IN THE HIGH COURT AT CALCUTTA
CIVIL APPELLATE JURISDICTION
APPELLATE SIDE

Present:
The Hon'ble Justice Lanusungkum Jamir
And
The Hon'ble Justice Rai Chattopadhyay

MAT 1340 of 2025

Ganesh Kumbhakar & Ors.
Vs.
WB Power Development Corporation Ltd. & Ors.

For the appellants	: Mr. Amitava Mukherjee, ld. Sr. Adv. : Ms. Arpita Saha : Ms. Ankita Ghosh : Ms. Antara Das
For the respondent Nos. 1 & 4	: Mr. Ranjay De, ld. Sr. Adv. : Mr. Basabjit Banerjee : Mr. Adityajit Abel Bose
For the State	: Mr. S. Banerjee : Mr. Diptendu Narayan Banerjee
Heard on	**: 21/01/2026**
Judgment on	**: 26/02/2026**

Rai Chattopadhyay, J. :-

1. The appellants are the sponsored candidates, appointed in a specific project of the respondent no. 1/the West Bengal Power Development Corporation Limited. They are aggrieved with the judgment of the Hon'ble Single Bench, dated May 19, 2025 in WPA No. 8847 of 2009 and file this appeal with the prayer to set aside the said judgment and for absorption and regularization of their service, with the respondent no. 1.

2. The appellants intend to derive their right of absorption from a tripartite agreement dated July 02, 2008, entered into between the respondent no. 1 and the trade unions. According to the appellants, the said tripartite memorandum dated July 02, 2008 is the recognized policy decision for regularisation of workers in Unit No. 5 and in Unit No. 6 also, during the future course. It is stated that according to the agreed terms, unanimously entered into by all the stakeholders, the sponsored workers, that is the appellant/writ petitioners would be absorbed and engaged in the operation and maintenance of Unit No. 5 immediately and in Unit No. 6 in due course. It is stated further that by dint of the same, a binding obligation has been created upon the respondent no. 1, to absorb and regularise the appellants.

3. The General Manager, Santhaldih Thermal Power Station, wrote to the District Employment Exchange on December 17, 2004, for sponsoring names of unskilled labourers, to be engaged in the construction site of Unit No. 5. Hence, the names of the appellants/petitioners were sponsored and they have been engaged in the year 2005. The petitioners have been placed under the contractors and this way they were continued being engaged as unskilled labourers with the respondent no. 1.

4. Allegedly, from mid of 2007, the authority started to terminate those labourers, earlier sponsored by the Employment Exchange. Consequently, labour agitation took place. Ultimately, at the intervention of the District Magistrate, the parties have entered into the said Memorandum dated July 02, 2008.

5. In the writ petition as above, the appellant/petitioners have sought for the relief that they may be directed to be absorbed and regularised with the respondent no. 1.

6. The Hon'ble Single Bench has held as follows:-

> ***"28. It is absolutely the discretion of the respondent thermal power plants to seek the requisite number of man power to accomplish individual project irrespectively. The petitioners cannot direct the respondent thermal power plants to utilize the manpower in a specific manner, being nowhere connected with the respondent thermal power plants either in management or in organization. The cessation of their employment, definitely disheartening and unfortunate, should be addressed to the Employment Exchange for contemplating avenues for 'alternative engagement suitably. The petitioner's deployment through contractors does not accrue any legal right violative of the provisions of the Constitution, since the terms and conditions of functioning are restricted to the agreement between the contractors and the respondent thermal power plants with definite clause of expiration at the end of its period of validity which cannot continue till eternity being time bound and project specific.***
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> ***29. The petitioners were not providing the job of permanent or perennial nature. There were basically hired by the independent contractor and were not essentially performing the work of permanent employees to be considered for regularization or to claim any vested right against retrenchment. The deployment of the petitioners had been restricted to the duration of the contract between the contractor, through whom the petitioners had been engaged and the principal employer, being the respondent thermal power plants. The respondent thermal power plants did not directly employ the petitioners who are therefore debarred from claiming any legal or vested rights against the respondent thermal power plants for violation of constitutional provisions as well as principles of natural justice.***
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> ***30. However, the petitioners are at liberty to approach Respondent 5,6,7 to reconsider their status of retrenchment giving them an opportunity of hearing and if legally permissible and practicable to provide alternative engagement through contractors at different***

sites if at all their work power as unskilled person is required for the interest of public administration."

