

IN THE HIGH COURT AT CALCUTTA

Constitutional Writ Jurisdiction

APPELLATE SIDE

Present:

The Hon'ble Justice ShampaDutt (Paul)

WPA 25066 of 2022

Sri Debasish Guha

vs.

The State of West Bengal & Ors.

For the Petitioner : Mr. Balai Chandra Paul,
Ms. Tithi Roy.

For the Respondent No.3 : Mr. Soumya Majumder, ld. Sr. Adv.
Mr. Sandip Kundu,
Mr. Malay Kr. Seal.

Judgment reserved on : 01.07.2026

Judgment delivered on : 27.07.2026

ShampaDutt (Paul), J.:

1. The writ application has been preferred praying for quashing of the impugned award dated 17.06.2022 passed in case No. 03/2018 by the Second Industrial Tribunal, Kolkata.
2. The petitioner's case is that he was appointed by the respondent No. 3 on 01.08.1993 and he was made permanent on and from 01.02.1994.
3. On 19.06.2012, the petitioner met with a severe accident resulting in severe injuries on head, eyes and also other parts of the body for which he had to undergo an operation for the same. After long treatment he was advised to take full rest and after recovery, the petitioner was advised to join his duty with light job.
4. The petitioner states that in spite of the advice of the Doctor, he had to do his duty as usual as per the order of the management of the company and as a result, after completion of his duty he felt various problems, resulting in absenteeism in his duty.
5. It is further stated that when he demanded for light job and/or changing his duty as per advice of the Doctors, he was not allowed to enter the factory premises on and from 05.09.2014, which was fully illegal and/or unjustified.
6. It is further stated that due to his frequent absence, the company referred his case to the Medical Board, wherein 6(six) Doctors examined and submitted a report to the company, which was produced by the company before the respondent Tribunal and marked as exhibit H2/1.

7. The petitioner further states that in spite of his regular visit to the company to join his job, neither was he allowed to join his duty nor was any show cause/charge sheet issued to the petitioner in accordance with the provisions of the standing order of the company for his alleged absenteeism.
8. Having no other alternative, he raised an industrial dispute on 18.12.2017 before the Labour Department, wherein due to the adamant attitude of the management, the matter was not settled and as such the petitioner filed an application on 26.02.2017 under Section 2A(2) of the Industrial Disputes Act, 1947, before the respondent tribunal, being No. 3/ 2018.
9. After hearing both the parties, the impugned award was passed. Vide the impugned order, the learned Tribunal held as follows:-

“So considering the entire materials on record as discussed above, I hold that the petitioner has failed to prove his allegation that by way of refusal of employment w.e.f. 05.09.14, the O.P. company has terminated his service and it has also been proved that as per the standing orders of the O.P. company, the O.P. company has not terminated the service of the petitioner and the O.P. company has submitted that it has not terminated the service of the petitioner in any way, and the petitioner intentionally left the said service by remaining absent for a long time unauthorisedly without prior sanction of leave and the record also shows that the petitioner did

not submit proper leave applications to regularise his long unauthorised absence to the O.P. company.

Accordingly, I hold that the petitioner himself has left the said service and he is not entitled to get any relief in this case as prayed for and he is also not entitled to get any back wages as he has not regularised his unauthorised long absence in the OP company.”

- 10.** The learned Tribunal then dismissed the said case No. 03 of 2018.
- 11.** Being aggrieved the present writ application has been preferred challenging the said award.
- 12.** Both parties have filed their respective written notes.
- 13.** The petitioner herein has argued that after joining his duty, the management of the company without considering the medical certificates, forced the workman to do the heavy work including night duty and as a result, he faced various problems, resulting in his absence to report for duty.
- 14.** As the petitioner demanded for avoiding the night duty, he was not allowed and/or refused to join in his duty on and from 05.09.2014.
- 15.** The termination of service by the way of refusal was made without issuing any show cause/charge sheet and/or holding any enquiry as per the service Rules of the Company.

