

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
APPELLATE SIDE

Present:

The Hon'ble Justice Shampa Dutt (Paul)

WPA 27330 of 2026

Hitachi Payment Services Pvt. Ltd.

Vs

Union of India & Ors.

With

WPA 27944 of 2026

Indusind Bank Limited

Vs

Union of India & Ors.

For the Petitioner : Mr. Soumya Majumder, Sr. advocate
in WPA 27330 of 2026 Mr. Jagannath Chatterjee.

For the Respondent No.3/ : Mr. Ranjay De, Sr. Advocate,
Bank in WPA 27330 of 2026 Ms. Anna Malhotra,
and Petitioner in WPA Mr. Basabjit Banerjee,
27944 of 2026 Mr. Aditya Abel Bose,
Mr. Rishav Maity,
Mr. D. Mukherjee.

For the Respondent No.4 : Mr. Dwaipayan Sengupta,
in WPA 27330 of 2026 Mr. Samrat Dey Paul.

For the Respondent No.4 : Mr. Soumya Majumder, Sr. Adv.
in WPA 27944 of 2026 Mr. Jagannath Chatterjee.

For the Respondent No.5 : Ms. Anna Malhotra.
in WPA 27330 of 2026

- For the Respondent No.5** : Mr. Kamalesh Jha,
in WPA 27944 of 2026 Md. Raihan Islam,
Mr. Sourasis Roy.
- For the Respondent No.6** : Mr. Kamlesh Jha.
in WPA 27330 of 2026 Md. Raihan Islam,
Mr. Sourasis Roy.
- For the Union of India** : Mr. Kalyan Kr. Chakraborty,
in WPA 27330 of 2026 Mr. Rajesh Kr. Upadhay.
- For the Union of India** : Ms. Rashmi Bothra,
in WPA 27944 of 2026 Ms. Garima Rajjada.

Judgment reserved on : 25.09.2026/30.09.2026

Judgment delivered on : 05.10.2026

Shampa Dutt (Paul), J.:

1. The present writ application is taken up for disposal by a common order along with WPA 27944 of 2026, the issue being similar.
2. The writ applications have been preferred being aggrieved by the conciliation proceedings, particularly the orders dated 29th June, 2026 and 1st September, 2026 passed by the Conciliation Officer under the Industrial Relation Code, 2020 & Assistant Labour Commissioner (C), Kolkata.
3. The petitioner's prayer herein is for quashing of the said proceedings and an interim order restraining the respondents from giving any further effect to the decisions taken in the said meetings.

- 4.** The petitioner company was previously known as Prizm Payment Services Private Limited. The name of the company got changed to Hitachi Payment Services Private Limited with effect from 10th April, 2015. It is primarily a service provider for various clients including Banks, one of which is the Respondent Indusind Bank Limited, for whom the petitioner, at all material times had rendered, ATM operations, caretaking, housekeeping and allied services. The first agreement between your petitioner and your respondent Bank was executed on 1st June, 2009, and the last one on 26th November, 2025. The validity of the last agreement is still continuing.
- 5.** The respondent nos. 4 and 5 are sub-contractors in relation to the respondent Bank, who had been engaged with the consent of Indusind Bank Limited for the purpose of executing the contract on behalf of the petitioner. The petitioner had entered into separate contracts with the respondent nos. 4 and 5.
- 6.** There is no supervision, administration and control over the men of the respondent nos. 4 and 5, by the petitioner company, with regard to their nature and manner of work. The extent of supervision, exercised by the petitioner is with regard to the general standard of execution of the contract for the purpose of honouring the terms and conditions of the contract.
- 7.** The pre-dominance of online transactions through mobile phones, is steadily declining the requirement of ATM sites of the Banks. Resultantly, the maintenance and upkeep of the ATM sites of the Respondent Bank in the State of West Bengal has also lessened. The

petitioner manages 77 number of ATMs for the respondent Bank in West Bengal. However, **by an email of 21st May, 2026, the petitioner was instructed by the respondent Bank to remove caretakers from the East Zone. The same was necessitated by reason of inevitable closure of 43 ATM sites of Indusind Bank Limited.** Consequent upon such instruction and decision of the Bank, the petitioner had instructed the sub-contractors i.e. the respondent nos. 4 and 5 to remove the adequate number of work personnel deployed by them at the 43 ATM sites of Indusind Bank Limited. The respondent nos. 4 and 5 had accordingly issued **retrenchment notices** to their workmen by terminating their services with effect from 30th June, 2026, **by giving 30 days' notice period.**

