

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

BEFORE:

THE HON'BLE JUSTICE SHAMPA DUTT (PAUL)

WPA 18033 of 2026

**M/s. Cemindia Projects Limited
Vs.
The State of West Bengal & Ors.**

For the Petitioner : Mr. Ranjay De, Sr. Adv.
Mr. A.A. Bose.

For the Private Respondent No.3 : Mr. N. Rakshit,
Ms. Ashmita Chatterjee.

Judgment reserved on : 04.08.2026

Judgment delivered on : 03.09.2026

SHAMPA DUTT (PAUL), J.:-

1. The present writ application has been preferred challenging for setting aside of an order dated 29.05.2026 passed by the respondent no.2 the Referee under West Bengal Shops and Establishments Act, 1963, Bidhannagar, North 24 Parganas, West Bengal. Vide the impugned order the respondent no.3 held as follows:-

“Finally, with respect to the issue of limitation extending beyond a period of ten years, it is hereby concluded that the applicant concerned had filed herein substantial evidences, the details of which had already been stated above, which shows that even while he had been in persistent ill-health condition leading to his restrictions in mobility simultaneously, he had been in constant persuasion with the O.P. Company for

his alleged outstanding dues Moreover, even during the pendency of the instant case, as is apparent from the records, he had been hospitalized and had to pray for an adjournment of proceedings. Thus, it is highly felt that refusing to entertain an application of an elderly, persistently ill septuagenarian citizen at this preliminary stage, who had been in constant persuasion for his alleged outstanding balance dues, would essentially mean negating a claim at the very threshold without giving reasonable opportunities of being heard. It would also tantamount to negation of the principle of natural justice as well Hence, it is opined and concluded that the delay caused in filing of the instant application had been well explained by the applicant through different documentations and therefore depending on the facts and circumstances of the instant case, it stands condoned That whether any amount as is alleged by the applicant through this instant application is actually lying outstanding or not is felt can be ascertained only through further proceedings of law considering the alleged point being raised by the applicant of a bipartite meeting being held on 21/02/2012, days before his actual cessation of employment from the O.P. Company. Moreover, it is observed that the records and documentations have been well maintained by both the parties concerned with respect to the instant case, and hence searching for the same would not be of much inconvenience to either of them.

Thus, the petition of the OP dated 15/12/2022 pertaining to preliminary objections stands overruled and cannot be considered Furthermore, the preliminary issues being decided upon, the instant application is admitted on merit. The O.P. Company is directed to file their written objection/ written statement in duplicate on the main merit of the instant

application on the next date of appearance to be fixed on 25/06/2026 at 1:30 pm. Inform both the parties by issuing notices vide Speed Post/email/Special Messenger.”

2. The petitioner's case is that by a letter dated 14.01.2009, the private respondent was appointed as Deputy General Manager on probation for a period of 6 months by ITD Cementation India Limited, being the erstwhile company. The letter of Appointment was issued by the Vice President Human Resources & Admin of the said company having his office at Mumbai and the same was received by the private respondent accordingly. The place of posting of the private respondent was Airport Project Site. The petitioner also stated that by a Letter dated 03.08.2009, his service was confirmed by the management of the erstwhile company and the said letter was also issued from Mumbai. **The private respondent by an email dated 24.02.2012 submitted his resignation** addressing the same to the General Manager (HR), ITD Cementation India Ltd, Kalina, Mumbai. At this time, he was posted to work at the Kolkata Airport Construction Project.
3. By a letter dated 29.02.2012, the Letter of Resignation of the Private Respondent was accepted by the General Manager Human Resources of the erstwhile company having its office at Mumbai. Accordingly he was also issued with a Certificate on 21.05.2012 confirming his tenure of employment from the Mumbai office.
4. The petitioner states that although as per Clause 5 of the said Letter of Appointment dated 14.01.2009, the private respondent was not entitled

to any amount other than 3 months Notice Pay, the Management paid to him a sum of Rs. 11, 12, 816.03/- (Rupees Eleven Lakhs Twelve Thousand Eight Hundred and Sixteen and Three Paise) Only on following heads:-