7. For the reasons as above, the writ petition has been dismissed, though the appellant/writ petitioners were granted liberty to approach the respondent nos. 5,6,7, that is, the District Magistrate/SDO/Employment Exchange Officer, for their redress.

8. Mr. Amitava Mukherjee, learned Senior advocate on behalf of the appellants has stated that the impugned judgment of the Single Bench dated May 19, 2025 is absolutely misconceived and suffers from non-application of mind and wrongful or no consideration of what the law has provided for. The policy regarding engagement of maintenance of unskilled labourers as determined by dint of the said memorandum is, to engage the petitioners as unskilled workers being sponsored by the Employment Exchange, for Unit No. 5 and in future with unit No. 6 too. Mr. Mukherjee has submitted that, the respondent No. 1 by writing letter to the Employment Exchange sought for sponsorship of names of unskilled workers for the organization. That the petitioners reported to the respondent No. 1 and from there, they have been channelized through the contractor, for employment. Therefore, according to the appellant/writ petitioners the entire process of recruitment of the appellants was at the instance of the respondent No. 1 only. The contractor had no role to play in the same.

9. Similarly, in day to day disposition of duty by the present appellants and also regarding disbursement of their wages and discipline, the only responsible authority has been the respondent No. 1 and none else. The project in which the appellants were

engaged was directly supervised by the respondents including the day to day work disposition of each of the appellants. Therefore, according to them, the respondent No. 1 directly controlled and supervised the appellants.

10. Further, it has been submitted that, the work for which the appellants were engaged into is of perennial nature in so far as the maintenance work of the organization is only co-extensive with the life of the organization itself. It is submitted further that the appellants have been consistently kept being engaged with the respondent No. 1 though, the contractors have changed for several times in between. Initially, the respondent No. 1 sought to engage the appellants for three years, though continued with their service for 5 years and more, without any break. According to the appellants, the respondent No. 1/the principal employer should be considered to have direct supervision and control over their work, which is perennial in nature. Therefore, there exists employer-employee relationship between the appellants and the respondent No. 1.

11. Further that the tripartite settlement has provided for selection of the appellants as the sponsored candidates as regular employees of the respondent No. 1.

12. Mr. Mukherjee has submitted that, for all the reasons, the appellants are eligible to be absorbed and regularized with the respondent No. 1 which the Hon'ble Single Judge has not considered. That, the impugned judgment is passed without considering whether there existed any employer-employee relationship between the appellants and the respondent No. 1 and whether the job they were discharging was perennial in nature or

not. Also, it has not been considered that, if the appellants were actually under direct supervision and control of the respondent No. 1. Therefore, he says that the impugned judgment is unsustainable having not considered the legal framework for absorption of the contract labours like the present appellants. Instead, the direction passed by the Hon'ble Single Bench is only misconceived and illegal. Hence, the appellants have prayed for setting aside of the impugned judgment dated May 19, 2025 in WPA no. 8847 of 2009 and a direction upon the respondent No. 1 for their regularization.

13. Also, according to the appellants, the instant is a case where the employment through the contractor was sham or camouflage arrangement, which is prima facie apparent. In that case, the law is well-settled that the veil is to be removed to find the employer-employee relationship to be existing between the parties.

14. The following judgments have been relied on by the appellant:-

i) Full Bench judgment of this Court in ***Awadhesh Singh Vs. Union of India [(2013) 3 CHN Cal 407]***

ii) ***Steel Authority of India Limited Vs. Workmen*** reported in ***(2017) 3 CHN Cal 143***.

