IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
APPELLATE SIDE

Present:

The Hon'ble Justice Shampa Dutt (Paul)

WPA 28603 of 2025

ICICI Bank Limited
Vs
Union of India & Ors.

For the petitioner	:	Mr. Soumya Majumder, ld. Sr. Adv. Ms. Pooja Chakraborti, Mr. Prithwish Roy Chowdhury, Mr. Aritra Deb.
For the Respondent No. 4	:	Mr. Kamalesh Jha, Mr. Md. Raihan Islam.
For the Respondent No.1	:	Mr. Asis Mukherjee.
Judgment reserved on	:	18.03.2026
Judgment delivered on	:	27.04.2026

Shampa Dutt (Paul), J.:

1. The writ application has been preferred praying for direction upon the respondent authorities to withdraw/cancel the order of reference dated May 22, 2025, passed by the Deputy Chief Labour Commissioner (Central), Government of India, and thus prays for quashing the impugned reference order dated May 22, 2025.

2. The petitioner's case herein is that the Bank of Madura (hereinafter "e-BOM") was amalgamated with the petitioner bank with effect from March 10, 1993 by virtue of a scheme of amalgamation in terms of Section 44A of the Banking Regulation Act, 1949.

3. The respondent no. 4, originally an employee of e-BOM, became an employee of the petitioner bank, since the date of amalgamation. He continued to receive salaries and benefits like the employees of the Petitioner bank after the merger of e-BOM with the petitioner bank.

4. The employees of the petitioner bank do not have a provision for pension. However, the employees of e-BOM who had been absorbed in the service of the petitioner bank, get pension in terms of Employees' Pension Regulations, 1995 on the basis of the basic pay drawn by them on the date of amalgamation.

5. This limited liability is owed by the Petitioner bank as a part of the conditions of the amalgamation. Since the Petitioner bank does not have its own Pension Regulations, no service condition of the employees of the Petitioner bank is reconcilable with the Employees' Pension Regulations, 1995 and the pension calculation under the Employees' Pension Regulations, 1995 ceased to have effect post amalgamation date.

6. Thus, for the purpose of pension, the employees of the erstwhile e-BOM are separately classed than the employees of the Petitioner bank.

7. The respondent no. 4, on June 30, 2016, superannuated from the service of the petitioner bank, on attainment of 60 years of age. He was

2026:CHC-AS:641

holding the post of Assistant Manager on the date of superannuation and therefore, a managerial employee. He was not a "workman" within the meaning of the Industrial Dispute Act on the date of superannuation.

8. The petitioner Bank does not have any trade union to represent its workers. Post superannuation, the Respondent no. 4 had raised a purported industrial dispute over the issue of his entitlement to higher pension in terms of Employees' Pension Regulations, 1995 by lodging a complaint with the "Samadhan" Portal.

9. Conciliation proceedings were thereafter initiated in the offices of the Respondent nos. 2 and 3.

10. The Respondent no. 2, being the Conciliation Officer, submitted a failure report to the Government of India.

11. The respondent no. 3 then issued the impugned order of reference to the learned Central Government Industrial Tribunal cum Labour Court, Kolkata over the issue of calculation of pension.

12. Hence, the writ application on the following grounds:-

I) That there was no material before the Government to make the impugned order of reference.

II) That in the facts and circumstances of the case, the conciliation officer had failed to discharge its statutory duties to enquire as to whether there was any industrial dispute in existence capable of being conciliated upon.

III) A retired employee, even if he be a ‘workman’, cannot raise an "industrial dispute.

2026:CHC-AS:641

13. The present case instituted by an individual employee without being sponsored as a collective dispute by a substantial number of workmen of the industry, could not have been referred for adjudication.

14. As, the respondent no. 4 was a managerial personnel, the reference ought not to have been made by the appropriate Government.

15. Thus, it is stated that the order of reference is bad in law.

16. Written notes have been filed by both the parties.

17. The petitioner has reiterated it's case as made out in the writ application and has relied upon the following judgments:-

i) Hindustan Lever Ltd. vs. Fourth Industrial Tribunal & Ors. Reported in 2006 SCC OnLine Cal 651, Para 33 and 42.

