

IN THE HIGH COURT AT CALCUTTA

Constitutional Writ Jurisdiction

Appellate Side

Present:

The Hon'ble Justice Shampa Dutt (Paul)

WPA 6505 of 2026

Lagan Engineering Company Limited

Vs.

The State of West Bengal & Ors.

For the Petitioner : Mr. Soumya Majumder, Id. Sr. Adv.
Ms. Amrita Pandey,
Mr. Ghanshyam Pandey,
Mr. S. Auddy.

For the State : Mr. Swapan Kr. Dutta,
Mr. Susanta Pal,
Ms. Ananya Neogi.

Judgment reserved on : 23.04.2026

Judgment delivered on : 27.04.2026

SHAMPA DUTT (PAUL), J. :

1. The writ application has been preferred on the ground that the impugned Award dated 20.02.2025 passed by the Learned Judge, 3rd Industrial Tribunal, West Bengal, Kolkata in Case No. 03/2021 has been passed in gross violation of the cardinal principles of natural justice, specifically the audi alteram partem rule, inasmuch as the Tribunal peremptorily closed the evidence

of the parties before cross-examination of the petitioner's witness OPW-1 could be completed.

2. The petitioner relies upon the judgments and the settled legal framework laid down by the Constitution Bench of the Hon'ble Supreme Court in *Workmen of Firestone Tyre & Rubber Co. of India (P) Ltd. v. Management, (1973) 1 SCC 813*, and reiterated in *State of Uttarakhand v. Sureshwati, (2021) 3 SCC 108*, which mandates that **where no domestic enquiry has been held prior to dismissal, the employer is entitled to lead evidence before the Tribunal for the first time and the Tribunal must determine justifiability of the dismissal on the basis of such evidence.**
3. The petitioner further states that the workman/respondent No. 2 herein examined himself as PW-1. His examination-in-chief was recorded on 08.06.2022 and 22.06.2022. Petitioner the Company examined Manas Kumar Banerjee, its Personnel Manager, as OPW-1. The examination-in-chief of OPW-1 was recorded on 11.09.2024 and 23.09.2024.
4. The cross-examination of OPW-1 had commenced but was not completed. Despite the petitioner's bona fide requests for time to produce OPW-1 for completion of his cross-examination and to place all relevant documents on record, the Learned Tribunal, vide its order dated 20.11.2024, peremptorily rejected the

petitioner's prayer for adjournment and unilaterally closed the evidence of both parties. The petitioner's further application for adjournment was similarly rejected by a detailed order dated 20.12.2024. The Petitioner was thereby deprived of the opportunity to complete the cross-examination of its own witness OPW-1, and to produce additional evidence such as the attendance register and other relevant documents, which had been specifically called for by the Tribunal itself vide Order No. 27 dated 08.09.2023 and Order No. 32 dated 12.03.2024.

5. Mr. Majumder, learned senior counsel for the petitioner submits that as per the law laid down by the Hon'ble Supreme Court of India in ***Workmen of Firestone Tyre & Rubber Co. of India (P) Ltd. v. Management of Firestone Tyre & Rubber Co. of India (P) Ltd. and others, and State of Uttarakhand v. Sureshwati***, since no domestic enquiry had been held prior to dismissal, the Petitioner was entitled to lead evidence before the Tribunal to justify the dismissal, and duly availed of that opportunity.
6. Mr. Majumder further states that in deciding Issue No. 1, the learned Tribunal held, inter alia, that the overall evidence of the petitioner was found to be weak and insufficient to prove the charges against the respondent No. 2, and thus decided the said issue in favour of the respondent No. 2 even though the said

reply against the show cause far from being a defence, further corroborates the charges against the respondent No. 2 and demonstrates a continuation of his misconduct in an even more audacious form. This conduct - threatening further coercive action in response to a legitimate disciplinary notice is a most serious aggravation of the original misconduct and bears directly on the nature of the respondent No. 2's conduct, the appropriateness of the penalty of dismissal, and the absence of any basis for a finding of victimisation. The Tribunal's complete failure to consider and evaluate this material aspect of the record vitiates its finding on Issue No. 1.