15. The respondent No. 1 has been represented by Mr. Ranjay De, learned senior advocate. It is submitted that, there was never any privity of contract between the appellants and the respondent No. 1. Hence, according to the respondent, the present writ petition is not maintainable as the appellants have no right to be enforced under Article 226 of the Constitution of India. Mr. De has declined to accept that the appellants have been remunerated by the respondent No. 1 and submits that this amounts to be a disputed

question of fact which is required to be determined by a fact-finding authority, upon evidence. On that score also, he challenges the very maintainability of the writ petition.

16. According to the respondent, it is explicitly clear that the appellants / writ petitioners were the unskilled contract labours engaged by the contractors for the construction of unit no. 5 of STPS. The said construction job has come to an end long back. The appellant is of 58 years of age. That, the STPS is a highly sophisticated power generating unit where there is no requirement for any unskilled contract labour. That, there never subsisted any employer-employee relationship between the respondent Corporation and the contract labours; there is no averment in the writ petition that the appellants / writ petitioners being the contract labours were engaged by the respondent Corporation and the management of the respondent was the paymaster; nor anything could be placed on behalf of the appellants / writ petitioners that the management of the respondent Corporation ever exercised any supervision and control over them and, it is settled law that no absorption can be made of the persons those who have worked in any organization not being employed following the prescribed Rules therefor. The respondent further says that, it is trite law that the prayer for absorption can never be entertained by this Hon'ble Court under Article 226 of The Constitution of India. In other words, the prayer for absorption is unsustainable in law as there was no privity of contract between the Corporation and the contract labours.

17. According to the respondent, the learned Single Bench has committed no wrong in law while dismissing the claim of the appellants / writ petitioners for absorption in the respondent

Company and as such, the said judgment and order dated May 19, 2025, impugned herein, does not require any intervention by this Appeal Court.

18. The following judgments have been referred to by the respondent:-

i) ***Sunil Kumar Biswas Vs. Ordnance Factory Board and Ors.*** reported in ***[(2019) 15 SCC 617]***

ii) ***Oshiar Prosad & Ors. Vs. The employers in relation to management of Sudamdih Coal Washiery of M/s. BCCL, Dhanbad, Jharkhan*** reported in ***[(2015) 4 SCC 71]***

iii) ***A.P. SRTC & Ors. Vs. G. Srinivas Reddy & Ors.*** reported in ***[(2006) 3 SCC 674]***

iv) ***Secretary, State of Karnataka & Ors. Vs. Umadevi (3) & Ors.*** reported in ***[(2006) 4 SCC 1]***

v) ***Indian Drugs & Pharmaceuticals Ltd. Vs. Workman, Indian Drugs & Pharmaceutical Pvt. Ltd.*** reported in ***[(2007) 1 SCC 408]***

vi) ***Shakti Shankar Dey & Anr. Vs. Union of India & Ors.*** reported in ***[2005 SCC OnLine Cal 231]***

vii) ***Awadhesh Singh & Ors. Vs. Union of India & Ors.*** reported in ***[2013 SCC OnLine Cal 9458]***

viii) ***General Manager (OSD), Bengal Nagpur Cotton Mills, Rajnandgaon Vs. Bharat Lal & Ors.*** reported in ***[(2011) 1 SCC 635]***

ix) ***Balwant Rai Saluja & Anr. Vs. AIR India & Ors.*** reported in ***[(2014) 9 SCC 407]***

x) ***Bharat Heavy Electricals Ltd. Vs. Mahendra Prasad Jakhmola & Ors.*** reported in ***[(2019) 13 SCC 82]***

