

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
APPELLATE SIDE

Present:

The Hon'ble Justice Shampa Dutt (Paul)

WPA 6126 of 2026

Sun Pharma Laboratories Limited
Versus
Samitava Roy & Anr.

For the Petitioner : Mr. Soumya Majumdser, ld. Sr. Adv.
Mr. Dwaipayan Sengupta,
Ms. Sanjukta Dutta.

For the Respondents : Mr. Bikash Ranjan Bhattacharya, Sr. Adv.
Mr. Aninda Lahiri,
Ms. Pallabi Mondal.

Judgment reserved on : 17.09.2026

Judgment delivered on : 13.10.2026

Shampa Dutt (Paul), J.:

1. The writ application has been preferred challenging an order dated 2nd January, 2026, passed by the learned First Industrial Tribunal, West Bengal in Case No. 04 of 2025 under Section 10 (1B)(d) of the Industrial Disputes Act, 1947.
2. The petitioner's case is that following the condition of service pertaining to transfer, as delineated in the Appointment Letter, private respondent was transferred on 29.7.2024.

3. The employee filed an application under section 10(1B)(d) of the Industrial Disputes Act, 1947 to set aside the order of transfer.
4. In written statement, company has specifically raised the point of lack of jurisdiction to invoke the provision of Section 10(18)(d) since only an individual dispute of termination of service of workman can be adjudicated in a Section 10(1B)(d) proceeding. A collective dispute like transfer cannot be adjudicated having been raised by an individual workman. The same will not constitute an industrial dispute".
5. Company's application for deciding the maintainability of the proceeding as a preliminary issue was supported by a judgment delivered by this Hon'ble Court in ***Merck Specialties Private Limited (MSPL) vs Abhishek Datta & Ors., in WPA 20299 of 2025, decided on 03.09.2025.*** Another reference was made to a judgment passed by the Himachal Pradesh High Court on the same point.
6. **The issues framed by the Learned Tribunal were also with regard to the propriety of the transfer order.**
7. Argument was advanced on behalf of the workman and accepted by the Learned Tribunal to the effect that since "to transfer a workman malafide from one place to another, under the guise of management policy comes under Item 7 of the Fifth Schedule of the ID Act; the Industrial Tribunal would retain jurisdiction to decide dispute with regard to transfer of a workman, even if the said dispute has been raised by an individual workman. In other

words, a collective dispute through a trade union or substantial number of workmen of the industry is not required for the purpose of raising a dispute of "transfer".

8. The impugned order dated 2.1.2026 passed by the Learned Tribunal accepts the cause of action to be a transfer dispute and by placing reliance upon Item 7 of Fifth Schedule to the Industrial Disputes Act and the definition of "industrial dispute u/s 2(k) of the Industrial Disputes Act, it has been held that the said dispute is an "industrial dispute and hence it cannot be said that the proceeding is ex facie not maintainable in law and fact.
9. The order militates against the very concept of "industrial dispute". As defined in section 2(k) of the Industrial Disputes Act, an "industrial dispute is essentially a dispute between the employer and the workmen, and not a dispute between the employer and the individual workman.
10. Reliance has been made in ***AIR 1958 SC 353 (Para 15): Workmen of Dimakuchi Tea Estate Vs. Management of Dimakuchi Tea Estate.***
11. It is only by reason of section 2A of the Industrial Disputes Act, that a dispute relating to termination of service of an individual workman has been "deemed to be an industrial dispute. It means, such an individual dispute is not actually an industrial dispute. The word "deemed" means akin to, although not exact. It only creates a legal fiction.

