

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
APPELLATE SIDE

Present:

The Hon'ble Justice Shampa Dutt (Paul)

WPA 8883 of 2025

Hindustan Cables Company Limited
Versus
Union of India & Ors.

For the Petitioner : Mr. Soumya Majumder, ld. Sr. Adv.
Mr. Puspall Chakraborty,
Ms. Sanjukta Dutta,
Mr. Ranit Ray.

For the Respondents/IOI : Mr. Shiv Chandra Prasad,
Ms. Banani Bhattacahrya.

For the Private Respondents : Mr. Harisankar Chattopadhyay,
Mr. Asutosh Pandey.

Judgment reserved on : 11.09.2026

Judgment delivered on : 08.10.2026

Shampa Dutt (Paul), J.:

1. The writ application has been preferred challenging an order dated 3rd March, 2025 passed by the learned Central Government Industrial Tribunal-cum-Labour Court at Asansol in L.C. Application No. 01 of 2018.
2. The Tribunal vide the impugned order has held as follows:-

“The petitioners in this case have a pre-existing right and are entitled to the benefits which has been recognized by the management by entering into the Memorandum of Settlement, agreeing to make payment under certain terms and conditions. The capacity of the company to make payment does not destroy their entitlement and right to receive their dues and there are various ways to resolve the dues. In view of the above discussion I find and hold that the application of the petitioners under Section 33-C(2) of the Act is well maintainable before this Tribunal-cum-Labour Court. The petition dated 31.07.2024 filed by the O.P. management, challenging maintainability of the petitioners’ application is without merit and the same is dismissed on contest.”

3. Being aggrieved by the said order, the present writ application has been preferred.
4. It is the contention of **Mr. Soumya Majumder**, learned senior counsel appearing for the petitioner that the application/claim under Section 33-C(2) of the Industrial Disputes Act preferred before the Tribunal is based on the Memorandum of Settlement executed between the parties dated 20.08.2001. **The effective date of the said settlement was on and from 01.01.1997.**
5. **Mr. Chattopadhyay**, learned counsel appearing for the respondents/workmen has admitted that their claim before the Tribunal is based on the said Memorandum of Settlement.

6. It is the contention of Mr. Majumder, that the said Memorandum of Settlement which was entered into had certain terms and conditions, which include, the unit being the company herein, being able to generate sufficient resources and it is only when the said condition is fulfilled, the payment of arrears as per the terms laid down would be considered along with the prayer for clearing of arrears of statutory dues.
7. It has been specifically noted in **clause-16 of the Memorandum of Settlement that the said benefit arising out of the settlement would not be applicable to the Ex-employees, who ceased to be in the services of the company after 01.01.1997 (a) on the ground of dismissal or (b) termination.**
8. **It is the further contention of Mr. Majumder, that the termination herein includes the employees who opted for VRS.**
9. The document at page 357 of the writ application dated 28th September, 2006 is placed before this Court by Mr. Majumder. The said document relates to an order issued by the appropriate authority herein being the Government of India, Ministry of Heavy Industries & Public Enterprises, Department of Heavy Industry and relates to release of funds under Non-Plan (Loan) during 2006-2007 to Hindustan Cables Limited.
10. It is submitted by Mr. Majumdar, that in view of this order dated 28th September, 2006, there does not exist any pre-existing right of the respondent/workman herein and as such an application under

Section 33-C(2) of the Industrial Disputes Act in this case is clearly not maintainable.

11. Mr. Chattopadhyay, learned counsel submits that the document dated 28th September, 2006 does not take away the workers' right which accrued to them on the basis of the Memorandum of Settlement of 1997.
12. **Admittedly, there is a delay of 17 years** in preferring the said application before the Tribunal. Mr. Chattopadhyay contends that delay in such cases is not relevant as the cause of action is a continuing one.
13. The petitioner herein has relied upon the following judgments:-
 - (i) ***ESI Scheme vs. Natvarlal Amrutlal Shah reported in (1997) 1 LLJ 216, para 7 and 8;***
 - (ii) ***Municipal Corporation of Delhi vs. Ganesh Razak & Anr. reported in (1995) 1 SCC 235, Paras 8, 11, 12 and 13;***
 - (iii) ***State of U.P. & Anr. vs. Uptron Employees' Union, CMD & Ors. reported in (2006) 5 SCC 319 paras 14, 15 and 16;***
 - (iv) ***Kapila Hingorani vs. State of Bihar reported in (2003) 6 SCC 1 para 74;***
 - (v) ***Central Bank of India Ltd. vs. P.S. Rajgopalan etc. reported in 1963 SCC OnLine SC 158 para 1, 2, 3, 5, 18 and 27.***

14. The respondent no. 2 on behalf of him and another 553 retired employees have filed their written notes and submits that:-