7. Mr. Majumder further argues that:-

- (a) Even if no enquiry has been held by an employer, or if the enquiry held is found to be defective, **the Tribunal cannot,** without permitting evidence, straightway direct reinstatement of the dismissed employee.
- (b) The employer has the right to adduce evidence before the Tribunal to justify the action taken; if such an opportunity is asked for, the Tribunal has no power to refuse.
- (c) The giving of an opportunity to the employer to adduce evidence for the first time before the Tribunal is in the interest of both the management and the employee and to

enable the Tribunal itself to be satisfied about the alleged misconduct and or termination.

(d) Once the misconduct is proved either in the enquiry conducted by the employer or by the evidence placed before the Tribunal for the first time, the punishment imposed cannot be interfered with by the Tribunal except in cases where the punishment is so harsh as to suggest victimization.

8. It is stated that in ***State of Uttarkhand vs. Sureshwati (2021) 3 SCC 108***, the Hon'ble Supreme Court reiterated the above principles and held that where an employer fails to hold an enquiry before dismissal or discharge of a workman, he can justify his action by leading evidence before the Labour Court, and the Labour Court has the authority to decide the justifiability of the order of discharge or dismissal.
9. The Hon'ble Court in the case before it further held that the High Court had committed an error in allowing the writ petition merely on the ground that the employer had not conducted a disciplinary enquiry, without advertng to the evidence adduced by the employer before the Labour Court. **The parallel with the present case is manifest and direct.**
10. It is further stated that the impugned Award has been passed in gross violation of the cardinal principles of natural justice,

specifically the audi alteram partem rule. **The learned Tribunal, by its order dated 20.11.2024 and 20.12.2024, peremptorily closed the evidence of the parties before the cross-examination of the petitioner's own witness OPW-1, Manas Kumar Banerjee, could be completed.**

11. The cross-examination of OPW-1 had commenced but remained wholly incomplete. The petitioner's bona fide and repeated requests for sufficient time to produce OPW-1 for completion of cross-examination were rejected without adequate or valid reason. A party's right to lead complete evidence, and the right to have its witness's cross-examination fully concluded, is a **fundamental ingredient of the right of hearing guaranteed by the principles of natural justice.** No litigant can be condemned on the basis of incomplete evidence caused by the Tribunal's own premature closure order. The impugned Award passed on such a truncated and incomplete record is vitiated at its root and is liable to be set aside in its entirety.

12. The relevant observation/finding of the Tribunal in its Award is as follows:-

"It is to mention here that after closing the evidence of this case, date of argument was fixed but on the date of argument, Ld. Advocate for the OP/Company filed adjournment petition. This Tribunal after passing a reasoned order rejected

the said adjournment petition on 20.11.2024 and fixed a date for Award. It is to mention here that on 20.12.2024 i.e. the fixed date for passing Award, Ld. Advocate for the OP/Company filed a petition with the prayer for adjournment seeking opportunity to adduce evidence. On the same date, Ld. Advocate for the applicant/workman filed a petition seeking opportunity to submit written notes of argument. This Tribunal passed a detailed order on 20.12.2024 and rejected the adjournment petition submitted by the OP/Company and at the same time allowed both the parties to file written notes of argument before the date of passing Award. In fact, neither the OP/Company nor the applicant/workman has filed written notes of argument in this case. Be it mentioned here that actually there is no provision for argument hearing in a case u/s. 10(1B)(d) of the Industrial Disputes Act, 1947 as well as there is no such provision in the West Bengal Industrial Disputes Rules, 1958.”

13. It appears from the evidence of the OPW No.1 that (evidence of cross examination) is incomplete and as the evidence has been closed, there is also no scope for further witnesses/evidence.