12. The petitioner has also relied upon the decision in ***Ali M.K. & Ors. Vs. State of Kerala & Ors.*** reported in ***2003 AIR SCW 2931-(2003) 115 CC 632 (Paras 14,15,16).***
13. Mr. Majumder, learned senior counsel, appearing for the petitioner submits that if an individual workman is permitted to raise a transfer dispute, over which substantial number of workman of the industry does not have any interest, then the very object of the Industrial Disputes Act, 1947 will loose its way.
14. Section 10 (1B)(d) cannot be said to have expanded the zone or horizon of industrial dispute for the State of West Bengal so as to make any dispute in relation to an individual workman, to be an industrial dispute.
15. Section 10(1B), although begins with a non-obstante clause; it specifically mentions the expression "**in a conciliation proceeding of an industrial dispute relating to an individual workman**".
16. Mr. Majumder further argues that the provision only expedites the adjudicatory process in a dispute relating to termination of service of an individual workman through bypassing the administrative action of the Government towards making a reference. This is all what section 10 (1B) has intended to do. Similar provision is contained in section 2A(2) of the principal Act.
17. Reliance is also placed on the Bill for introducing section 10 (1B) through legislative amendment. Copy of the Bill which has been assented to by the President in terms of Article 111 of the Constitution of India has been annexed.

18. It is stated that a Bill is an aid to a statutory provision if the provision requires any interpretation. Mr. Majumder relies upon the decision in the case of ***Rajesh Awasthi vs. Nandlal Jaiswal & Ors.*** reported in ***(2013)1 SCC 501 (Paras 40-43)***
19. Further reference is made to the definition of "industrial dispute" under section 2(q) of the Industrial Relations Code 2020 which includes any dispute or difference between an individual worker and an employer connected with or arising out of discharge, dismissal, retrenchment or termination of such worker. **Therefore, both under the old Act as well as under the new Code; there can be no doubt that only a case of termination of service of a workman can be raised individually as an industrial dispute.**
20. It is thus stated that the impugned order is therefore grossly erroneous, and thus the Hon'ble Court may be pleased to set aside the impugned proceeding pending before the Learned Tribunal on the ground of maintainability.
21. The respondent no. 1 has filed written notes and it is argued by Mr. Bhattacharya, learned senior counsel that the respondent no. 1 joined the petitioner i.e. M/s. Sun Pharma Laboratories Limited on 06.06.2002, as a Trainee Sales Officer (Medical Representative) in the Sun Division at Burdwan Headquarter. After confirmation of service with effect from 01.06.2003, he became "sales officer", although the job profile did not undergo any change. Further the Respondent No. 1 was re-designated a "Territory Sales Executive" with effect from 01.04.2006. The Respondent No.1 was again

promoted to the post with effect from 03.07.2008 and got the designation of “Area Sale Manager”. All these designations of the respondent No.1 denote same job profile of a Sales Promotion Employee (SPE).

- 22.** The respondent No.1 received an email on 02/07/2024 from the petitioner asking him to attend Mumbai office on 04/07/2024 at 2 P.M. for performance and business activity review meeting. The Respondent No.1 as per that email attended Mumbai office for such review meeting on the appointed date and time. In the name of performance and business activity Review meeting, the respondent No.1 was asked about unethical adjustment payment made by one Sales Promotion Employee of Bankura, to the stockiest to meet the sales target.
- 23.** The respondent No. 1 states that he has never been involved in such unethical practice throughout his career in any manner whatsoever, as the respondent No. 1 remained as a star performer, the respondent No.1 frankly told the superiors in Mumbai meeting about that. He was then pressurized by other superiors in the meeting to tender his resignation without assigning any reason. The respondent No. I expostulated to such proposal and refused to resign. The respondent No.1 was literally perplexed having come across with such conduct of the Petitioner towards him, who has all along been a star performer.
- 24.** All on a sudden the Respondent No.1 was given a letter dated 29.07.2024 by the OP/Company transferring his services from

Midnapore Head Quarter to Jamnagar Head Quarter, Gujarat, Sun Division on the ground of business exigency, the Respondent No.1 being a star performer till then in Midnapore Head Quarter does not evoke any reason to the respondent No.1 to be transferred to any far off place like Jamnagar. Business exigency is anything but a reason, of such transfer. Moreover when the respondent No. I was pressurized to tender resignation by the Company Management, this illegal and mala fide transfer of the Respondent No.1 unerringly reflects mala fide of the said transfer. That the Respondent No.1 by a representation dated 8.8.2024 requested the company/ management to revoke the said transfer order dated 29.07.2024 from Midnapore Head Quarter to Jamnagar Head Quarter.