- 16.** It is submitted that in spite of Doctor's advice, the petitioner was given night duty and that from the cross examination of the Company's evidence, the workman's duty was not changed, **as the union did not give consent.**
- 17.** It is further stated that the findings of the learned Tribunal is thus not in accordance with law and the same is liable to be set aside on the ground that the petitioner's termination of service by way of refusal was made:-
- i) Without giving any opportunity to defend.*
 - ii) No show cause/charge sheet as well as enquiry was held in terms of the service rules of the Company.*
 - iii) No notice was served in terms of Section 25(F) of the I.D. Act, 1947.*
 - iv) Non consideration of the medical reports as well as service Rules by the company and also by the Tribunal.*
- 18.** The petitioner superannuated on 31.01.2026.
- 19.** The contesting respondent herein, being the respondent no. 3/company/establishment has argued that the writ petitioner joined as a workman in the factory of the company at Belur on 01.02.1994, in the capacity of 12' Shear Helper. **The said duty was a shifting duty. The factory is a round the clock factory.**
- 20.** The petitioner met with an **accident** on 19th June, 2012 **far away from the factory premises**, and suffered severe injuries.

21. The company disbursed the medical expenses to the workman. The petitioner was insured under the Employees' State Insurance Act, 1948, yet the company had borne the medical treatment expense of the writ petitioner at the material point of time. The petitioner did not produce any documentary evidence of being treated at the ESI Hospital.
22. It is further stated that the **petitioner resumed service on 11th February, 2013**. It is the evidence of the petitioner before the learned Tribunal that he was suffering from drowsiness because of the effect of medicine, even after resuming duties on 11th February, 2013. It is also admitted that even after resuming duties, he continued to remain absent because of his incapability to perform duties due to the effect of medicines.
23. It is stated that the petitioner was admitted on 5th September, 2014, when he again became ill. Thereafter the doctors advised him bed rest for one month.
24. The petitioner admits to have been suffering also from morbidities of high blood pressure and high sugar as well.
25. It is submitted that the petitioner had requested the management of the company for a lighter job thereby exhibiting his complete **lack of interest to continue his service in the post which he was holding at the time of resumption of duty on 11th February, 2013**.
26. The company had written a letter dated 15th September, 2014, intimating the writ petitioner that he was absenting without permission or sanction, with effect from 5th September, 2014. To this, the petitioner had replied on

18th September, 2014 stating that his health condition was not good and doctor had prescribed him to take bed rest for four weeks. The company by a letter dated 20th September, 2014 advised the petitioner to report in person to justify the severity of his illness.

27. It is further argued by **Mr. Majumder**, learned senior counsel appearing for the respondent/establishment that the writ petitioner had been examined at the Howrah District Hospital on 26th November, 2014 and had been **issued a certificate of fitness dated 27th November, 2014 recommending light job and to avoid night duty. The said certificate cannot therefore be treated as a certificate of fitness for the nature of job required to be performed by the writ petitioner.** The writ petitioner's claim for being able to resume duties is thus contrary to records.

28. Mr. Majumder, further argues that the company had a subsisting settlement with the trade unions representing the workers of the factory with regard to placement of the workers in various departments and shifting them from one duty to another. The petitioner was a member of M/s. Aditya Birla and Hindalco Industries Limited, Belur Works Employees' Union, which had entered into an agreement with the management on 28th November, 2014, regarding such placement and shifting of duties of workmen. The union however did not communicate any request or probability of the petitioner's placement/deployment or

non-allotment of night shift duty to him, in spite of the management referring the issue to the union by honouring the Industrial settlement.