19. It appears that, the General Manager, STPS writes to the Employment Exchange Officer vide letter dated December 17, 2004 that, in view of the imminent construction work of one new unit at STPS, the said respondent requires some unskilled workers (about 300 in numbers) whose service under different contractors may be required for about three years depending on the nature of job. Since thereafter, the names of the appellants having been sponsored by the Employment Exchange vide letter dated January 07, 2005 they were engaged to discharge unskilled labour in the construction site of the respondent No. 1 under different contractors. According to the appellants, the engagement of contractor was only a camouflage to deprive the appellants from their lawful due upon being engaged with the respondent No. 1. While instead, the appellants have actually worked under direct supervision and control of the said respondent being appointed and accountable to the respondent No. 1 only. According to them, they have been paid by the respondent No. 1, which fact has been disputed in this case by the said respondent. The fact of termination of employment of the appellants has however, not disputed by the respondent. The respondents say that, amongst the appellants and the respondent, there is no privity of contract or employer-employee relationship between them. Therefore, there would not be any obligation on part of the respondent as regards the contractual employment of the present appellants.

20. The Court notices that, the memorandum, heavily relied on by the appellants in this case has stipulated that *"the unskilled workers of the O&M job will be engaged from the list of the candidates of Employment Exchange, if required through selection".*

21. Considering all as above, the Court is of definite finding that, the issues involved in the instant case relate to whether there existed employer-employee relationship between the appellants and the respondent No. 1 or whether the respondent No. 1 exercised direct supervision and control on the appellants as the sponsored unskilled labourers under contractors engaged with them; also that, whether engagement of contractor is only a camouflage to deprive the appellants of their lawful dues, which needs to be wiped out. All these amount to be disputed questions of fact, which require determination by the fact-finding authority and only upon evidence. It is the settled law that, while exercising power of judicial review under Article 226 of the Constitution, the High Court would not generally consider the disputed questions of fact and relegate the matter to the fact finding authority for decision.

22. In a petition filed under Article 226 of the Constitution, it is not for the court to go into disputed question of fact namely, whether the employees are under the direct supervision and control of the employer or whether the veil of working under the contract contractor is required to by lifted to establish the employer-employee relationship between the parties. In this context reference may be had to the judgment of the Supreme Court in the case of ***Real Estate Agencies vs. State of Goa and Others, (2012) 12 SCC 170*** where the Supreme Court held as follows:

> ***"17. However, there is no universal rule or principle of law which debars the writ court from entertaining adjudications involving***

disputed questions of fact. In fact, in the realm of legal theory, no question or issue would be beyond the adjudicatory jurisdiction under Article 226, even if such adjudication would require taking of oral evidence. However, as a matter of prudence, the High Court under Article 226 of the Constitution, normally would not entertain a dispute which would require it to adjudicate the contested questions and conflicting claims of the parties to determine the correct facts for due application of the law. In ABL International Ltd. v. Export Credit Guarantee Corpn. of India Ltd., [(2004) 3 SCC 553], the precise position of the law in this regard has been explained in paras 16, 17 and 19 of the judgment in the course of which the earlier views of this Court in Gunwant Kaur v. Municipal Committee, Bhatinda, [(1969) 3 SCC 769] and Century Spg. & Mfg. Co. Ltd. v. Ulhasnagar Municipal Council, [(1970) 1 SCC 582] has been referred to.

18. The aforesaid paragraphs of the judgment in ABL International Ltd. v. Export Credit Guarantee Corpn. of India Ltd., [(2004) 3 SCC 553] may, therefore, be usefully extracted below: (SCC pp. 567-69)

"16. A perusal of this judgment though shows that a writ petition involving serious disputed questions of facts which requires consideration of evidence which is not on record, will not normally be entertained by a court in the exercise of its jurisdiction under Article 226 of the Constitution of India. This decision again, in our opinion, does not lay down an absolute rule that in all cases involving disputed questions of fact the parties should be relegated to a civil suit. In this view of ours, we are supported by a judgment of this Court in Gunwant Kaur v. Municipal Committee, Bhatinda, [(1969) 3 SCC 769] where dealing with such a situation of disputed questions of fact in a writ petition this Court held: (SCC p. 774, paras 14-16)

