

**IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
APPELLATE SIDE**

BEFORE:

THE HON'BLE JUSTICE SHAMPA DUTT (PAUL)

WPA 11393 of 2026

**M/s. Industrial Enterprises
Vs.
The State of West Bengal & Ors.**

For the Petitioner	:Mr. Subhabrata Datta, Adv. Mr. Jatindra Barik, Adv. Mr. Aranya Saha, Adv.
For the Respondent No.4	:Ms. Dipanwita Ganguly, Adv. Mr. M. Tarafdar, Adv.
For the State	: Mr. Samrat Mukherji, Adv. Ms. Manisha Paswan, Adv.
Judgment reserved on	: 02.09.2026
Judgment delivered on	: 07.10.2026

SHAMPA DUTT (PAUL), J.:-

1. The present writ application has been preferred challenging the orders dated 14.03.2022 and 18.02.2026 passed in Case no. 01 of 2018 under Section 10(1B)(c) of the Industrial Disputes Act of 1947. Vide the order dated 14.03.2022 the 2nd Labour Court condoned the delay by allowing the application dated 23.05.2018 praying for condonation of delay.
2. Vide the order dated 18.02.2026 the Court held as follows:-

“Having heard the submission of the Ld. Counsels for the parties and having perused the materials on record, I find that this court vide order no. 26 dated 14.03.2022 has

already condoned the delay in filing the instant case rightly or wrongly. Therefore, I cannot sit as an appeal court on the order of this court. Furthermore, the case no. 14 of 2013 under section 2A(2) of Industrial Disputes Act 1947 was dismissed by this court vide order dated 16.10.2015 by holding that the case is not maintainable on the ground that this court has no scope to accept and decide any such application under section 2A after the expiry of three years from the date of discharge, dismissal, retrenchment and otherwise termination of service. Thus, this Court decided the preliminary issues in case number 14 of 2013 and it was not decided on merit.

Moreso, the issues in the present case are not directly and substantially in issue in case number 14 of 2013, so the principle of resjudicata is not applicable in the present matter. Besides that I do not find any merit in the application of the O.P. to allow it at this belated stage.

Hence it is,

Ordered

That the petition dated 06.05.2024 of the O.P. is rejected on contest.

Fix 16.03.2026 for evidence of the applicant.

Sd/-

Judge 2nd Labour Court, Kolkata West Bengal”

- 3.** It is the case of the petitioner herein that the dispute raised by the respondent no. 4 was considered and disposed of in accordance with law by the Deputy Labour Commissioner vide an order dated 21.11.2001 wherein the authority concerned held as follows:-

“6. From the statements of the parties, it is observed that Shri Sekhar Manna, workman, was working as an Unskilled

worker in M/s. Industrial Enterprise, contractor engaged by Exide Industries Ltd at Haldia. He had a pain in his right back while working and was treated at E.S.I. Hospital, Haldia and Tamluk sub-divisional hospital. On recovery, he received a certificate from Tamluk sub-divisional hospital declaring him fit for light duty. He approached his employer with that certificate as the employer did not have any light duty at his disposal, he was allowed the duty which he was performing previously. He again fell ill after a few days and was treated at Tamluk sub divisional hospital and Nil Ratan Sarkar hospital, Kolkata. From N.R.S. hospital also, he received a certificate declaring him fit for light job. Again, he approached his employer with that certificate. But as no light job was available with the employer, he was offered the job which he was performing earlier. He did not join duty and applied to the Asstt. Labour Commissioner, Haldia and his employer on 26.11.98 for redressal of his grievances.

It is found from his statement as well as the statements of other parties that the job of Shri Sekhar Manna was not terminated by his employer, M/s. Industrial Enterprise. Shri Manna did not join duty as the employer could not provide him with a light job.

Accordingly to Sec.2A of Industrial disputes Act, 1947, an Industrial workman can raise an industrial dispute only when an employer discharges, dispenses, retrenches or otherwise terminates the service of the workman. In all other cases, the industrial dispute has to be raised by a group of workmen or any trade union of workman.

The grievance of Shri Sekhar Manna is that his employer did not allot him a light job which was prescribed by the doctors who treated him. As his employer did not terminate his

services, the dispute individually raised by him cannot be treated as an industrial dispute. The then Assistant Labour Commissioner, Haldia should not have entertained the dispute which is not an industrial dispute. The dispute of Shri Sekhar Manna should have been raised by the trade union operating in the unit.