> ***"33.*** *Thus, if on an admitted fact the issue of maintainability of the reference can be decided and when no further evidence is necessary, this Court is of the view that the question of maintainability of the reference is required to be taken up for consideration. The basic admitted fact in this case, in respect of which there is no dispute in between the parties, is that the respondent Nos. 3 to 54 are persons who have retired from their services and may be termed as ex-employees of the petitioner. The question is whether such ex-employees can come within the definition of "workman" and whether the dispute raised by them can be said to be an "industrial dispute" as the said term has been defined in the said Act of 1947.* ***If the answer to such question is that the respondent Nos. 3 to 54 cannot be said to be workmen and the dispute raised by them cannot be said to be an industrial dispute, then in that event the reference has to be declared***

2026:CHC-AS:641

as bad in law. *According to the definition of the term "workman," quoted above, it would appear that the said definition contemplates any person (including an apprentice)* ***employed in any industry*** *to do any manual, unskilled, skilled, technical, operational, clerical or supervisory works for hire or reward, whether the terms of the employment are express or implied. This shows that the person concerned has to be "employed in any industry" that is to say such person must be in employment. In the second part of the definition of the term "workman" persons who have been dismissed, discharged or retrenched have been included. The third part of the definition deals with the exclusion part. The respondent Nos. 3 to 54 are neither in employment at present nor were they in employment when the dispute was raised and the reference was made. It is also not the case of the respondent Nos. 3 to 54 that they were dismissed, discharged or retrenched from their service. There is no ambiguity in the said definition. If the words "any person" in the said definition was intended to include a person who was employed at any point of time and had subsequently retired then the latter part of the definition, which contemplates a discharged, dismissed or retrenched employee, would have become redundant and useless.* ***Thus, this Court is of the view that a plain reading of the said S. 2(s) would indicate that a retired person was not intended to be included in the said definition.***

42. *In ICI India, Ltd. case (vide supra), the Hon'ble Single Judge of Bombay High Court was pleased to hold in Para. 45 of the reports that "for the purpose of pensionary rights, the pensioner or retiree would as much be as workman a other workman whose contracts of employment are still subsisting" and subsequently His Lordship was pleased to hold that "I see no difficulty in holding that, even*

after retirement, a retiree has the right to take recourse to the adjudicatory machinery made available under the provisions of the Act." It appears from the same paragraph that His Lordship was pleased to rely upon a judgment of a Division Bench of Bombay High Court in P.L. Mayekar case (vide supra), and also a judgment of the Hon'ble Supreme Court in Dimakuchi case (vide supra), but His Lordship was also pleased to observe that though "both the decisions were concerned with relief to a dismissed workman, the principle can be extended to the case on hand also." ***It will appear from the definition of the term "workman" in S. 2(s) that a person who has been dismissed from his service is included in the definition of the term "workman" but a retiree does not find place in the definition of the term "workman."*** *In Para. 47 of the said reports His Lordship was pleased to hold that "every workman of today is a pensioner or retiree, after his date of retirement. Conversely, every retiree or pensioner was a workman at some earlier point of time." With respect, such observation indicates that a retiree does not continue to be a workman after retirement but that he was a workman at some earlier point of time. This Court is of the view that the meaning of the word "workman" in the present context will have to be understood as it has been defined in the said Act of 1947. In the present case had the respondents concerned been dismissed or discharged employees or retrenched employees the situation would have been different. In the instant case, concerned respondents are all retirees. In such circumstances, this Court finds that the said ICI India Ltd. case (vide supra), cannot be made applicable to the facts and circumstances of the instant case."*

2026:CHC-AS:641

ii) Secretary, Indian Tea Association vs. Ajit Kumar Barat & Ors. Reported in (2000) 3 SCC 93, Para 6,7,9 & 10..