`14. The High Court observed that they will not determine disputed question of fact in a writ petition. But what facts were in dispute and what were admitted could only be determined after an affidavit-in-reply was filed by the State. The High Court, however, proceeded to dismiss the petition in limine. The High Court is not deprived of its jurisdiction to entertain a petition under Article 226 merely because in considering the petitioner's right to relief questions of fact may fall to be determined. In a petition under Article 226 the High Court has jurisdiction to try issues both of fact and law. Exercise of the jurisdiction is, it is true, discretionary, but the discretion must be exercised on sound judicial principles. When the petition raises questions of fact of a complex nature, which may for their determination require oral evidence to be taken, and on that account the High Court is of the view that the dispute may not

> ***appropriately be tried in a writ petition, the High Court may decline to try a petition. Rejection of a petition in limine will normally be justified, where the High Court is of the view that the petition is frivolous or because of the nature of the claim made dispute sought to be agitated, or that the petition against the party against whom relief is claimed is not maintainable or that the dispute raised thereby is such that it would be inappropriate to try it in the writ jurisdiction, or for analogous reasons."***

23. In ***Sanjay Sitaram Khemka vs State of Maharashtra [(2006) 5 SCC 255]*** the Supreme Court has held:

> ***"8. Having regard to the allegations and counter allegations made by the parties before us, we are of the opinion that no relief can be granted to the Petitioner in this petition. The writ petition has rightly been held by the High Court to be involving disputed questions of fact. The petitioner has several causes of action wherefor he is required to pursue specific remedies provided therefor in law.***
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> ***9. A Writ Petition, as has rightly been pointed out by the High Court, for grant of the said reliefs, was not the remedy. A matter involving a great deal of disputed questions of fact cannot be dealt with by the High Court in exercise of its power of judicial review. As the High Court or this Court cannot, in view of the nature of the controversy as also the disputed questions of fact, go into the merit of the matter, evidently no relief can be granted to the Petitioner at this stage. We are, therefore, of the opinion that the impugned judgment of the High Court does not contain any factual or legal error warranting interference by this Court in exercise of its jurisdiction under Article 136 of the Constitution".***

24. Writ courts have jurisdiction over questions of fact but normally refrain from entertaining seriously disputed or complex factual issues requiring oral evidence or detailed investigation. Parties must pursue specific remedies in civil courts or appropriate forums for factual adjudication, as writ jurisdiction is extraordinary and suited for legal errors or jurisdictional issues, not rival claims on facts. The principle stems from prudence and judicial economy,

reinforced by Supreme Court, emphasizing that disputed facts lead to dismissal of writ petitions.

25. It is beneficial to mention the following portion of the three-Judges Bench decision of this Court in ***Awadhesh Singh's Case (supra)*** which is as follows:-

> ***"15. In this context, the substance of the grievance and relief that the party aggrieved seeks are also of some relevance. Assuming that the claim of the contract labours succeed before the Central Administrative Tribunal, an order would necessarily follow directing their regularization/absorption in Railway service. In view of the decision in L. Chandra Kumar (supra), the High Court can be approached after the first round of litigation is initiated before the Central Administrative Tribunal and not directly.***
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> ***16. Turning our focus to the CLRA Act, we are inclined to take the view on examination of the provisions thereof that it is the forum under the ID Act that ought to be ordinarily approached for the relief that the petitioners claim. Bearing in mind the definition of 'contract labour', 'contractor', 'establishment', 'principal employer' and 'workman' in the CLRA Act, the forum that is approached for relief of regularization/absorption may have to consider the question as to whether the contractor has been interposed either on the ground of having undertaken to produce a given result for the establishment or for supply of contract labour/workmen for any work of the establishment under a genuine contract or is a mere ruse/camouflage to evade compliance with various beneficial provisions so as to deprive the workmen of the benefits thereunder. Hon'ble Supreme Court has authoritatively held in number of decisions that where the answer is in the affirmative, the workman will have to be treated as an employee of the principal employer who shall be directed to regularize his service in the establishment subject to eligibility. However, if the answer is in the negative, the workman will be a contract labour. Reference in this connection may be made to the case in Steel Authority of India Ltd. v. National Union Waterfront Workers, reported in (2001) 7 SCC 1. Answering the aforesaid question would***