8. The respondent Trade Union, as it appears from the proceedings of conciliation, had approached the respondent Bank by issuing a strike notice dated 29th May, 2026 raising various issues including retrenchment compensation, minimum wages, gratuity and other service conditions of the workers of the sub-contractors. The said letter was forwarded under the cover of a conciliation notice dated 10th June, 2026 issued by the respondent no. 2, purporting to initiate conciliation under the Industrial Relations Code, 2020.
9. The petitioner attended the conciliation. Conciliation meetings were held on 16th June, 2026 and 29th June, 2026.
10. Further conciliation notice dated 9th July, 2026 was issued by the respondent no. 2 to various officers of the respondent Bank to enforce its presence at the conciliation.

11. In course of the conciliation proceeding, the petitioner commented through its representation dated 29th July, 2026.
12. Subsequent conciliation proceeding was held on 29th July, 2026.
13. Another trade union being respondent no.7 herein had also raised dispute over the disengagement of the contractors at the ATM sites to be closed.
14. By an order dated 1st September, 2026, the respondent no. 2 held the alleged dismissal or discharge of the contractor to be bad in law and the petitioner/ Respondent Bank/sub-contractors were advised to release the dues of the workers at the earliest as they were deemed to be in service.
15. The respondent no. 6 Trade Union has thereafter made a representation inter alia to the petitioner for enforcement of the direction of the conciliation officer which has been received by the petitioner on 16th September, 2026.
16. **Mr. Majumder, learned senior counsel for the petitioner states that the role of the conciliation officer under the provisions of the Industrial Relations Code, 2020 has been guided by the statutory provisions and under no circumstance the conciliation officer can assume jurisdiction beyond the said statutory mandate, which has been done in the instant case.**
17. **The retrenchment notices** were evidently **issued** to the workers of the sub-contractors **before commencement of any conciliation proceeding** and admittedly there was **no industrial dispute pending** in conciliation on the date of issuance of the retrenchment notices;

which would allow the conciliation officer to invoke the jurisdiction under Section 33 of the erstwhile Industrial Disputes Act, 1947, corresponding to Section 90 of the Industrial Relations Code, 2020,

18. Mr. Majumder further argues that retrenchment does not come under the mischief of Section 90 of the Industrial Relations Code, 2020; and therefore, invocation of jurisdiction by the Conciliation Officer is per se ex-statutory and perverse.
19. The respondent no. 2 failed to appreciate that the factual matrix of the case does not permit recourse to Section 90 of the Industrial Relations Code, 2020 to a conciliation officer; and as such, by making a repeated reference to judicial pronouncements and legal position, he has craftily hidden the factual matrix of the present case so as to snatch at jurisdiction.
20. The conciliation officer while exercising jurisdiction under the provisions of the Industrial Relations Code, 2020 does not have power and authority to either direct maintenance of status quo or to transform a case of retrenchment from service to a case of dismissal or discharge.
21. The respondent trade unions had not made out any case whatsoever through an appropriate application as **regards violation of conditions of service vis-à-vis discharge or dismissal, during the pendency of conciliation** proceedings under the Industrial Relations Code, 2020 and as such it is wholly incompetent and incorrect on the part of the Conciliation Officer being the respondent no. 2 to pass the orders on 29th June, 2026 as well as on 1st September, 2026.

