

**IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
APPELLATE SIDE**

Present:

The Hon'ble Justice Shampa Dutt (Paul)

WPA 13184 of 2024

**Hindustan Motors Limited
Versus
The State of West Bengal & Ors.**

with

WPA 24741 of 2024

**Hindustan Motors Limited
Versus
The State of West Bengal & Ors.**

For the Petitioner : Mr. Dipanjan Mukhopadhyay,
Mr. Niladri Khanra.

For the Respondent No. 4 : Mr. Balaram Patra,
Mr. Suvadip Bhattachrjee.

Judgment reserved on : 11.09.2026

Judgment delivered on : 07.10.2026

Shampa Dutt (Paul), J.:

1. The writ applications have been preferred challenging an Award dated 10.04.2023, passed by the respondent no. 2/the learned Third Industrial Tribunal, Kolkata and the publication order dated

02.05.2023 passed by the respondent no.1/The State of West Bengal.

2. Vide the impugned order the Tribunal held as follows:-

Ordered

“that the applicant/workman Sri Avash Munshi is entitled for reinstatement in his service as well as in the position/post held by him prior to his dismissal from the service and also he is entitled to get back wages to the tune of 50% of his last drawn gross salary (Rs.5,700/-) per month since 22.10.2008 till his reinstatement in the service of the OP/Company within 90 days of such reinstatement.”

3. The petitioner’s case herein is that the petitioner company was, inter alia, engaged in the business of manufacturing various cars since 1957, but the petitioner was constrained to close down all its businesses since May, 2014 due to scarcity of funds and other reasons. Consequently, all the employees/ workmen of the petitioner company were laid off.
4. The respondent No.3 was one of the employees of the petitioner. The respondent no. 3, while engaged in the service with the petitioner company was served with **two charge sheets** dated 5th October, 2006 and 1st June, 2007 respectively for several acts of misconduct.
5. Pursuant to replies received from the Respondent No. 3, **two separate enquiry proceedings** were initiated by the petitioner, so as to enquire into the charges levelled against the Respondent No. 3. The said enquiries were held on several dates and the respondent no. 3 along with his representative participated in both the enquiries by submitting documents and also by adducing evidence in his defence and as such, it is submitted that the said **enquiries**

were conducted by following the principles of natural justice
nor is it the complaint of the Respondent No. 3 that the said enquiries were conducted in violation of the principle of natural justice.

6. Both the enquiry officers, appointed in respect of the charge sheets dated 5th October, 2006 and 1st June, 2007, by way of filing their respective reports dated 24th July, 2008 and 21st August, 2008 held the respondent No. 3 **guilty of the charges levelled against him.**
7. The said reports as submitted by the respective enquiry officers were forwarded to the Respondent No. 3 and the Respondent No. 3 also replied to the same.
8. After considering both the enquiry reports and the respective replies thereto, the management of the petitioner company terminated the respondent No. 3 from the service of the company by a letter dated 22nd October, 2008. It is submitted that the respondent no. 3 was terminated and/or dismissed from the service by way of punishment upon being found guilty of several misconducts.
9. **Since a previous industrial dispute was pending between the petitioner and the respondent no. 3, the petitioner filed an application under section 33 (2) (b) of the Industrial Dispute Act, 1947 and thereby prayed, inter alia, for approval of the order of termination before the Learned Industrial Tribunal and accordingly, the Learned 5th Industrial Tribunal by an order dated 11th May, 2015 was pleased to accord approval to the order of termination and/or dismissal of the respondent no. 3.**

10. After lapse of about seven years from the date of termination, the respondent No.3 raised an industrial dispute before the Deputy Labour Commissioner, Government of West Bengal at Srirampur on 10 June, 2015 and thereafter a conciliation proceeding was drawn up but the dispute could not be resolved.
11. **After lapse of about nine years from the date of his termination** from service, the respondent No.3 filed an application before the Learned Industrial Tribunal in the year of 2017 under section 10 (1)(b)(d) of the Industrial Dispute Act.
12. The petitioner could not appear before the learned Tribunal from the stage of the evidence due to the extreme financial crisis that the petitioner was going through and due to insufficient staff to keep track of the said proceeding.
13. On 10th April, 2023, the Learned 3rd Industrial Tribunal passed its award thereby allowing the application filed by the respondent no. 3 with a direction upon the petitioner to reinstate the respondent no. 3 in service along with a direction to pay back wages from the date of termination.
14. The petitioner's further case is that an application under Section 10(1)(b)(D) of the Industrial Disputes Act is barred by limitation and thus not maintainable.
15. It is further stated that principle of natural justice was not violated and a proper enquiry proceedings was conducted with opportunity being granted to the delinquent employee prior to his termination on being found guilty.