29. It is the further case of the respondent/establishment that the petitioner continued to remain absent. Only on 9th February, 2015, he submitted a letter to the company, which he contradicted as a matter of fact in his cross examination before the learned Tribunal. The writ petitioner had evidently involved himself in a family business having a trade license along with his mother; which will reveal from his cross examination before the learned Tribunal.
30. It is further stated that learned Tribunal on proper appraisal of the evidence and on proper reasoning rightly dismissed the case on coming to the conclusion that the management of the company had not terminated the petitioner from service with effect from 5th September, 2014.
31. On hearing learned counsels for the parties and on perusal from the record including the impugned award, this Court finds that the learned Tribunal made relevant observations, which are extracted and reproduced herein below for convenience:-

“(i) After the petitioner was declared medically fit after the said accident, the O.P. company allowed him to join on 11.02.13 in the O.P. company, and though the O.P. company has not admitted in its written statement and evidence of the OPW-I in chief regarding allowing the petitioner to work light job after the said accident in 2012, the OPW-1 has admitted in his cross examination that after the accident in question, the workman was posted by giving light assignment by adjusting his times and the workman joined and worked there.

So it is proved through the above admitted facts that when after the said accident in 2012, the O.P. company allowed the petitioner to join on 11.02.13 in the O.P. company after he was medically declared fit, the O.P. company gave him light job by adjusting his times and then the workman joined and worked there.

- (ii) After the said accident in 2012, the O.P. company allowed him to join the duty on 11.02.13 when he was declared medically fit but **thereafter he started absenting himself frequently from duty in an unauthorised manner and since 05.09.14 he started absenting continuously as per allegations of the O.P. company.**

The O.P. company has proved on letter dt. 15.09.14 as the Exbt.B and the petitioner also has proved this letter as the Exbt.I and this letter dt. 15.09.14 mentions **that since 05.09.14 the petitioner would not attend his duty in an unauthorised manner and without prior sanction of leave and sufficient cause and for this reason the petitioner was directed by the O.P. company to report to the Head-HR immediately and explain the reason of the said absence. So this letter dt. 15.09.14 mentions that the petitioner was directed to show cause or explain the reason of his unauthorised absence from 05.09.14.**

The petitioner has mentioned in his written statement that the O.P. company never issued any show cause notice to him to explain his conduct during the period of his service but this allegation of the petitioner **is not correct** in view of this **Exhibit B and I** and by this letter the petitioner was directed to explain the reason of his continuous absence from 05.09.14.

- (iii) The Exbt. 7 shows that the O.P. company by this order informed the petitioner w.e.f 05.09.14 he had been absenting himself in an unauthorised manner for whom the company issued one letter dt. 15.09.14 advising him to report and submit explanation and in response to the letter, **the petitioner sent one e-mail on 18.09.14 stating about his ill health and advice of doctor to take bed rest for four weeks and he already reported about his sickness to the**

Medical Department and the Mechanical Department and by this letter the O.P. company informed the petitioner that as he had been working in this factory for last 22 years, he must be aware that as per the standing orders of the company, no worker is allowed to absent himself from work unless he has the previous sanction from his Manager and **in case of the sudden illness, a definite message to that respect in writing must be sent to the Time Office but he failed to comply the above standing orders and information to the Medical Department and the Mechanical Department are not required as per the standing orders and he did not submit the sick certificate of a doctor within 48 hours.**

- (iv) **The petitioner has proved his letter dt. 26.02.15 sent to the O.P. company as the Exbt 8 and in this letter he has mentioned that after recovery from accident he joined his duty but became sick and then he was treated by the medical board and the medical board suggested for light job and avoiding night duty and then he addressed the O.P. company for light job but the O.P. company told him to wait till the reply from the unions was received, and the petitioner has mentioned in this letter that the O.P. company has not been allowing him to enter the factory and by hand delivery the O.P. company has not been receiving any letter from him. But this Exbt.8 issued by the petitioner to the O.P. company mentions that it was given by him by hand delivery to the O.P. company.** So the allegation of the petitioner that by hand delivery the O.P. company has not been receiving any letter from him is not correct.
- (v) The most interesting exhibited document of this case is the certificate of fitness on medical ground issued by the medical board of the Howrah District Hospital and as per this certificate (Exbt.H/ 1), on 26.11.14 the petitioner was examined by the said medical board and according to their opinions, **the petitioner was found to be medically fit and they also opined that no loco motor disability was found at present and prescribed for light job and avoiding night duty. This medical certificate is confusing and contradictory because once the medical board has found the petitioner as medically fit and again they have opined for light job and avoiding night duty.**