22. The orders dated 29th June, 2026 and 1st September, 2026 passed by the respondent no. 2 are wholly without jurisdiction and bad in law.
23. Hence, the writ application.
24. The petitioner has relied upon the judgment in ***L. Robert D'Souza Vs. Executive Engineer, Southern Railway & Anr. reported in (1982) 1 SCC 645.***
25. Mr. Majumder relies upon Section 9A of the Industrial Disputes Act and the 4th Schedule to the Industrial Disputes Act with the argument that **"retrenchment"** is not covered in the 4th Schedule.
26. Mr. De, learned senior counsel for the respondent no.3 being the bank has stated that the Respondent No. 4 being one of the contractors of the petitioner served a letter of termination upon its employees.
27. During a conciliation proceeding, the union being Respondent No. 6 made an incorrect statement that more than 100 workmen were **"retrenched"** by the Respondent Bank.
28. The conciliation officer during the conciliation proceeding passed an order for maintenance of status quo by injuncting the employer of the contract labour from changing their conditions of service.
29. **The conciliation officer** being the Respondent No. 2 by an order held that in the instant matter, **there is a violation of Section 33(2)(b) of the Industrial Disputes Act, 1947**, though none of the employees employed by Respondent No. 4 were dismissed as a resultant effect of a disciplinary proceedings. Accordingly, **the petitioner, the Respondent Bank as well as the contractor are to reinstate them in job though**

as a business decision, the bank has discontinued the "caretaker service" of ATM centers.

30. It is the further contention of the respondent no.3 that the conciliation officer is not empowered to pass any direction, as passed in the present case and relies upon the judgment in ***Hooghly Dock and Port Engineers Ltd. Vs. Chief Labour Commissioner (C), Government of India & Ors.***
31. Mr. De for the respondent no. 3 further states that a contract labour can never be converted into an employee of the principal employer, when there is no finding from the competent judicial forum - the agreement to be sham one and relies upon a judgment in ***Steel Authority of India Ltd. Vs. Union of India reported in (2006) 12 SCC 233.***
32. Mr. De further relies upon Section 2(zh) of the Industrial Relations Code, 2020 wherein it appears that retrenchment does not include imposition of any arrangement by way of disciplinary action.
33. The respondent no.3 also relies upon ***L. Robert D'Souza (Supra).***
34. Mr. Jha learned counsel for the respondent no.6 herein being an employee's organization, a registered union on filing written notes argues that the petitioner's contention that the retrenchment "commenced" on 26.05.2026 is not, by itself, determinative of the applicability of Section 90 of the Industrial Relations Code, 2020. Respondent No.6 does not dispute that 26.05.2026 may be treated as the date on which the petitioner initiated the process leading to retrenchment. **The legal question is whether the mere issuance of**

such notice, before commencement of conciliation, conclusively takes the subsequent termination outside Section 90, when the petitioner's own notice stipulated that the services would terminate only with effect from 30.06.2026.

- 35.** The statutory scheme makes the distinction material. Section 70 of the Industrial Relations Code requires, the statutory notice period to expire before retrenchment, subject to wages in lieu thereof. **Thus, notice of retrenchment and actual cessation of employment are not necessarily the same legal event. The Supreme Court in *North Brook Jute Co. Ltd. v. Their Workmen*, AIR 1960 SC 879**, clearly distinguished proposal, notice and actual implementation, holding that conditions of service are altered when the change is actually effected and not merely when the proposal or notice is made.

The same principle has been reiterated in the judgment of Karnataka High Court decided on 10.01.2014, ***Bangalore Electricity Supply Co. Ltd. Vs- S. Jyothi***, where the Court held that the date of actual alteration, and not the earlier decision to effect it, is material for Section 33.

- 36.** The chronology in the present case is therefore decisive: 26.05.2026-notice; 29.05.2026-strike notice by Respondent No.6; 16.06.2026-first conciliation meeting; 29.06.2026 status quo recorded; 30.06.2026-effective date of termination. **Section 60(1) of the Code** treats the first meeting of the Conciliation Officer as the commencement of conciliation. The petitioner's own documents consequently establish that conciliation was pending before the stipulated date of termination.

37. The respondent union further states that Section 90(1)(a) is concerned, not merely with the decision to retrench but with alteration, to the prejudice of the concerned workers, of conditions of service "in regard to any matter connected with" the pending dispute. The enquiry must therefore be directed to the actual alteration of the workers' service position and its nexus with the pending dispute. The corresponding jurisprudence under Section 33 of the Industrial Disputes Act remains instructive because of the substantial similarity of the statutory protection. The judgment in ***Lokmat Newspapers Pvt. Ltd. v. Shankarprasad, (1999) 6 SCC 275***, treated a termination effected during pending conciliation, where it was directly connected with the matter in dispute, as attracting Section 33 protection.
38. The petitioner's reliance upon the alleged prior closure of the commercial contract does not by itself conclude the issue. **Closure of the commercial arrangement and cessation of the workers' employment are distinct events.** Even if the petitioner establishes that its contract with the subcontractor was closed before 16.06.2026, it must still establish when the workers' own employment actually ceased. The petitioner's own notice presently fixes that date as 30.06.2026. The alleged contract closure may explain the commercial reason for initiating retrenchment, but does not automatically establish the date of retrenchment of the workers or render the subsequent termination unrelated to the pending industrial dispute.
39. Relying upon the judgment of the Hon'ble Supreme Court in ***Bhavnagar Municipality Vs. Alibhai Karimbhai reported in (1977)***