> ***"6.*** *In Sultan Singh v. State of Haryana [(1996) 2 SCC 66 : 1996 SCC (L&S) 751 : (1996) 32 ATC 847] this Court held that an order issued under Section 10 of the Act is an administrative order and the Government is entitled to go into the question whether an industrial dispute exists or is apprehended and it will be only a subjective satisfaction on the basis of the material on record and being an administrative order no lis is involved.*
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> ***7.*** *The law on the point may briefly be summarised as follows:*
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> *1. The appropriate Government would not be justified in making a reference under Section 10 of the Act without satisfying itself on the facts and circumstances brought to its notice that an industrial dispute exists or is apprehended and if such a reference is made it is desirable wherever possible, for the Government to indicate the nature of dispute in the order of reference.*
>
> *2. The order of the appropriate Government making a reference under Section 10 of the Act is an administrative order and not a judicial or quasi-judicial one and the court, therefore, cannot canvass the order of the reference closely to see if there was any material before the Government to support its conclusion, as if it was a judicial or quasi-judicial order.*
>
> ***3. An order made by the appropriate Government under Section 10 of the Act being an administrative order no lis is involved, as such an order is made on the subjective satisfaction of the Government.***
>
> ***4. If it appears from the reasons given that the appropriate Government took into account any consideration irrelevant or foreign material, the court may in a given***

2026:CHC-AS:641

case consider the case for a writ of mandamus.

5. It would, however, be open to a party to show that what was referred by the Government was not an industrial dispute within the meaning of the Act.

9. *The appropriate Government would be justified in making a reference under Section 10 of the Act, if it is satisfied on the facts and circumstances brought to its notice that an industrial dispute exists or is apprehended and "industrial dispute" as per clause (k) of Section 2 of the Act means, inter alia, a dispute or difference between employers and employers, or between employers and workmen. Clause (s) of Section 2 of the Act defines "workman" but does not include any such person—*

*"2. (s) (i)-(ii) * * **

(iii) who is employed mainly in a managerial or administrative capacity; or

(iv) who, being employed in a supervisory capacity, draws wages exceeding one thousand six hundred rupees per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature."

10. Before making a reference under Section 10 of the Act the appropriate Government has to form an opinion whether an employee is a workman and thereafter has to consider as to whether an industrial dispute exists or is apprehended."

18. The private respondent in the present case on filing written notes has argued that the respondent was employed in a non-managerial cadre and is a "workman" within the meaning of Section 2(s) of the Act, **who retired from service and is presently receiving pension.**

19. It is the further case of the answering respondent that pension is "deferred wage" and part of service conditions and as it is settled law that pension is not a bounty but a deferred wage, pension is a valuable right flowing from past service, it is deferred portion of compensation. Therefore, pension is intrinsically connected to employment and squarely falls within the ambit of industrial jurisprudence.

20. The dispute relates to interpretation and implementation of settlement, and computation of monetary benefits arising out of employment and **such disputes survive retirement and remain industrial disputes.**

21. The respondent is receiving lesser pension every month which gives rise to a recurring and continuous cause of action. Hence, the dispute is not stale but live and subsisting and the appropriate Government has, upon due application of mind, referred the dispute.

22. It is settled law that at the stage of reference only the existence of dispute is to be seen and merits cannot be adjudicated.

23. Labour legislation is beneficial in nature and the beneficial interpretation is in favour of workman.

24. Without prejudice, even computation of benefits can be claimed under Section 33C(2) of the Act. This itself establishes that disputes relating to monetary benefits post retirement are recognized under industrial law framework.

25. The order of reference dated 22.05.2025 is as follows:-

> ***".....No in Kos-700020/09/2025.E.Dy.CLC(C):*** *WHEREAS, the undersigned is of the opinion that an industrial dispute exists between the employer in relation to the management of M/S ICICI Bank Limited and their*

workman in respect of the matter specified in the Schedule below.

AND WHEREAS, the undersigned considers it desirable to refer the said dispute for adjudication;

NOW THEREFORE, in exercise of the powers conferred by sub-section ***(5) of Section 12 read with sub-section (2A) of Section 10 of the Industrial Disputes Act, 1947 (14 of 1947)*** *on the Central Government and Delegated to the undersigned in pursuance of the Notifications of the Government of India, in the Ministry of Labour & Employment published in the Gazette of India, Extraordinary Part II, Section 3, Sub-Section (ii) vide S.O. 1262 (E) and 1263(E) both dated the 17.03.2023, the undersigned after complying with the relevant conditions of the said Notifications hereby refers said dispute for adjudication to the* ***CGIT-cum-Labour Court, Kolkata.*** *The said Tribunal shall give its award within a period of three months on the reference specified in the Scheduled below.*