(vi) A completely medically fit person can be allowed only to work before any place of employment. So if the petitioner was found completely medically fit, then why the said doctors opined for his light job of the petitioner and advised for his night duty! Naturally the question arises as to whether on 26.11.14 after examination by the medical board the petitioner was found completely medically fit or not and **if he was found completely medically fit then the doctors would not opine for light job and avoid night duty, and a completely medically fit person will have no problem to perform any kind of job like before and he will have no problem also to work in night shift.** But the said doctors have opined for light job for the petitioner with a direction to avoid the night duty, and **such type of opinion means scientifically that after examination on 26.11.14 the petitioner was confirmly not found completely medically fit for which the opinion of light job with a direction to avoid night duty was given by the said doctors.)**

So considering the above **contradictory**, opinions of the doctors of the said medical board, I have no hesitation to hold that the said opinions of the doctors are not correct and genuine scientifically and the same are biased and on the basis of this report it cannot be confirmly held as to whether the petitioner was found completely medical fit after examination on 26.11.14 or whether he was unfit or half fit for which light job with a direction to avoid night duty was prescribed by the said doctors.”

- 32.** The learned Tribunal also held that the petitioner violated point No. 23 of the Standing Orders of the respondent/company, as he remained absent without prior intimation.
- 33.** Finally the Tribunal considering the entire materials on record as discussed above, held that the petitioner has failed to prove his allegation that by way of refusal of employment w.e.f. 05.09.14, the respondent/

company has terminated his service and it has also been proved that as per the standing orders of the O.P. company, the O.P. company has not terminated the service of the petitioner in any way, and that **the petitioner intentionally (voluntarily) left the said service by remaining absent for a long time unauthorisedly without prior sanction of leave** and the record also shows that the petitioner did not submit proper leave applications to regularise his long unauthorised absence to the O.P. company.

34. Accordingly, the tribunal held that the petitioner himself has left the said service and he is not entitled to get any relief in this case as prayed for and he is also not entitled to get any back wages, as he has not regularised his unauthorised long absence in the OP company.
35. In the written notes filed on behalf of the petitioner herein the case of the petitioner has been reiterated, as made out in the writ petition.
36. The respondent no. 3/company on filing their written notes has argued as noted above, relying upon the following judgments:-

- i. **West Bengal Central School Service Commission and Ors. Vs Abdul Halim & Ors. (2019) 18 SCC 39, Para 29,30,31,32,33.**

“29. The High Court in exercise of its power to issue writs, directions or orders to any person or authority to correct quasi-judicial or even administrative decisions for enforcement of a fundamental or legal right is obliged to prevent abuse of power and neglect of duty by public authorities.

30. *In exercise of its power of judicial review, the Court is to see whether the decision impugned is vitiated by an apparent error of law. The test to determine whether a decision is vitiated by error apparent on the face of the record is whether the error is self-evident on the face of the record or whether the error requires examination or argument to establish it. If an error has to be established by a process of reasoning, on points where there may reasonably be two opinions, it cannot be said to be an error on the face of the record, as held by this Court in Satyanarayan Laxminarayan Hegde v. Millikarjun Bhavanappa Tirumale [Satyanarayan Laxminarayan Hegde v. Millikarjun Bhavanappa Tirumale, AIR 1960 SC 137] . If the provision of a statutory rule is reasonably capable of two or more constructions and one construction has been adopted, the decision would not be open to interference by the writ court. It is only an obvious misinterpretation of a relevant statutory provision, or ignorance or disregard thereof, or a decision founded on reasons which are clearly wrong in law, which can be corrected by the writ court by issuance of writ of certiorari.*