14. On 23.09.2024, the tribunal held:-

“..... It is to mention here that after closing the evidence of this case, date of argument was fixed but on the date of argument, Ld. Advocate for the OP/Company filed adjournment petition. This Tribunal after passing a

reasoned order rejected the said adjournment petition on 20.11.2024 and fixed a date for Award. It is to mention here that on 20.12.2024 i.e. the fixed date for passing Award, Ld. Advocate for the OP/Company filed a petition with the prayer for adjournment seeking opportunity to adduce evidence. On the same date, Ld. Advocate for the applicant/workman filed a petition seeking Opportunity to submit written notes of argument. This Tribunal passed a detailed order on 20.12..2024 and rejected the adjournment petition submitted by the OP/Company and at the same time allowed both the parties to file written notes of argument before the date of passing Award. In fact, neither the OP/Company nor the applicant/workman has filed written notes of argument in this case. Be it mentioned here that actually there is no provision for argument hearing in a case u/s. 10(1B)(d) of the Industrial Disputes Act, 1947 as well as there is no such provision in the West Bengal Industrial Dispute Rules, 1958.....”

15. In *Workmen of Messrs Firestone Tyre vs. Management &*

Ors. (Supra) the Supreme Court held as follows :-

*“We have already expressed our view regarding the interpretation of section 11A. We have held that the previous law, according to the decisions of this Court, **in cases where a proper domestic enquiry had been held, was that the Tribunal, had no jurisdiction to interfere with the finding of misconduct except under certain circumstances. The position further was that the Tribunal had no jurisdiction to interfere with the punishment imposed by an***

employer both in cases where the misconduct is established in a proper domestic enquiry as also in cases where the Tribunal finds such misconduct proved on the basis of evidence adduced before it. These limitations on the powers of the Tribunals were recognised by this Court mainly on the basis that the power to take disciplinary action and impose punishment was part of the managerial functions. That means that the law, as laid down by this Court over a period of years,' had recognised certain managerial rights in an employer. **We have pointed out that this position has now been changed by section 11 A. The section has the effect of altering the law by abridging the rights of the employer inasmuch as it gives power to the Tribunal for the first time to differ both on a finding of misconduct arrived at by an employer as well as the punishment imposed by him."**

16. In State of Uttarakhand & Ors. vs. Sureshwati (2021)

SCC 108 para 18, 19, 20 and 21, the Court held:-.

"18. This Court has in a catena of decisions held that where an employer has failed to make an enquiry before dismissal or discharge of a workman, it is open for him to justify the action before the Labour Court by leading evidence before it. The entire matter would be open before the tribunal, which would have the jurisdiction to satisfy itself on the evidence adduced by the parties whether the dismissal or discharge was justified."

19. A four Judge Bench of this Court in *Workmen v. Motipur Sugar Factory (P) Ltd.* held that :

“ 11. It is now well settled by a number of decisions of this Court that **where an employer has failed to make an enquiry before dismissing or discharging a workman it is open to him to justify the action before the tribunal by leading all relevant evidence before it.** In such a case the employer would not have the benefit which he had in cases where domestic enquiries have been held. **The entire matter would be open before the tribunal which will have jurisdiction not only to go into the limited questions open to a tribunal where domestic enquiry has been properly held (see Indian Iron & Steel Co. v. Workmen) but also to satisfy itself on the facts adduced before it by the employer whether the dismissal or discharge was justified.** We may in this connection refer to *Sana Musa Sugar Works (P) Limited v. Shobrati Khan*, *Phulbari Tea Estate v. Workmen*, and *Punjab National Bank Limited v. Workmen*. These three cases were further considered by this Court in *Bharat Sugar Mills Limited v. Jai Singh*, and reference was also made to the decision of the Labour Appellate Tribunal in *Ram Swarath Sinha v. Belsund Sugar*. It was pointed out that “the important effect of omission to hold an enquiry was merely this: that the tribunal would not have to consider only whether there was a prima facie case but would decide for itself on the evidence adduced whether the charges have really been made out”. It is true that three of these cases, except *Phulbari Tea Estate* case, were on applications under Section 33 of the Industrial Disputes Act, 1947. But in principle we see no difference whether the matter comes before the