- 25.** It is this transfer order which it is stated to be mala fide and has been challenged and the impugned order has been passed by the learned Tribunal.
- 26.** The contention of the respondent herein is that there is no provision for challenging maintainability of a case either in ID Act or W.B. ID Rules as a preliminary point, because the case is scheduled to be adjudicated by trial-on-Evidence, and not in proceeding. So application of the petitioner is not at all maintainable a summery by itself on that Court.
- 27.** It was contented by the petitioner that the order of transfer of any individual workman does not come within the scope and ambit of Industrial Dispute as defined under Section 2K of the ID Act, 1947.

- 28.** There is a specific mention of victimization of an individual Workman in case of transfer in entry 7 of Schedule V of the I.D. Act which says **"To transfer a Workman mala fide from one place to another,** under the guise of following management policy. It obviously goes to underscore that in case of transfer of an individual Workman, he can have a clear legal remedy to adopt it individually and for which the Workman need not take resort to any Union or a group of Workmen to challenge that transfer order, in order to avail (maintain) the legal remedy.
- 29. The respondent has alleged that by way of the order of transfer served upon the respondent there has been unfair legal practice by the petitioner herein.**
- 30.** This aforesaid legal concept has become adequately pronounced after the introduction of Section 10(1B)(d) vide West Bengal Act 33 of 1989 Section 4 w.e.f. 08.12.1989.
- 31.** This particular Section 10(1B) has been formulated exclusively for the individual. Workman to get the access to legal remedy directly by approaching Industrial Tribunal or Labour Court, pending disposal of the conciliation proceeding for his any kind of victimization including transfer.
- 32.** Finally, it is stated that an individual workman can surely assert his/her unfettered right against the Order of illegal and mala fide transfer by raising Industrial Dispute before conciliation authority and thereafter Industrial, Tribunal or Labour Court, under Section 10(1B) of Industrial Disputes Act, 1947. Thus the Learned Tribunal

has rightly passed the order dated 02.01.2026 in rejecting the application dated 27.08.2025 filed by the petitioner.

33. The respondent has relied upon the following judgments:-

(i) Canara Banking Corporation Limited Vs. U Vittal
Reported in AIR online 1963 SC 3.

(ii) Management of Cipla Ltd. Vs. Jay Kumar, R and Anr.
reported in AIR on line 1997 SC 49.

34. From the materials on record, it appears that the employee joined the petitioner company on **01.12.2002.**

35. Clause 7 in the letter of appointment provides the transfer clause:-

“7. AREA OF ACTIVITY AND TRANSFER:

*Your Head quarters for the time being will be at BURDWAN in the territory of WEST BENGAL. You are liable to be transferred to the area assigned to you by the management and/or such other territories anywhere in India as the Management may, from time to time, deem necessary at their sole discretion. **Your refusal for such transfer will be considered as your unwillingness to serve the company and in such a case management will be free to terminate your services by giving one month's notice or salary in lieu thereof.***

You may be required to attend Bombay/ Baroda/ Vapi office from time to time either for instruction or for any other official purpose or to attend meetings arranged at anywhere in India and you will not refuse to do so. In such case you will be paid actual traveling expenses and outstation allowances as per Clause 4-ii-d above.”

36. On 29th July, 2024, the employee was transferred from Midnapore to Jamnagar and was relieved on **31.07.2024, after 22 years of service** to join his place of transfer.

37. Vide letter dated 29th July, 2024, the employee was asked to join his place of transfer on 10th August, 2024 at 10.00 A.M.

38. The issues framed by the tribunal are as follows:-

“Issues

1) *Whether the application filed by the applicant u/s 10(1B)(d) of the Industrial Dispute Act 1947 is maintainable in law or in fact?*

2) *Whether the application of the applicant can be entertained by treating him as a workman in view of Section 2(s) of the Industrial Dispute Act?*

3) *Whether the impugned order of transfer dated 29.07.2024 of the applicant Sri Samitava Roy by the Management of the OP/Company M/s Sun Pharma Laboratories Limited is lawful, bonafide and justified in the light of the Industrial Dispute Act upto date amendment?*

4) *Whether the applicant is entitled to get the relief/reliefs as prayed for?*

5) *To what other relief/reliefs, if any, the applicant is entitled to?”*

39. Vide the impugned order the tribunal held:-

“.....It is further claimed that the applicant by his application u/s 10(1B)(d) of the Industrial Dispute Act, has challenged his order of transfer dated 29.07.2024 passed by his company herein Opposite Party, which is veiled individual dispute by challenging his transfer from Medinipur (Headquarter) to Jamnagar (Headquarter), Gujrat.....”