As the dispute concerned is not an industrial dispute, no action can be taken by Labour Directorate.

This is my decision.

Sd/-

Deputy Labour Commissioner Haldia.”

4. The respondent no. 4 approached the High Court, but did not proceed with the writ application. The respondent no. 4 then approached the Labour Court directly. **The Labour Court was pleased to dispose of the said case by holding the same as not maintainable, as the case under Section 2A of the I.D. Act was filed after three years and it was dismissed.**
5. The respondent no. 4, again approached the statutory authority being the Deputy Labour Commissioner on 24.10.2017 with the **self-same issue without challenging the order of the Labour Court.** While the matter was pending before the Deputy Labour Commissioner for the second time, the petitioner once again approached the Labour Court on 23.05.2018.
6. The Labour Court vide its impugned order dated 18.02.2026 held as follows:-

*“Having heard the submission of the Ld. Counsels for the parties and having perused the materials on record, I find that this court vide order no. 26 dated 14.03.2022 **has already condoned the delay** in filing the instant case rightly or wrongly Therefore, I cannot sit as an appeal court on the order of this court. Furthermore, the case no. 14 of 2013 under section 2A(2) of Industrial Disputes Act 1947 was dismissed by this court vide order dated 16.10.2015 by holding that the case is not maintainable on the ground that this court **has no scope to accept and decide any such application under section 2A after the expiry of three years from the date of discharge, dismissal, retrenchment and otherwise termination of service.** Thus, this Court decided the preliminary issues in case number 14 of 2013 and it was not decided on merit.*

More so, the issues in the present case are not directly and substantially in issue in case number 14 of 2013, so the principle of resjudicata is not applicable in the present matter Besides that I do not find any merit in the application of the O.P. to allow it at this belated stage.

Hence it is,

Ordered

That the petition dated 06.05.2024 of the O.P. is rejected on contest.

Fix 16.03.2026 for evidence of the applicant.

Sd/-

**Judge 2nd Labour Court,
Kolkata West Bengal”**

- 7.** It appears that the learned Judge passed the impugned order on the ground that as the earlier order dated 16.10.2015 was not on merit, but

was disposed of on a preliminary issue, being that the order was challenged after a period of three years, the principle of resjudicata did not lie.

8. Admittedly the respondent no. 4 raised the dispute, which was heard for the first time on 08.11.2001 as directed by the Hon'ble High Court. The impugned order has been passed on the same issue in a case registered as Case no. 01 of 2018 before the 2nd Labour Court.
9. Section 2A of the Industrial Disputes Act, 1947 lays down as follows:-

“[2A. Dismissal, etc., of an individual workman to be deemed to be an industrial dispute.— [(1)] Where any employer discharges, dismisses, retrenches, or otherwise terminates the services of an individual workman, any dispute or difference between that workman and his employer connected with, or arising out of, such discharge, dismissal, retrenchment or termination shall be deemed to be an industrial dispute notwithstanding that no other workman nor any union of workmen is a party to the dispute.]

[(2) Notwithstanding anything contained in section 10, any such workman as is specified in sub-section (1) may, make an application direct to the Labour Court or Tribunal for adjudication of the dispute referred to therein after the expiry of forty-five days from the date he has made the application to the Conciliation Officer of the appropriate Government for conciliation of the dispute, and in receipt of such application the Labour Court or Tribunal shall have powers and jurisdiction to adjudicate upon the dispute, as if it were a dispute referred to it by the appropriate Government in accordance with the provisions of this Act and all the

provisions of this Act shall apply in relation to such adjudication as they apply in relation to an industrial dispute referred to it by the appropriate Government.

[(3) The application referred to in sub-section (2) shall be made to the Labour Court or Tribunal before the expiry of three years from the date of discharge, dismissal, retrenchment or otherwise termination of service as specified in sub-section (1).]