tribunal for approval under Section 33 or on a reference under Section 10 of the Industrial Disputes Act, 1947. In either case if the enquiry is defective or if no enquiry has been held as required by Standing Orders, the entire case would be open before the tribunal and the employer would have to justify on facts as well that its order of dismissal or discharge was proper. Phulbari Tea Estate case was on a reference under Section 10, and the same principle was applied there also, the only difference being that in that case there was an inquiry though it was defective. A defective enquiry in our opinion stands on the same footing as no enquiry and in either case the tribunal would have jurisdiction to go into the facts and the employer would have to satisfy the tribunal that on facts the order of dismissal or discharge was proper.”

20. Subsequently in Delhi Cloth and General Mills Co. v. Ludh Budh Singh this Court held that :

“60...(1) If no domestic enquiry had been held by the management, or if the management makes it clear that it does not rely upon any domestic enquiry that may have been held by it, it is entitled to straightway adduce evidence before the Tribunal justifying its action. The Tribunal is bound to consider that evidence so adduced before it, on merits, and give a decision thereon. In such a case, it is not necessary for the Tribunal to consider the validity of the domestic enquiry as the employer himself does not rely on it.

* * * *

(3) When the management relies on the enquiry conducted by it, and also simultaneously adduces evidence before the Tribunal, without prejudice to its plea that the enquiry proceedings are proper, it is the duty of the Tribunal, in the first instance, to consider whether the enquiry proceedings conducted by the management, are valid and proper. If the Tribunal is satisfied that the enquiry proceedings have been held properly and are valid, the question of considering the evidence adduced before it on merits, no longer survives. It is only when the Tribunal holds that the enquiry proceedings have not been properly held, that it derives jurisdiction to deal with the merits of the dispute and in such a case it has to consider the evidence adduced before it by the management and decide the matter on the basis of such evidence.”

21. *Reliance is again placed on the judgment of this Court in **Workmen v. Firestone Tyre & Rubber Co. of India (P) Ltd.** wherein the broad principle regarding holding of the enquiry were spelt out as:*

“32. From those decisions, the following principles broadly emerge:

“(1) The right to take disciplinary action and to decide upon the quantum of punishment are mainly managerial functions, but if a dispute is referred to a Tribunal, the latter has power to see if action of the employer is justified.

(2) Before imposing the punishment, an employer is expected to conduct a proper enquiry in accordance with the provisions of the Standing Orders, if applicable, and

principles of natural justice. The enquiry should not be an empty formality.

(3) When a proper enquiry has been held by an employer, and the finding of misconduct is a plausible conclusion flowing from the evidence, adduced at the said enquiry, the Tribunal has no jurisdiction to sit in judgment over the decision of the employer as an appellate body. The interference with the decision of the employer will be justified only when the findings arrived at in the enquiry are perverse or the management is guilty of victimisation, unfair labour practice or mala fide.

(4) Even if no enquiry has been held by an employer or if the enquiry held by him is found to be defective, the Tribunal in order to satisfy itself about the legality and validity of the order, had to give an opportunity to the employer and employee to adduce evidence before it. It is open to the employer to adduce evidence for the first time justifying his action, and it is open to the employee to adduce evidence contra.

(5) The effect of an employer not holding an enquiry is that the Tribunal would not have to consider only whether there was a prima facie case. On the other hand, the issue about the merits of the impugned order of dismissal or discharge is at large before the Tribunal and the latter, on the evidence adduced before it, has to decide for itself whether the misconduct alleged is proved. In such cases, the point about the exercise of managerial functions does not arise at all. A case of defective enquiry stands on the same footing as no enquiry.