40. The preliminary issue decided by the tribunal was:-

“.....The crux of the controversy is that as to whether the transfer of the applicant being a incidental part of service, at all comes under the scope of industrial dispute or not.....”

41. It is also recorded:-

“.....During the pendency of the conciliation proceeding before the Conciliation Officer, the applicant obtained Pendency Certificate from the Conciliation Officer in the prescribed Form P-4 dated 28.01.2025 and filed the instant proceeding before this Tribunal u/s 10(1B)(d) of the Industrial Dispute Act (West Bengal amendment), seeking relief as stated in his prayer.....”

42. The findings of the tribunal is as follows:-

“..... But the fact of the case in hand, this applicant has come with a prayer to annul the transfer order or revoke the same before this Tribunal under Section 10(1B)(d) of the Industrial Dispute Act (West Bengal Amendment), after compliance of pre-condition of obtaining pending certificate before the appropriate government.

In this context I am agreed with the submission made by the Ld. Counsel for applicant that Section 10(1B) of the Industrial Dispute Act, (West Bengal Amendment) is a Genius and Section 2A of the Industrial Dispute Act is a species in terms of an industrial dispute and Section 10(1B) has also enabled any workman as an individual to come to the Tribunal for seeking relief against the dispute in the colour of mala fide transfer raised by him.

Apart from it, it is pertinent to state that if any malafide transfer of any individual workman is made under the guise of the interest of the company or following management policy then that workman, in any state of imagination, cannot be remained un-remedied against such malafide transfer. For that reason and to protect from malafide transfer, this malafide transfer has been incorporated in Clause-7 of V Schedule under the heading of "Unfair Labour Practice" in Industrial Dispute Act.....”

.....On the contrary, if transfer is made by way of victimization or something that ulterior motive, not connected with the interest of the establishment or company, then it should be called as malafide transfer and in that case it certainly comes under the scope of industrial dispute because Section 2K also enunciates difference between employer and workmen

"connected with the employment" or "the terms of employment" or "with the condition of the labour".

The case in hand, the grievances are ventilated by the workman against the transfer order claiming malafide transfer. Obviously it comes under the nature of industrial dispute. Simple way, it can not be said that the proceeding ex facie is not maintainable in law and fact.

Rather the order of transfer made by the OP/Company against the workman/applicant is malafide or for the interest of business, is a fully subject of trial. But it cannot straightway be said that the proceeding itself, in the given fact, is not maintainable in law and fact.

Therefore, in view of above discussion, I definitely hold that the question of not maintainable of the proceeding, raised by the OP/Company, is having no merits and liable to be rejected.

Thus, the prayer made by the OP/Company on petition dated 27.08.2025 stands rejected. No order as to cost is passed.

Accordingly issues to be framed on the next date."

- 43.** It appears from the order impugned that there was no material before the tribunal to even prima facie make out any case of unfair labour practice.
- 44.** The only issue before it was the order of transfer.
- 45.** The tribunal has wrongly interpreted the definition of "industrial dispute" as defined in Section 2(k) of the Act, which defines 2(k):-

"2(k) "industrial dispute" means any dispute or difference between employers and employers, or between employers and workmen, or between workmen and workmen, which is connected with the employment or non-employment or the terms of employment or with the conditions of labour, of any person;"

46. Petitioner relies upon the judgment in Workmen of **Dimakuchi Tea Estate vs Management of Dimakuchi Tea Estate, 1958 SCC**

OnLine SC 4, the Court held:-

‘15. We reach the same conclusion by approaching the question from a somewhat different standpoint. Ordinarily, it is only the aggrieved party who can raise a dispute; but an “industrial dispute” is put on a collective basis, because it is now settled that an individual dispute, not espoused by others of the class to which the aggrieved party may belong, is not an industrial dispute within the meaning of Section 2(k). As Isaacs, J., observed in the Australian case of *George Hudson Ltd. v. Australian Timber Workers' Union* [32 CLR 413, 441] :

“The very nature of an ‘industrial dispute’ as distinguished from an individual dispute, is to obtain new industrial conditions, not merely for the specific individuals then working from the specific individuals then employing them, and not for the moment only, but for the class of employees from the class of employers.... It is a battle by the claimants, not for themselves alone.”