> ***necessarily involve enquiry into disputed questions of fact, which cannot conveniently be made by the High Court under Article 226 of the Constitution, and it is the Industrial Tribunal/Labour Court that would be the appropriate authority to determine the issue.***
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> ***17. From whichever angle the problem is viewed, it seems to be inescapable that the contract labours must plead and prove that the contract between the principal employer and the contractor is a mere ruse/camouflage to deprive benefits to them flowing from the beneficial legislations and that they are really the employees of the principal employer. In other words, there is relationship of employer-employee between the principal employer and the workman and declaration ought to be claimed for recognition of such relationship and consequential direction for regularization/absorption. In the absence of such a claim in the pleadings, no relief can at all be granted and the claim is likely to fail. Once such claim is traceable in the pleadings, the contract labours would not be entitled to urge that notwithstanding the fact they are contract labours they are entitled to maintain a writ petition before the Writ Court prior to an adjudication/determination by the Industrial Tribunal or the Central Administrative Tribunal, as the case may be."***

26. The Court has held that, there are certain guidelines and settled principles upon which a Court has to determine whether the workman is an employee under the principal employer or a contract labour but answering the said question would necessarily involve enquiry into disputed questions of fact, which should not in an usual and normal course, be made by the High Court under Article 226 of the Constitution. The Court has held that, it is the Industrial Tribunal/Labour Court that would be the appropriate authority to determine the issue. The Court has held further that, in case, the employees plead before the Court of a camouflage contract to have been infused in between them and the principal

employer, the contract labours would not be entitled to urge that, notwithstanding the fact, they are contract labours, they are entitled to maintain a writ petition before the Writ Court, prior to an adjudication/determination by the Industrial Tribunal.

27. Hence, therefore, there can be no doubt about the settled legal position that, to agitate the disputes questions of fact as above, the statutory Tribunal and not the High Court in exercise of jurisdiction under Article 226 of the Constitution – would be the appropriate forum. In such view of the fact, the finding of the Hon'ble Single Judge relegating grievance of the appellants to the District Administration appears to be de hors the law and strongly unsustainable. The judgment as impugned in the instant case, is thus liable to be set aside.

28. The instant writ petition faces challenge as to the maintainability on another score. The established principle of public recruitment is in conformity with Article 16 of the Constitution and appointment only of the persons sponsored by the Employment Exchange, violates the same. In ***Excise Superintendent, Malkapatnam v. K.B.N. Visweshwara Rao [(1996) 6 SCC 216]***, the Supreme Court held restricting recruitment only to candidates sponsored by the Employment Exchange violates Article 16; the process must involve wide publicity of the vacancy and ensure broader opportunity. The Court emphasized that limiting selection only to sponsored candidates excludes many eligible persons and is constitutionally infirm.

29. Be that as it may, for all the reasons as discussed above, the impugned judgment dated May 19, 2025 in WPA no. 8847 of 2009 is set aside. This Court is however, of the opinion that, there are

several disputed questions of fact which require judicial attention of the appropriate statutory authority and the matter is to be tried on evidence. This Court, in exercise of power under Article 226 of the Constitution, is not to interfere into the dispute raised by entertaining the writ petition.

30. In that view of the matter, the instant appeal is disposed of by directing the Assistant Labour Commissioner/Conciliation Officer under the Industrial Disputes Act, 1947 of appropriate jurisdiction, to consider the instant writ petition as an application by the appellant/writ petitioners presented before it, raising an industrial dispute and consider and dispose of the same in accordance with law.

31. The appellant/writ petitioners would be at liberty to submit a photocopy of the writ petition before the Assistant Labour Commissioner/Conciliation Officer under the Industrial Disputes Act, 1947 of appropriate jurisdiction for the purpose.

32. The appeal No. MAT 1340 of 2025 is allowed and disposed of.

33. Urgent certified copies of this judgment, if applied for, be supplied to the parties upon compliance with all requisite formalities.

(Lanusungkum Jamir, J.)

(Rai Chattopadhyay, J.)