(6) *The Tribunal gets jurisdiction to consider the evidence placed before it for the first time in justification of the action taken only, if no enquiry has been held or after the enquiry conducted by an employer is found to be defective.*

(7) *It has never been recognised that the Tribunal should straightaway, without anything more, direct reinstatement of a dismissed or discharged employee, once it is found that no domestic enquiry has been held or the said enquiry is found to be defective.*

(8) *An employer, who wants to avail himself of the opportunity of adducing evidence for the first time before the Tribunal to justify his action, should ask for it at the appropriate stage. If such an opportunity is asked for, the Tribunal has no power to refuse. The giving of an opportunity to an employer to adduce evidence for the first time before the Tribunal is in the interest of both the management and the employee and to enable the Tribunal itself to be satisfied about the alleged misconduct.*

(9) *Once the misconduct is proved either in the enquiry conducted by an employer or by the evidence placed before a Tribunal for the first time, **punishment imposed cannot be interfered with by the Tribunal except in cases where the punishment is so harsh as to suggest victimisation.***

(10) *In a particular case, after setting aside the order of dismissal, whether a workman should be reinstated or paid compensation is, as held by this Court in *Panitole Tea Estate v. Workmen* within the judicial decision of a Labour Court or Tribunal.*

* * * *

40. Therefore, it will be seen that both in respect of cases where a domestic enquiry has been held as also in cases where the Tribunal considers the matter on the evidence adduced before it for the first time, the satisfaction under Section 11-A, about the guilt or otherwise of the workman concerned, is that of the Tribunal. It has to consider the evidence and come to a conclusion one way or other. Even in cases where an enquiry has been held by an employer and a finding of misconduct arrived at, the Tribunal can now differ from that finding in a proper case and hold that no misconduct is proved.

41. We are not inclined to accept the contentions advanced on behalf of the employers that the stage for interference under Section 11-A by the Tribunal is reached only when it has to consider the punishment after having accepted the finding of guilt recorded by an employer. It has to be remembered that a Tribunal may hold that the punishment is not justified because the misconduct alleged and found proved is such that it does not warrant dismissal or discharge. The Tribunal may also hold that the order of discharge or dismissal is not justified because the alleged misconduct itself is **not established by the evidence. To come to a conclusion either way, the Tribunal will have to re-appraise the evidence for itself.** Ultimately it may hold that the misconduct itself is not proved or that the misconduct proved does not warrant the punishment of dismissal or discharge. That is why, according to us,

*Section 11-A now gives full power to the **Tribunal to go into the evidence and satisfy itself on both these points. Now the jurisdiction of the Tribunal to reappraise the evidence and come to its conclusion enures to it** when it has to adjudicate upon the dispute referred to it in which an employer relies on the findings recorded by him in a domestic enquiry. **Such a power to appreciate the evidence and come to its own conclusion about the guilt or otherwise was always recognised in a Tribunal when it was deciding a dispute on the basis of evidence adduced before it for the first time.** Both categories are now put on a par by Section 11-A.”*

- 17. In the present case,** the tribunal's has categorically noted that no further opportunity would be granted to the petitioner for adducing further evidence as prayed for, even though evidence was necessary. As such the order is clearly against the principles of natural justice and a clear abuse of the process of law.
- 18.** Not providing an opportunity to adduce evidence in spite of sufficient cause being shown for the delay, has caused severe prejudice to the petitioner herein.
- 19.** Thus the impugned award dated Award dated 20.02.2025, passed by the Learned Judge, 3rd Industrial Tribunal, West Bengal, Kolkata in Case No. 03/2021, is hereby set aside.
- 20.** The proceeding in Case No. 03/2021 under Section 10 (1B)(d) of the I.D. Act is restored to the file of the learned Third Industrial

Tribunal, Kolkata, for fresh adjudication by permitting the petitioner herein to adduce fresh and/or further evidence in accordance with law, without any delay and proceed to dispose of the case expeditiously preferably within a period of 3 months from the date of communication of this order, by passing a fresh award **without being influenced by the earlier award which has been set aside.**

21. It is also made clear that this Court has not gone into the merit of the case.
22. **WPA 6505 of 2026 is disposed of.**
23. Connected application, if any, stands disposed of.
24. Urgent photostat certified copy of this Judgment, if applied for, be supplied to the parties upon compliance with all requisite formalities.

[Shampa Dutt (Paul). J]