

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
APPELLATE SIDE

Present:

The Hon'ble Justice Shampa Dutt (Paul)

WPA 253 of 2026

Saibal Kumar Nag

Vs

The State of West Bengal & Anr.

For the Petitioner : Mr. Bikash Ranjan Bhattacharya, Sr. Adv.
Mr. Anindya Lahiri,
Mr. Bikash Chakraborty.

For the Respondent No. 2 : Mr. Soumya Majumdar, Sr. Adv.
Mr. S. K. Singh,
Mr. S.K. Sharma,
Mr. Ravi Kr. Dubey.

Judgment reserved on : 15.09.2026

Judgment delivered on : 08.10.2026

Shampa Dutt (Paul), J.:

1. The writ application has been preferred challenging an order dated 29th August, 2025 passed by the Learned 5th Industrial Tribunal, West Bengal in Case No.08/2022 under Section 2A(2) of the Industrial Dispute Act, 1947.
2. It is submitted by Mr. Bhattacharya, Learned Senior Counsel appearing for the petitioner that the impugned order is not in accordance with law, as the Tribunal in the garb of a review has almost

decided the case in appeal and the petitioner has thus prayed for setting aside of the order dated 29th August, 2025.

3. **The Learned Senior Counsels for the parties have relied upon Rule 27 of the West Bengal Industrial Dispute Rules, 1958.**
4. The petitioner's case is that he was appointed by M/s Himalay Drug Company presently known as M/s Himalaya Wellness Company, with effect from 18th May, 1992 at Balasore Headquarter with the designation of Medical Representative, a Sales Promotion Employee. In the year 1993 the petitioner was transferred to Dimapur (Nagaland). From there the petitioner was transferred to Agartala Headquarter in the year 1997. Finally the petitioner got his posting at Kolkata Headquarter on and from April, 2007.
5. It is stated that a Sales Promotion Employee is regarded as 'workman' in terms of Industrial Dispute Act, 1947 as well as in Sales Promotion Employee (condition of Service) Act, 1976. As a Sales Promotion Employee the petitioner was by and large a star performer being awarded with a number of accolade in different times making the petitioner a blue eyed person to the respondent No.2. Thereafter the problem started during Covid-period, when the petitioner was asked to visit Kirana Store (Grocer Shop), which was a diametrical change in the condition of his service. As a medical Representative the petitioner is meant for doing ethical promotion of the Medicines of the respondent No.2 to the doctors, but not for visiting Kirana Stores. However the petitioner, for the interest of the respondent No.2 agreed to visit 15 Kirana Stores, but the respondent No.2 insisted on 25 stores, which

the petitioner disagreed. But the matter was never placed by the respondent No.2 in the grievance Committee, rather a charge sheet was issued to the petitioner which was by far vague, unspecific, speculative and not constituting any substantive charge.

6. The petitioner's further case is that the respondent No.2 conducted an illegal domestic Enquiry against the petitioner and terminated his service. The petitioner challenge his illegal termination in the Learned 2nd Industrial Tribunal under Section 2A(2) of the Industrial Disputes Act, 1947. After a contested hearing the Learned 2nd Industrial Tribunal passed an Award directing the respondent No.2 inter-alia to reinstate the petitioner with full back wages.
7. The respondent No.2 filed an application for review (not an application as per Rule 27(ii) of the West Bengal Industrial Disputes Rules, 1958) challenging the said Award. Learned 5th Industrial Tribunal then allowed the said application of the respondent No.2 **on contest**.
8. It is further submitted that the prayer for review is not maintainable as the grounds for review was not present or available to the petitioner before the Tribunal. It is further stated that the impugned award dated 18.12.2024 was in accordance with law and required no interference by the tribunal.
9. The petitioner has relied upon the following judgments in support of his contention:-

(i) The Government of Andhra Pradesh & Ors. Vs. A. Venkata Rayudu reported in AIR Online 2006 SC 544;

(ii) Anil Gilurker Vs. Bilaspur Raipur Kshetria Gramin Bank reported in 2011 AIR SCW 5327;

(iii) Sawai Singh Vs. State of Rajasthan reported in 1986 AIR 995 SC;

(iv) Surath Chandra Chakrabarty Vs. State of West Bengal reported in 1971 AIR 752 SC.