10. The petitioner has argued that since the order passed by the Deputy Labour Commissioner, Haldia has reached finality, the said order has a binding effect upon the parties to the proceeding. The Ld. Judge has acted without jurisdiction by entertaining an application beyond the statutory period as envisaged in Section 10 (1B) (C) of the Act, 1947 and thereby acted in derogation of the procedural mandate envisaged in the said act.
11. The petitioner relies upon the following judgments:-
 - i) ***Indu Bhusan Jana v. Union of India & Ors. reported in AIR 2009 Cal 24.***
 - ii) ***Sarguja Transport Service v. State Transport Appellate Tribunal, M.P. Gwalior, & Ors. reported in (1987) 1 SCC 5.***
 - iii) ***M. Nagabhushana v. State of Karnataka & Ors. reported in (2011) 3 SCC 408.***
12. The respondent no.4 on filing written notes and has argued that the Case No. 14 of 2013 was filed under Section 2A of the Act, naming M/s. Exide Industries Ltd. as the principal employer, and **was dismissed on**

16.10.2015 by the Learned 2nd Labour Court, Kolkata, solely on the technical ground of limitation under Section 2A(2) of the Act. The merits of the alleged refusal of employment were never examined. The present proceeding, Case No. 01 of 2018, rests on an independent and distinct statutory remedy under Section 10(1B)(d) of the Act, against the employer, namely the writ petitioner. The subject-matter and cause of action being materially different, and the earlier dismissal being non-adjudicatory on merits, the bar of res judicata under Section 11 of the Code of Civil Procedure, 1908, has no application - as rightly found by the Learned Labour Court. It is also an admitted fact that the Respondent No. 4 was never dismissed or discharged by his employer.

- 13.** It is further stated that the history of the matter demonstrates the continuous efforts of an injured and economically vulnerable workman to obtain redress. The delay cannot be assessed in isolation, without regard to the workman's continuous pursuit of remedies and to the repeated failure of the statutory conciliation machinery to resolve the dispute. A distinction must be drawn between an alleged error in the exercise of jurisdiction and a complete absence of jurisdiction. An order passed by a competent judicial or quasi-judicial authority cannot be treated as non-est merely because one party disputes the interpretation placed on a statutory provision.

14. The respondent no.2 relies upon the judgment in ***Syed Yakooob v. K.S. Radhakrishnan, AIR 1964 SC 477*** (Para 7 and 8) wherein the Hon'ble Supreme Court of India held that a writ of certiorari is not available for correcting mere errors of fact or law, and that supervisory jurisdiction is confined to jurisdictional errors and errors apparent on the face of the record.
15. The respondent no.4 further submits that it is well settled that Article 226 confers a discretionary remedy, and relief thereunder may be declined where the petitioner's own conduct, including participation in the very proceeding sought to be impugned, suppression of material facts, or approaching the Court as an afterthought, amounts to an abuse of the process of the Court. In ***Chennai Metropolitan Water Supply and Sewerage Board v. T.T. Murali Babu, (2014) 4 SCC 108*** (para 16), the Hon'ble Supreme Court of India held that "Delay reflects inactivity and inaction on the part of a litigant... law does not permit one to sleep and rise like a phoenix. Delay does bring in hazard and causes injury to the lis."
16. It is further stated that the writ petition, filed as an afterthought after nearly four years of active participation in the impugned proceeding, and seeking to reopen questions of limitation and maintainability to which the writ petitioner itself submitted for decision by the Learned Labour Court, does not warrant the exercise of this Hon'ble Court's extraordinary, discretionary writ jurisdiction.

17. On hearing the parties and considering the materials on record, it is on record that:-

- i. The proceeding under Section 2A(2) of the I.D. Act was dismissed vide order dated 16.10.2015 on the ground of delay (limitation) under the provision of Section 2A(3) of the Act.**
- ii. The present proceeding/case is different and separate from the earlier case, this being a proceeding under Section 10(1B)(d) of the Act.**

18. Considering the fact that proceedings under Section 2A(2) and Section 10(1B)(d) of Act are separate and independent of each other, the learned labour Court vide the impugned orders has passed orders in accordance with law which requires no interference. The learned labour Court shall proceed in accordance with law.

19. WPA 11393 of 2026 is dismissed.

20. Applications, if any, connected thereto stand disposed of consequently.

21. Photostat certified copy of this Judgment, if applied for, be given to the parties on priority basis upon compliance of all formalities.

(Shampa Dutt (Paul), J.)