- (i) *The DHI letter dated 28.09.2006 cannot defeat the 2001 Settlement. It became stale as the Company repeatedly paid the 1997 wage arrears as part payments in several occasions and in several manners.*
- (ii) *The said internal communication of the DHI dated 28th September, 2006 was not circulated for the employees/workmen or to the Unions.*
- (iii) *The AP High Court verdict given on 19.06.2007 was subsequent to the DHI letter dated 28.09.2006. The Company implemented it across all Unis including Rupnarainpur also at its own discretion.*
- (iv) *The Company paid the said 1997 wage arrears to other units and officers.*
- (v) *The Company has already paid Rs.3.79 crore to the employees of Rupnarainpur Unit out of Rs. 15.78 crore, only the balance is the claim.*
- (vi) *The liability was admitted in its accounts.*
- (vii) *Balance Sheet (FY 2015-16) shows Rs. 33.10 crore cash and Rs. 1084.32 crore projected by Sept. 2016.*
- (viii) *Company sold assets worth Rs.29.95 crore, proof given. It had sufficient funds and resources.*
- (ix) *The Labour Court's order is correct and has not been effectively challenged.*

15. Respondents have prayed for dismissal of the writ application.
16. Several judgments have been relied upon.
17. The petitioner has filed an order of the Government of India, Ministry of Labour and Employment dated 31st May, 2017 wherein vide the said order Hindustan Cables Company Ltd., the petitioner herein was given permission to close down on certain conditions which is as follows:-

“ORDER

17. In view of the above upshot, the permission of closure of said undertaking is hereby accorded with immediate effect subject to following conditions:-

- 1. That the applicant/ Management of HCL, Rupnarainpur shall pay all statutory dues such as unpaid wages, gratuity, leave wages, etc. to the workmen.*
- 2. The applicant/Management of HCL, Rupnarainpur shall pay retrenchment compensation to the retrenched workmen which shall be equivalent to 15 days average pay for every completed year of continuous service or part thereof in excess of six months as per the provisions of Industrial Disputes Act, 1947.”*

18. On hearing the learned counsels for the parties and on perusal of the materials on record, it appears that clause-3 in the Memorandum of Settlement is as follows :-

3. DURATION :-

*“This Settlement shall be effective from 01/01/1997 for a period of ten years i.e. from 01./01/1997 to 31/12/2006 and shall continue to be in force there after **unless otherwise modified/terminated** in accordance with the provisions of The Industrial Disputes Act, 1947 and Rules framed there under.”*

- 19.** It appears that the order dated 28th September, 2006 relates to payment of salary and wages to certain employees who meet certain requirements. **Para 7** of the order dated 28th September, 2006, is as follows :-

*“7. The arrears paid by the company on account of implementation of wage revision of 1997 was erroneous in nature, in so much so that those were disbursed when statutory dues were outstanding, therefore was in violation of condition stipulated in the approval of implementation of pay revision of **1997** which was by way of Presidential Directives, and which has come out in the observation of **CAG Special Audit Report. Therefore, this erroneous payment of arrears paid without fulfilling the conditions of the approval have to be recovered.** The company will effect recovery of 10% from all the existing employees from the salary dues to be paid to them for the period from 01.01.2006 to 30.06.2006. Budgetary support of Rs.32.19 crore for payment of salary and wages has been required by the company. Funds of Rs. 31.19 crore have been released to Hindustan Cables Ltd. for full payment of salary and wages to its employees for the period 01.01.2006 to 30.06.2006 after effecting uniform recovery of 10% of the arrears paid/advance given on account of arrears on implementation of pay revision of 1997. The arrears so recovered from employees @ 10% of arrears given will be notionally booked in the books of the company.”*

- 20.** It also appears that the said Memorandum of Settlement of 1997 was executed for the reasons as follows :-

“SHORT RECITAL:

*Last settlement in respect of **Wage Revision** expired on 31/12/1996. Again fresh demand for revision of Wages and Fringe benefits, protracted negotiations were held between the Management and the Unions on several occasions at Bipartite level and finally the following settlement between the Management and the Unions has been arrived at, on the terms and conditions specified here under, on this 20th day of August, 2001.”*

- 21.** Paragraph 7 (as reproduced hereinabove) of the order dated 28th September, 2006 clearly states that the **Wages Revision of 1997** was erroneous in nature and **directions for recovery was passed in the said order.**
- 22. Admittedly, the order dated 28th September, 2006 has not been challenged before the Tribunal, wherein only an application under Section 33-C(2) of the Industrial Disputes Act has been preferred praying for relief/computation as per the said provision, based on the said Memorandum of Settlement.**
- 23.** Paragraph 7 of the order dated 28th September, 2006 and clause 3 of the Memorandum of Settlement read together, is prima facie against the maintainability of the application under Section 33-C(2) of the Industrial Disputes Act filed before the Tribunal which has been challenged.

- 24.** Clause 3 of the Memorandum of Settlement and paragraph 7 of the letter dated 28th September, 2006 prima facie shows that any pre-existing right which the respondents/workers' claim, did not/**does not exist now**, and, as such, the question of maintainability of an application under Section 33-C(2) of the Industrial Disputes Act in such circumstances is to be decided by this Court.
- 25.** Thus the impugned order dated 3rd March, 2025 passed by the Central Government Industrial Tribunal-cum-Labour Court at Asansol in L.C. Application No. 01 of 2018, **not being in accordance with law is set aside.**
- 26. WPA 8883 of 2025 is allowed.**
- 27.** Applications, if any, connected thereto stand disposed of consequently.
- 28.** 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.)