Sl. No.	Particulars	Amount
1	Amount paid towards full and final (3 months Gross salary, Leave Encashment, All Legal Dues being paid)	774,085.00
2	Payment of Superannuation (paid upto 31.03.2012)	115,452.00
3	Payment of Superannuation (paid upto 31.03.2012)	223,279.03
	Total Amount Paid	11,12,816.03

5. The said amount was duly received by the private respondent by way of a Cheque dated 03.05.2012 consequent upon tendering of resignation as on 24.02.2012 but **the Private Respondent after a period of more than 10 years of severance of his employer - employee relationship, in the year 2022, filed an application being FORM-N** under the West Bengal Shops and Establishments Act, 1963 before the Respondent No. 2 for compensation in the name of "RECOVERY OF WAGES" totaling to Rs. 4, 30, 656/- along with interest applicable thereon. Accordingly, the said

FORM N was forwarded by the Respondent no.2 by issuing a Memo in Form O dated 30.11.2022.

6. The petitioner challenges the maintainability of the Form N before the respondent no.2 on the ground of delay and also that there was no deduction of wages by the petitioner as claimed by the private respondent. It was further argued that the respondent no.2 did not have any jurisdiction as the West Bengal Shops and Establishment Act 1963 was not applicable in the case of the private respondent. The territorial jurisdiction was also challenged. The point of the appropriate authority was also taken before the respondent no.2.
7. It is further stated that as the claim of compensation made by the private respondent that as no deduction has ever been made from the salary of the private respondent as aforesaid, the question of compensation under Section 14(3) of the said Act of 1963 has got no manner of applicability in the present facts and circumstances of the matter.
8. The primary objection raised by the petitioner was overlooked by the respondent no.2. The learned Counsel for the petitioner has relied upon the judgment of ***M/s. Gupta Electric Company & Anr. v. The Learned Chief Judge, Small Causes Court at Calcutta & Ors. reported in 1988 SCC OnLine Cal 19***, held:-

“4. As observed earlier, the learned Referee cannot enter into the disputed question of fact as to whether there has been a wrongful determination and as to whether the claimant has been wrongfully debarred from attending to his work which is outside the domain and/or jurisdiction of

the learned Referee inasmuch as serious disputes have been raised with regard thereto. In the case of The Managing Director, Jalpaiguri Electric Supply Co. Ltd. v. The Authority under Payment of Wages Act, reported in Volume 49 of the Indian Factories & Labour Reports at page 49 G.N. Ray, J. was of the view that there may not be inherent lack of jurisdiction of the Authority under section 15(1) of the Payment of Wages Act to entertain claims of workmen relating to the question of 'wages' and deduction of such 'wages', but in the facts of a case it may be necessary to go into intricate question of law and fact relating to such claim of wages. In such circumstances on the ground of expediency the Authority under the Act should not entertain complicated questions of facts and law relating to claim of wages and such claim should be left to be decided by the authority under the Industrial Disputes Act which is a special Act for dealing with all questions between the workmen and the employer. In that case also it was necessary to determine as to whether or not retrenchment in fact and law had taken place. It was essentially necessary to probe a little deeper into the rival contentions made by the parties and, in the exercise of the limited jurisdiction of the authority concerned the learned Judge was of the view that it was not desirable or expedient that the said Authority should entertain such question. It is true that the said case was decided under the Payment of Wages Act. In instant case the claim has been made under the Shops and Establishments Act. From the relevant provisions of the Act it indicates that the Authority concerned has no jurisdiction to enter into the question of fact and law. Under the circumstances, this court is of view that the petitioner is entitled to an order as prayed for....."

9. It appears from clause 21 of the letter of appointment dated 2009, that the contract clearly says that disputes are subject to the jurisdiction at Mumbai only.
10. **Admittedly the Form N has been filed on 11.11.2022 in respect of a claim ending on 31.03.2012.**

11. 10 years 7 months delay is evident. The cause shown and reasons accepted by the referee are not in accordance with the law of limitation, which if encouraged can never set at rest a case/claim indefinitely.
12. **WPA 18033 of 2026 is allowed.**
13. The order dated 29.05.2026 passed by the respondent no.2 the Referee under West Bengal Shops and Establishments Act, 1963, Bidhannagar, North 24 Parganas, West Bengal, **is set aside.**
14. Applications, if any, connected thereto stand disposed of consequently.
15. Interim order, if any, stands vacated.
16. 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.)