The Schedule

- *"**Whether** Sri Monoj Kumar Baul, retired employee / pensioner of ICICI Bank(erstwhile Bank of Madura) is **fall within the meaning of definition of workman as per Section 2(s) of Industrial Disputes Act, 1947?**"*
- *"Whether the action of the management of ICICI Bank in **calculating of pension** from the basic pay in the year 2001 instead of last drawn basic pay of superannuation in the year 2016 is legal and justified? If not, what relief the concerned workman is entitled to?".....”*

26. The report of the conciliation officer dated 27.02.2025 states as follows:-

"……. View of the conciliation officer; when considering the aggrieved pensioner can raise an ID under ID act 1947, it is crucial to understand the definition of workman of the act. The ID act 1947 primarily addresses disputes between the employer and workman who are employed in an industrial est, generally retired employees do not fall within the legal definition of workman under this act since the direct employer- employee's relation ceases once the workman superannuated from the services, while the Industrial Dispute act may not be the primary avenue, pensioners may explore other legal remedies to address their grievances such as raising the grievances before the competent authority under the relevant law. While the issue of the instant pensioner is significant as illustrated in the above submissions, the ID act has limitation regarding retired workman.

Therefore due to divergent view of both the parties and as requested by the complaint by way of written submission today the instant dispute matter is ***disposed of as failure……"***

27. Section 10(2A) of the Industrial Dispute Act lays down:-

"Section 10(2-A) *An order referring an industrial dispute to a Labour Court, Tribunal or National Tribunal under this section shall specify the period within which such Labour Court, Tribunal or National Tribunal shall submit its award on such dispute to the appropriate Government:*

Provided that where such industrial dispute is connected with an individual workman, no such period shall exceed three months:

Provided further that where the parties to an industrial dispute apply in the prescribed manner, whether

jointly or separately, to the Labour Court, Tribunal or National Tribunal for extension of such period or for any other reason, and the presiding officer of such Labour Court, Tribunal or National Tribunal considers it necessary or expedient to extend such period, he may for reasons to be recorded in writing, extend such period by such further period as he may think fit:

Provided also that in computing any period specified in this sub-section, the period, if any, for which the proceedings before the Labour Court, Tribunal or National Tribunal had been stayed by any injunction or order of a Civil Court shall be excluded:

Provided also that no proceedings before a Labour Court, Tribunal or National Tribunal shall lapse merely on the ground that any period specified under this sub-section had expired without such proceedings being completed.]"

28. Section 12(5) of the Industrial Dispute Act lays down:-

***"Section 12(5)** If, on a consideration of the **report** referred to in sub-section (4), the appropriate Government is satisfied that there is a case for reference to a Board, [Labour Court, Tribunal or National Tribunal], it may make such reference. Where the appropriate Government does not make such a reference, it shall record and communicate to the parties concerned its reasons therefor."*

29. Section 33C(2) of the Industrial Dispute Act lays down:-

"Section 33C(2)** Where any workman is entitled to receive from the employer any money or any benefit which is capable of being computed in terms of money and **if any question arises as to the amount of money due or as to the amount at which such

> ***benefit should be computed,*** *then the question may, subject to any rules that may be made under this Act, be decided by such Labour Court as may be specified in this behalf by the appropriate Government [within a period not exceeding three months:]*
>
> *[Provided that where the presiding officer of a Labour Court considers it necessary or expedient so to do, he may, for reasons to be recorded in writing, extend such period by such further period as he may think fit.]"*

30. Admittedly the petitioner herein superannuated on 30th June, 2016, the petitioner **after almost 9 years** made an application to the Assistant Labour Commissioner, Central, Kolkata-1 claiming discrimination in payment of pension.

31. It is on record that the petitioner was originally an employee of bank of Madura which amalgamated with the petitioner bank on and from March 10, 1993. The petitioner was absorbed in the service of the petitioner bank and gets pension in terms of employees pension regulation 1995, as per conditions of amalgamation. The petitioner superannuated when he was holding the post of an Assistant Manager.