2 SCC 350, the respondent no.6 submits that the governing labour jurisprudence requires consideration of the nexus between the termination and the subject matter of the pending dispute.

40. It is further added that the Hon'ble Supreme Court in ***Bhavnagar Municipality (Supra)*** clarified that retrenchment does not in every circumstance amount to alteration of service condition; however, where the employment status of the concerned workmen itself formed part of the dispute, terminating that employment during pendency directly affected the subject matter of the dispute and attracted Section 33 protection.
41. It is the further case that in the present case the dispute placed before the Conciliation Officer was itself substantially concerned with the termination/retrenchment of these workers. The termination was considered on 16.06.2026 and 29.06.2026, and on 29.06.2026, the Conciliation Officer recorded maintenance of status quo during pendency of conciliation. The question, therefore, cannot be answered merely by saying that the initial notice preceded conciliation.
42. Even assuming that the petitioner establishes a valid commercial reason for initiating retrenchment, or that a particular conclusion recorded by the Conciliation Officer on 01.09.2026 is legally unsustainable, that does not retrospectively extinguish the industrial dispute or invalidate the statutory conciliation proceeding. The existence and commencement of conciliation are distinct from the ultimate adjudication of the legality of retrenchment. The petitioner's challenge, at its highest, concerns the legal consequence of the

termination; it does not establish absence of jurisdiction to conduct conciliation.

43. Finally, the respondent no.6 argues that the petitioner may contend that the retrenchment process commenced on 26.05.2026, but that fact alone cannot determine the applicability of Section 90. The petitioner's own documents stipulate 30.06.2026 as the effective date of termination, whereas statutory conciliation commenced on 16.06.2026. The alleged prior closure of the commercial contract may explain the genesis of the retrenchment, but does not automatically establish the date of cessation of the workers' employment or answer the question of its connection with the pending dispute. Accordingly, the mere date of the retrenchment notice cannot furnish a jurisdictional basis for quashing the entire conciliation proceeding.

44. The following judgments are relied upon by the respondent no.6:-

(i)North Brook Jute Co. Ltd. v. Their Workmen, AIR 1960 SC 879;

(ii)Lokmat Newspapers Pvt. Ltd. v. Shankarprasad, (1999) 6 SCC 275;

(iii)Bhavnagar Municipality v. Alibhai Karimbhai, (1977) 2 SCC 350;

45. The respondent no.6 also relies upon Sections 60, 70 and 90 of the Industrial Relations Code, 2020.

46. On hearing the learned counsels for the parties and on perusal of the materials on record including the impugned orders, it appears that the Conciliation Officer being the Respondent no.2 herein has made a

wrong observation that no application had been made by any of the employers to the Conciliation Officer before discharge/dismissal of the workmen, as mandated by Industrial Relations Code, 2020. The officer has stressed upon the word “shall”.

47. The petitioner’s contention is that the said observation of the Conciliation Officer is erroneous as in the present case the workers were retrenched on the ground that the services for which they had been engaged through the sub-contractors had been withdrawn/closed down.