- 10.** The petitioner has further relied upon **several** other judgments.
- 11.** It is further stated that according to 9-C of the Industrial Disputes Act, 1947, the respondent No.2 did not refer the present dispute to the grievance redressal committee for settlement of the dispute.
- 12.** Section 6 of The Sales Promotion Employees (Conditions of Service) Act, 1976 is related to the application of certain acts to sales promotion employees and this section mentions six acts which are applicable to the sales promotion employees and it does not specifically mention that The Industrial Employment (Standing Orders) Act, 1946 is applicable to the sales promotion employees.
- 13.** As The Industrial Employment (Standing Orders) Act, 1946 is not applicable to the sales promotion employees according to Section 6 of The Sales Promotion Employees (Conditions of Service) Act, 1976, it is proved that as there is no standing order for the sales promotion employees, the respondent's conduction of domestic enquiry, is do hors any such standing order and inflicting of punishment of dismissal from service appeared to be completely illegal and perverse, as rightly held by the Learned 2nd Tribunal in its award dated 18.12.2024.

- 14.** It is the specific case of the petitioner that only the order in review dated 29.08.2025 has been challenged and vide the initial award dated 18.12.2024, the Learned 2nd Industrial Tribunal, Kolkata was pleased to direct as follows:-

“That the case no. 08/2022 under Section 2A(2) of the Industrial Disputes Act, 1947 is allowed on contest against the OP company with a compensation of Rs. 5,00,000 and Rs. 5,00,000/-, total Rs. 10,00,000/- (ten lakhs) to be paid to the petitioner by the OP company within 30 days from this date of order.

It is hereby declared that the order of termination dated 16.08.2022 passed by the OP company against the petitioner is illegal, invalid, baseless and unjustified.

It is hereby declared that the domestic enquiry held by the OP company against the petitioner is illegal and invalid.

The OP company is directed to reinstate the petitioner in his previous post immediately.

The OP company is directed to pay the full back wages along with other consequential relief from 16.08.2022 till the date of payment with a compound interest of 10% per annum on the entire arrear amount of back wages and consequential reliefs to the petitioner within 30 days from this date of order.”

- 15.** The private respondent by filing written notes has argued that the Learned Tribunal had committed an error/mistake by not deciding the validity of the domestic enquiry and the following judgments are relied upon:-

- i. (1975) 2 SCC 661, Para 22, The Cooper Engineering Limited - Vs- Shri P. P. Munde.**
- ii. (1979) 3 SCC 371, Para 28, Shankar Chakravarti -Vs- Brittanica Biscuit Company Ltd. & Anr.**

iii. Order dated 13.04.2021 passed in WPA 8531 of 2021 (M/s. Birla Building Ltd. -Vs- The State of West Bengal & Others).

- 16.** Since the learned Tribunal committed gross error by not deciding the validity of domestic enquiry as preliminary issue and declared the said enquiry as illegal in the award dated 18.12.2024, the respondent no.2 filed a review application under Rule 27 (ii) of the West Bengal Industrial Dispute Rules.
- 17. The learned Tribunal after hearing the parties on the point of review, vide its order dated 29.08.2025, allowed the application by reviewing the award and held validity of enquiry is required to be adjudged prior to the examination of the merit of the case.**
- 18. “27. Correction of errors and review of an award.**

The Labour Court, Industrial Tribunal or Arbitrator may-

(i) correct any clerical or arithmetical mistake arising from an accidental slip or omission in any award made by it or him, and

(ii) review an award on the ground of some mistake or error apparent on the face of the record, either of its/his own motion or on the application of any of the parties;

(iii) for sufficient cause set aside after notice to the opposite party or parties as the case may be, the ex-parte award or an award on the footing that the industrial dispute under reference is no longer in existence either of its/his own motion or on the application of any of the parties:

Provided that no correction shall be made without previous notices to the parties or opposite party, as the case may be.

Provided further that no application for review under clause (iii) shall be entertained on the expiry of the 15th day from the date of the award."

19. The petitioner has challenged the legality of the aforesaid review order.
20. Mr. Majumder, learned senior counsel for the private respondent submits that the impugned order passed in review is maintainable as there are sufficient reasons for invoking the power of review.
21. **The judgments relied upon by the respondents are as follows:-**
 - (i) ***(2005) 4 SCC 741 (Para 89,90) Board of Control for Cricket in India -Vs- Netaji Cricket Club and Others;***
 - (ii) ***(1954) 2 SCC 881-(Para 28) - Hari Vishnu Kamath -Vs- Syed Ahmed Ishaque and Ors.;***
 - (iii) ***1995 SCC Online Cal 87 Para 6 Sonodyne Television Co. Ltd. Vs Sonodyne Television Co. Employees Union and Others.***
22. It is further stated that there was error apparent on the face of record, which was duly considered in the order under review.
23. The respondents thus pray for dismissal of the writ application on the ground that it is not maintainable.
24. **Vide the impugned order in review, the Learned 5th Industrial Tribunal held as follows:-**

“Now the question is whether skipping of examining the validity of Domestic Enquiry becomes a procedural defect ?