Section 18 of the Act supports the aforesaid observations, insofar as it makes the award binding not merely on the parties to the dispute, but where the party is an employer, on his heirs, successors or assigns and where the party is composed of workmen, on all persons employed in the establishment and all persons who subsequently become employed therein. If, therefore, the dispute is a collective dispute, the party raising the dispute must have either a direct interest in the subject-matter of dispute or a substantial interest therein in the sense that the class to which the aggrieved party belongs is substantially affected thereby. It is the community of interest of the class as a whole — class of employers or class of workmen — which furnishes the real nexus between the dispute and the parties to the dispute. We see no insuperable difficulty in the practical application of this test. In a case where the party to the dispute is composed of aggrieved workmen themselves and the subject-matter of dispute relates to them or any of them, they clearly have a direct interest in the dispute. Where, however, the party to the dispute also composed of workmen, espouse the cause of another

person whose employment, or non-employment etc. may prejudicially affect their interest, the workmen have a substantial interest in the subject-matter of dispute. In both such cases, the dispute is an industrial dispute.”

47. Thus the argument of Mr. Majumder that:-

“.....The order militates against the very concept of "industrial dispute". As defined in section 2(k) of the Industrial Disputes Act, an "industrial dispute" is essentially a dispute between the employer and the workmen, and not a dispute between the employer and the individual workman.....” has merit and substance.

48. Section 2A of the Act provides for termination of service and thus an individual workman can raise a dispute and also under Section 10(1B) of the Act when it is a case of termination.

49. But the provision does not provide for an issue as to a ‘transfer order’ which in view of the definition in Section 2(k) of the Act, does not permit an individual to raise a dispute.

50. The tribunal’s view that as a certificate has been issued by a conciliation officer to raise a dispute, the dispute is maintainable, is erroneous, considering that when the term ‘industrial dispute’ under Section 2(k) itself does not permit such disputes (transfer) to be raised individually, the tribunal’s interpretation that the dispute is maintainable in view of the West Bengal Amendment of Section 10(1B) is wrong and not in accordance with law, in view of the fact that Section 10(1B) relates to dispute of termination raised

individually and not cases of transfer which is to be raised as per Section 2(k) of the Act.

- 51.** Section 10(1B) clearly talks of **individual disputes relating to an individual workman.**
- 52.** Individual disputes relating to an individual workman is provided under Section 2A of the Act and only such disputes can also be raised under Section 10(1B) of the Act.
- 53.** Any other dispute has to be raised collectively as per Section 2(k) of the Act.
- 54.** The tribunal holding the transfer order prima facie as 'malafide' is also erroneous, as the same cannot be decided when the maintainability of the dispute raised is challenged on the grounds as discussed above.
- 55.** In the present case there are no grounds to even prima facie show that the transfer is malafide. There are no incidents or allegations of any trade union activities or otherwise, other than some statement of the employee as to certain allegations.
- 56.** **A transfer order after 22 years in one place, and transfer being a condition in the letter of employment cannot be termed 'malafide'.**
- 57.** **The said order of transfer dated 29th July, 2024, clearly shows it is a plain and simple, an order of transfer in due course and there is nothing to indicate otherwise.**
- 58.** An employee not joining his place of transfer in spite of several directions/notices, does not support even a case of "refusal of

employment” to enable the same to be an individual dispute maintainable under Section 2A of the Act.

- 59.** Here the case of the employee herein is prima facie of “abandonment of service”.
- 60.** Thus the impugned order dated 2nd January, 2026, passed by the learned First Industrial Tribunal, West Bengal in Case No. 04 of 2025 under Section 10 (1B)(d) of the Industrial Disputes Act, 1947, being erroneous and not in accordance with law is set aside.
- 61. WPA 6126 of 2026 is allowed.**
- 62. The employee is entitled to his dues till 31st July, 2024, which be paid, (if any) within three months from the date of this order.**
- 63.** Applications, if any, connected thereto stand disposed of consequently.
- 64.** 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.)