48. The decision of the Conciliation Officer is as follows:-

*“The above judgement of Hon. Supreme Court makes it very clear that once the application is not made under Section 90(2)(b) or is not approved by the concerned authority which in the instant dispute is the undersigned Conciliation Officer, the result would be that the action taken by him would fall and thereupon the workman would be deemed never to have been dismissed or discharged and would remain in the service of the employer. The undersigned Conciliation Officer is bound by the above settled law pronounced by the Hon. Supreme Court and any further interpretation or change in the said law can only be done at the appropriate forum. None of the employers had made any application before terminating these workers pending conciliation. **However, they have only served 30 day notice period but the Code mandates both the conditions 30 day wage and application for approval.** Accordingly, the facts in this dispute being materially same, **the workers have deemed never to have been dismissed or discharged and remains in the service of the employers as per settled law.** Once, the workers are already in service, cause of action with respect to this dispute being termination does not arise and thereby matter being pre mature is disposed off as "OD"*

*In view of the above, **the employers** being IndusInd/ Hitachi/ CSS/ An Hour (whatever their individuals*

*agreements/contracts with each other may be) **are advised to release the dues with respect to applicant workers at earliest as they are deemed to in service.** In case of default, the applicant union/workers are at liberty to approach competent authority for payment of their pending dues.”*

- 49. “Conciliation officers” is defined under Section 4 of the I.D. Act as follows:-**

“4. Conciliation officers.-

*(1)The appropriate Government may, by notification in the Official Gazette, appoint such number of persons as it thinks fit, to be conciliation officers, charged with the duty of **mediating** in and **promoting the settlement** of industrial disputes.*

(2)A conciliation officer may be appointed for a specified area or for specified industries in a specified area or for one or more specified industries and either permanently or for a limited period.”

- 50.** The Job of such officers is primarily mediating in and promoting settlement in industrial disputes.

- 51. Section 33 of the Industrial Disputes Act, lays down:-**

“33. Conditions of service, etc., to remain unchanged under certain circumstances during pendency of proceedings.- *(1)During the pendency of any conciliation proceeding before a conciliation officer or a Board or of any proceeding before [an arbitrator or] a Labour Court or Tribunal or National Tribunal in respect of an industrial dispute, no employer shall.....”*

- 52.** Admittedly one month retrenchment notice was issued, as 43 ATM’s of the respondent no. 3 Bank had closed down and the Bank had directed the petitioner herein to remove the caretakers as the 43 ATM’s of the Bank was closed as requirement for such ATM’s was no more necessary.

53. a) The notice for termination by retrenchment was issued on 26.05.2026.

b) The strike notice was given on 29.05.2026.

c) First meeting on 16.06.2026.

d) Order of Status quo by conciliation officer 29.06.2026.

e) Termination 30.06.2026 as per date mentioned in notice dated 26.05.2026.

54. Thus, on 26th May, 2026, the date of the letter of termination of employment due to closure of service contract, there was admittedly no industrial dispute already pending before the conciliation officer.

55. Section 90 of the Industrial Relations Code, lays down:-

“Section 90. Conditions of service, etc. to remain unchanged under certain circumstances during pendency of proceedings.- (1) Where an industrial dispute pertaining to an establishment or undertaking is **already pending** before a conciliation officer or an Arbitrator or a Tribunal or a National Industrial Tribunal, as the case may be, with regard to matters not covered by the notice of change issued by an employer under section 40, no employer shall....”

56. As such, as the letter of termination by way of retrenchment was issued on 26th May, 2026, which is prior to initiation of the industrial dispute before the conciliation officer, and thus there is no prima facie violation of Section 90 of the Industrial Relations, Code, 2020. Thus the letter of termination dated 26.05.2026 already initiated the proceeding, prior to an industrial dispute being raised by the union and the notice period expiring during pendency of the proceeding is valid and this is not a case where the conditions of service have been changed during pendency of an industrial dispute.

57. Regarding the impugned orders passed in the conciliation proceedings by the conciliation officer relying upon Section 90(2)(b) of the Code, it appears that the said orders are bad in law, **as the findings and observations made in the impugned orders are beyond the scope and power of a conciliation officer under Section 4 of the Industrial Disputes Act.**
58. Section 90(2)(b) of the Code has also been erroneously applied considering that there was **no industrial dispute pending at the time of issuance of letter of termination by way of retrenchment.**
59. Thus the impugned orders dated 29th June, 2026 and 1st September, 2026 passed by the Conciliation Officer under the Industrial Relation Code, 2020 & Assistant Labour Commissioner (C), Kolkata, **are hereby quashed and set aside.**
60. **WPA 27330 of 2026 along with WPA 27944 of 2026 are allowed.**
61. Applications, if any, connected thereto stand disposed of consequently.
62. Interim order, if any, stands vacated.
63. 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.)