A similar case came up before Hon'ble High Court, Calcutta in connection with WPA 8531 of 2021(M/s Birla Building Ltd. Vs. State of West Bengal and others in connection with an order dated 23.04.2019 passed by the 2nd Industrial Tribunal, Kolkata. The Learned Tribunal did not adjudicate the

validity of the domestic enquiry conducted against employee who was dismissed from service on the basis of enquiry report.

In that case, against failure of adjudication to examine the validity of the domestic enquiry, the management moved the Hon'ble High Court, Calcutta urging that the 2nd Industrial Tribunal, Calcutta committed gross error by over-stepping its jurisdiction by deciding on the validity of the punishment itself.

The Hon'ble Court held that Industrial Tribunal was well within its jurisdiction to decide the preliminary issue as to whether the domestic enquiry conducted was fair and proper but it could not have gone into the merit of the matter and Hon'ble Court further held that skipping the process of adjudication to examine the validity of the domestic enquiry exceeds the jurisdiction of the Industrial Tribunal at the preliminary stage.

Thereby it appears to this Tribunal that Hon'ble High Court, Calcutta did not ratify the persons to examine the merit of the case by over stepping the process of examining the validity of the domestic enquiry conducted against the concerned employee.

In view of above observation this Tribunal does not hesitate to hold that the order passed by the 2nd Industrial Tribunal, Calcutta suffers from error and procedural defects on the face of the record and thereby comes within the purview of Rule 27 (ii) of West Bengal Industrial Disputes Rules 1958.

In view of above discussion it appears that the application made under Rule 27 Sub-Clause (ii) of the Rules, 1958 is well maintainable and deserves to be allowed.

Hence it is

ORDERED

that the Review Application is allowed on contest without cost and the validity of the enquiry is required to be judged prior to examining the merit of the dismissal.

Sd/-

**5th Industrial Tribunal
& I/C of 2nd Industrial Tribunal"**

- 25.** On hearing the parties, it appears that admittedly the petitioner here had **challenged his dismissal/termination based on a domestic**

enquiry conducted by the respondent no. 2 herein, before the learned tribunal.

26. The total case of dismissal/termination is based on the domestic enquiry and without first prima facie deciding it's validity the tribunal could not have decided the termination to be bad as it is the domestic enquiry, which is the foundation of the case.

27. The tribunal's observation as follows is relevant here:-

“In this case the petitioner has prayed for an Award of reinstatement in his service by setting aside the order of illegal retrenchment made by the OP company and for payment of full back wages and consequential benefits and admittedly as the OP company by virtue of one domestic enquiry dismissed the petitioner from his service, the petitioner has filed this case praying for reinstatement and other relief but the petitioner has not specifically prayed for declaration that the said domestic enquiry was illegal and invalid.

The Ld. Lawyer for the OP company has submitted during argument that the petitioner did not challenge the said domestic enquiry as illegal in his prayer but prayed for setting aside the said order of illegal retrenchment and reinstatement of his service alongwith other relief.

It is true that the petitioner has not prayed for declaration that the said domestic enquiry held against the petitioner was illegal and invalid though he has prayed for setting aside the order of dismissal.

This non-mention of prayer by the petitioner for declaration that the said domestic enquiry held against him was illegal and invalid is not fatal to the case of the petitioner because if after considering the entire materials on record and the oral and documentary evidences on record, it is found that the petitioner is entitled to get an order of reinstatement by setting aside the order of illegal retrenchment passed by the OP company, then by virtue of judicial discretion and inherent power according to Section 151 of the Code of Civil Procedure, 1908, the Tribunal can pass order stating that the said domestic enquiry was illegal and invalid.”

- 28. On careful perusal of the award dated 18.12.2024, it appears that the tribunal did not even frame an issue as to the validity of the domestic enquiry, which was the basis for the termination/dismissal.**
- 29.** It thus appears that the domestic enquiry which was the basis of the award dated 18.12.2024 itself, not being an issue before the tribunal, the impugned order in review dated 29th August, 2025 being a well reasoned order and in accordance with law, requires no interference.
- 30. WPA 253 of 2026 is dismissed.**
- 31.** Applications, if any, connected thereto stand disposed of consequently.
- 32.** 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.)