31. *The sweep of power under Article 226 may be wide enough to quash unreasonable orders. If a decision is so arbitrary and capricious that no reasonable person could have ever arrived at it, the same is liable to be struck down by a writ court. If the decision cannot rationally be supported by the materials on record, the same may be regarded as perverse.*

32. *However, the power of the Court to examine the reasonableness of an order of the authorities does not enable the Court to look into the sufficiency of the grounds in support of a decision to examine the*

merits of the decision, sitting as if in appeal over the decision. The test is not what the Court considers reasonable or unreasonable but a decision which the Court thinks that no reasonable person could have taken, which has led to manifest injustice. The writ court does not interfere, because a decision is not perfect.

33. In entertaining and allowing the writ petition, the High Court has lost sight of the limits of its extraordinary power of judicial review and has in fact sat in appeal over the decision of Respondent 2.”

ii. Satyanarayan Laxminarayan Hegde and Ors. Vs Millikarjun Bhavanappa Tirumale, 1959 SCC OnLine SC10.

37. On hearing the parties and on perusal of the materials on record including the impugned award, it is evident that:-

- (i)** On 01.08.1993, the petitioner was appointed as 12' sheer helper and confirmed in service on 01.02.1994.
- (ii)** On 19.06.2012, he met with a serious accident.
- (iii)** He joined after the accident on 11.02.2013 on being declared medically fit.
- (iv)** Thereafter the petitioner was absent for a long period without any proper application or following the official procedures, for 27 days in 2013 and 59 days in 2014.
- (v)** **Since 15.09.2014 he stopped attending /reporting for work, in spite of being asked to do so/report, on plea of illness.**

(vi) As such, the respondent/company sent him before a medical board, constituted by the District Medical Officer, Howrah, which declared him fit but advised light job and to avoid night duty.

(vii) The tribunal refused to consider such a medical (fitness) certificate, wherein contradictory facts were stated.

(viii) The tribunal's view was that if could not do the job he was appointed for, the fitness certificate was not a proper one, and rightly so.

38. Finally the tribunal held that in this case there was no illegal termination, but voluntary abandonment of service by the petitioner.

39. It is thus clear that the petitioner refused to join his job, if he was not given light job and was not given night duty.

40. The fitness certificate is not a proper medical certificate considering that the medical board/Doctors did not find him fit for normal work/job for which he was appointed.

41. The fact that the petitioner was permitted to join after his accident on 11.02.2013, proves that the respondent/company did not refuse employment.

42. Subsequently the petitioner on and from 05.09.2014 refused to work if not given light job and was not given night duty, without even any sanctioned leave for his continued absence.

43. The respondent company's letter dated 15.09.2014 (Exhibit B) and the petitioner's Exhibit 1, show that respondent/company asked the petitioner to report to the Head HR immediately and explain (show cause) for his

absence. The letter was admittedly received by the petitioner but he refused to work if not given light job and no night duty.

44. This letter (Ext. B) too proves that the respondent/company was all along ready and willing to let the petitioner to join.

45. But as the petitioner refused to join, his conduct could be treated as voluntary resignation and the company is then only obligated to clear the final dues to which the petitioner/workman is entitled under the law on **voluntary abandonment of service.**

46. As there was no termination of service, there was no show cause, charge and/or any enquiry/disciplinary proceedings initiated.

47. The order/award dated 17.06.2022 passed by the Second Industrial Tribunal, Kolkata, thus being in accordance with law requires no interference.

48. WPA 25066 of 2022 is dismissed.

49. Applications, if any, connected thereto stand disposed of consequently.

50. Interim order, if any, stands vacated.

51. 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.]