32. The reference in the present case is under Section 10(2A) of the Industrial Dispute Act. The authority concerned has framed a issue, where it is to be decided as to whether an employee herein a retired pensioner of the bank, comes under the definition of "workman" as per Section 2S of the Industrial Disputes Act. The second issue talks about calculation of pension.

2026:CHC-AS:641

33. In view of the judgment relied upon by the petitioner in ***Hindustan Lever Ltd. (Supra),*** question of maintainability of a reference can be taken up for consideration when no further evidences necessary. The Court clearly held as follows:-

> *"33..... If the words "any person" in the said definition was intended to include a person who was employed at any point of time and had subsequently retired then the latter part of the definition, which contemplates a discharged, dismissed or retrenched employee, would have become redundant and useless. Thus, this Court is of the view that a plain reading of the said S. 2(s) would indicate that a retired person was not intended to be included in the said definition.....*
>
> *42..... It will appear from the definition of the term "workman" in S. 2(s) that a person who has been dismissed from his service is included in the definition of the term "workman" but a retiree does not find place in the definition of the term "workman." In Para. 47 of the said reports His Lordship was pleased to hold that "every workman of today is a pensioner or retiree, after his date of retirement. Conversely, every retiree or pensioner was a workman at some earlier point of time."* ***With respect, such observation indicates that a retiree does not continue to be a workman after retirement but that he was a workman at some earlier point of time.*** *This Court is of the view that the meaning of the word "workman" in the present context will have to be understood as it has been defined in the said Act of 1947. In the present case had the respondents concerned been dismissed or discharged employees or retrenched employees the situation would have been different. In the instant case, concerned respondents are all retirees. In such circumstances, this Court finds that the said ICI India Ltd. case (vide supra), cannot be made applicable to the facts and circumstances of the instant case."*

34. The Supreme Court in ***Secretary, Indian Tea Association (Supra)*** was of the view that:-

> ***"10. Before making a reference under Section 10 of the Act the appropriate Government has to form an opinion whether an employee is a workman and thereafter has to consider as to whether an industrial dispute exists or is apprehended."***

35. In the present case, issue no. 1 in the reference shows that **no opinion** as whether an employee is a workman or not, has been formed. It has been left to the tribunal by the authority.

36. The question as to the retired employee being a workman not or is the issue no. 1. **Thus the requirement of Section 10 of the I.D. Act has not been complied with before holding that an industrial dispute exists.** ***Secretary, Indian Tea Association (Supra)***

37. In view of the judgments in ***Hindustan Lever Ltd. (Supra) and Secretary, Indian Tea Association (Supra)*** issue no. 1 in the reference is not in accordance with law, as the employee being a retired employee is not a 'workman' under Section 2(S) of the Act.

38. Thus the private respondent being a retired employee is not a 'workman' under 2(S) of the Act and thus cannot raise an industrial dispute.

39. Regarding issue no. 2, the same relates to his calculation of pension a claim made after 9 years.

40. As such it is clear that the employee herein does not come within the definition of Section 2(S) of the Industrial Dispute Act and the reference under Section 10 of the Act to that extent is not in

accordance with law. Regarding issue no. 2 in the reference, as specific provision is provided under Section 33C of the Industrial Dispute Act and Section 33C(2) provides for computation of any money due to the workman and for which an application under the relevant provision has to be made and while considering the prayer for calculation of dues, the Court can also prima facie consider the status of the employee afresh to consider his prayer for computation.

41. Section 33C also provides that such application is to be made within one year. In the present case admittedly the petitioner has raised the issue after 9 years.

42. Thus in view of the observations made in this judgment, the reference in the present case being not in accordance with law is set aside and quashed.

43. Writ application is accordingly allowed. The reference dated 22.05.2025 passed by the Deputy Chief Labour Commissioner (Central), Government of India, being not in accordance with law is quashed and set aside.

44. Writ application stands disposed of.

45. Connected application, if any, stands disposed of.

46. Urgent Photostat certified copy of this judgment, if applied for, be supplied to the parties expeditiously after due compliance.

(Shampa Dutt (Paul), J.)