domestic enquiry. While in a domestic enquiry the proof of the charges is based on preponderance of probabilities, in a criminal case the same is based on proof, beyond reasonable doubt. It is also well settled that if no enquiry is held, or the inquiry stands vitiated for reasons of failure of natural justice or for any other reason, both the employer and workman are entitled to get a second chance before the labour court to establish their respective cases. In this case, considering the letter of disengagement which in itself constituted an industrial dispute within the meaning of Section 2A of the said Act, the labour court had in order to test out the validity of the letter of disengagement was obliged to and had accordingly conducted an independent enquiry by providing opportunity to both the employer as also the workman and on the basis thereof had returned the above finding. In my view, there is no irregularity in the same, the labour court acted within four corners of the statute in deciding the above issue. The judgment of **Pottery Mazdoor Panchayat** (*supra*) relied on by Mr. Lall to conclude that the labour court had exceeded

its jurisdiction is not sustainable in law. The judgment of **Pottery Mazdoor Panchayat** (*supra*) was delivered in a different set of facts. In the said case a notice of closure was issued, whereupon the workman applied for conciliation proceeding. The conciliation proceeding having failed, the appropriate Government referred an industrial dispute to the industrial Court. The question that was referred was “*whether the proposed closure by the management of the perfect Pottery Co. Ltd., Jabalpur, of the pottery factory at Jabalpur, with effect from July 1, 1967, is proper and justified and to what retrenchment compensation are the employees entitled to, if it is decided that the proposed closure is proper and justified.*” By an award the Industrial Court declined to issue any prohibitory injunction. Challenging the same, a writ petition was filed before the High Court of Madhya Pradesh. The petition became infructuous after the closure, and was not pressed. On the basis of the claim made by the contesting parties, an issue had then arisen as to whether the closure of the business was a real closure or not. This led the appropriate Government to make a further reference to the Central Government Industrial Tribunal-cum-Labour Court, which was to the following: “*Whether the employers in relation to the Poly Pather Clay Mines of Perfect Pottery Co. Ltd., Jabalpur, were justified in closing down the said mine and retrenching the following 81 workers with effect from July 1, 1967. If not, to what relief the workmen are entitled.*” According to the employer, the labour court

had no jurisdiction as regards propriety or justification of the management decision to close down the business. Though, the union's case was that the closure was unreal and in substance, a lockout, the two tribunals came to contrary conclusions on the principal question as to whether they had jurisdiction to inquire into the propriety or justification for closure. While the Central Government Industrial Tribunal-cum-Labour Court held that it had no jurisdiction to inquire whether the decision of the management to close down the business was proper but it was entitled to consider whether in fact the business was closed, the Industrial court held that it had no jurisdiction either to inquire into the propriety of the closure or to consider whether there was or was not a real closure. In a challenge before the Hon'ble High Court, the High Court concluded that the tribunal while deciding a reference can go into matters incidental thereto, however, cannot go beyond the terms of reference made to it. It is in this context, the Hon'ble Supreme Court held that the reference to the tribunal was not to adjudicate upon the questions as to whether there was in fact a closure of business or whether under the pretence of closing the business the workers were locked out by the management. The reference being limited to the narrow question whether the closure was proper and justified, the tribunal by the very terms of the reference, had no jurisdiction to go beyond the fact of closure and inquire into the question whether the business was in fact closed down by the management.

The aforesaid case is distinguishable from the case at hand. Admittedly, in this case, the terms of reference are not so narrow and brings within its sweep, the issue of justifiability as regards the issuance of the disengagement letter as noted above. In so far as the case of ***Municipal Corporation of Delhi*** (supra), is concerned the same deals with justifiability of discontinuance of casual employees, the same is distinguishable on facts and does not assist the employer.

13. Having regard to the observations made herein above, it cannot be said that the labour court had exceeded its jurisdiction in returning the finding that the disengagement is unjustified. Admittedly, in this case, there is no dispute that workman was in continuous service, especially having regard to Section 25B of the said Act. In the light of the above, in my view, the labour court had failed to exercise jurisdiction in not considering the issue of reinstatement by treating the workman to be a casual worker. Simply because the workman was a contractual worker, the same could not have deterred the labour court from directing his reinstatement. Further the foundation for disengaging the workman, on his acquittal in criminal case stood wiped out especially since the employer having not independently or before the tribunal established the charges against the workman. The judgment delivered in the case of ***Uma Devi*** (supra) is also not an authority to deny relief of reinstatement to the workman. The workman was not

seeking absorption. The entry of the workman in service was not any backdoor appointment, it was a regular appointment and having regard thereto, in my view, the labour court ought to have directed the reinstatement to the workman. Although, the workman insisted that the workman is entitled to back wages, however, having regard to the judgment delivered in the case of ***Deepali Gundu Surwase v. Kranti Junior Adhyapak Mahavidyalaya (D. Ed.) & Ors.***, reported in **(2013) 10 SCC 324**, the workman having not made out a case that he had remained unemployed since the date of disengagement, I am of the view that no order for back wages can be passed. However, having regard to the facts as noted hereinabove, I direct the employer/Directorate of Transport, Andaman and Nicobar Islands to reinstate the workman in service from the date of passing the Award, though notionally. Actual benefits shall be payable from the date of this order. The direction for payment of compensation and interest as directed by the labour court is not interfered with.

14. With the above observations and direction, both the writ petitions stand disposed of.
15. There shall be no order as to costs.
16. Urgent photostat certified copy of this order, if applied for, be made available to the parties upon compliance of all necessary formalities.

(Raja Basu Chowdhury, J.)