16. The principal argument of the petitioner herein is that the **termination was duly approved by the Third Industrial Tribunal in Section 33(2)(b) of the Industrial Tribunal Act** and in view of the said fact it is submitted that the learned Tribunal has committed a serious error and passed the impugned award which is liable to be set aside.
17. The petitioner has relied upon a judgment in the case of ***State Bank of Patiala & Ors. vs. S.K. Sharma*** reported in (1996) 3 SCC 364 and a judgment of ***Muir Mills Unit of NTC (U.P) Ltd. vs. Swayam Prakash Srivastave & Anr.*** reported in (2007) 1 SCC 491.
18. The respondents by way of filing written notes has argued that the award is in accordance with law and the writ application is liable to be dismissed.
19. The respondents have relied upon the judgment of the Supreme Court in ***Dharampal (Dead) Through Lrs. Vs. National Engineering Industries Ltd. & Anr.*** reported in (2001) 10 SCC 40 and several other judgments.
20. Learned counsel for the State has placed an Action Taken Report in respect of an application dated 19.09.2023 filed by the respondents herein for implementation of the Award dated 10.04.2023. The same is under process and now the matter is before the Labour Department and the Government has been pleased to direct the appropriate authorities to file a case against the petitioner.

- 21.** Admittedly the respondent no. 3 was terminated on 22nd October, 2008 on holding two disciplinary proceedings.
- 22.** The said termination was approved by the learned 5th Industrial Tribunal by an order dated 11th May, 2015.
- 23.** The dispute in the present case was raised on 10th June, 2015 and the proceedings under Section 10(1)(b)(d) of the I.D. Act was initiated in the year, 2017.
- 24.** Vide the impugned award dated 10th April, 2023, the tribunal held as follows:-

“..... Thus, he tendered his Examination in Chief on Affidavit before he got examined on dock. It is seen that the applicant/workman Avash Munshi almost reproduced the contents of his Written Statement submitted along with Form-T in his examination in chief on affidavit. The PW1 in his oral evidence has corroborated the contents of the Written Statement, which was filed earlier. He has proved the documents in support of his version as depicted in his examination in chief on affidavit i.e. the PW1 in his oral evidence has corroborated his case as he made out in the Application u/s 10(1B)(d) of the Industrial Disputes Act, 1947. At the cost of repetition, it is to mention here that the OP/Company did not cross-examine the PW1 in full and thus, the version/evidence of the PW 1 remains unchallenged and uncontroverted. Similarly, the documents which have been proved and marked as exhibited documents in course of evidence of PW1, remain unchallenged and uncontroverted. So, there is nothing to disbelieve the unchallenged testimony of PW1. I am of the opinion that this is redundant but it is necessary to mention here that no duly proved documentary evidence has come before this Tribunal in connection with this case from the OP/Company side as a matter of countering the documentary evidence of the applicant/workman or to defeat the claim of the applicant/workman.

Now, considering all facts and circumstances and in view of the above discussion, it is well transpired that dismissal of Sri Avash Munshi from his service w.e.f. 22.10.2008 by the Management of M/s. Hindustan

*Motors Limited, Hind Motor, Hooghly is not at all justified.
Thus, the issue no. 2 is decided in affirmative in favour of the workman/applicant.”*

- 25. It appears from the said order, that the tribunal has not given any reasons as to why the evidence of the employee was being accepted and as to what extent the said evidence was relevant and how.**
- 26. The tribunal’s sole decision making observation** in allowing the employees application, **is the unchallenged testimony** of the employee, which this Court finds is an **abuse of the process of law and gross miscarriage of justice.**
- 27. The impugned award dated 10.04.2023, passed by the respondent no. 2/the learned Third Industrial Tribunal, Kolkata, thus being bad in law is hereby set aside. Consequently the order of publication dated 02.05.2023 is also set aside.**
- 28. WPA 13184 of 2024 along with WPA 24741 of 2024 are allowed.**
- 29. Applications, if any, connected thereto stand disposed of consequently.**
- 30. 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.)