IN THE HIGH COURT AT CALCUTTA
CONSTITUTIONAL WRIT JURISDICTION
ORIGINAL SIDE

Present:
The Hon'ble Justice Rai Chattopadhyay

WPO 737 of 2016

ICPA Health Products Limited
Vs.
The State of West Bengal & Ors.

For the petitioner	: Dr. Samir Chakraborty : Mr. Abhijit Biswas : Mr. B. Sengupta
For the State	: Ms. Tapati Samanta : Mr. Biswajit Mukherjee : Mr. S. Debnath
For the respondent No. 2	: Mr. Balaram Patra : Mr. Suvadip Bhattacharjee
Judgment on	**: 02.09.2026**
Uploaded on	**: 02.09.2026**

Rai Chattopadhyay, J. :-

1. This writ Court faces two determinable issues in the instant writ petition, in which the petitioner/company challenges an Award of the 7th Industrial Tribunal, West Bengal, dated March 31, 2016 in Case No.16/1008(d) of 2012. Firstly, whether the 7th Industrial Tribunal had territorial jurisdiction to entertain and adjudicate the industrial dispute or the impugned Award suffers from jurisdictional error and thus liable to be set aside. Secondly that whether the Tribunal's findings as regards the illegality and impropriety of the domestic enquiry procedure, resulting into dismissal of the private respondent, suffers from

unreasonableness, perversity and is thus illegal and liable to be set aside.

2. As stated earlier, an Award of the 7th Industrial Tribunal, West Bengal, dated March 31, 2016, is under challenge in the instant writ petition. The Tribunal has considered the following 4 issues, in the same:

- **"**(1) Is the case maintainable?
- (2) Has the Tribunal territorial jurisdiction to adjudicate the dispute as raised by the applicant?
- (3) Is the order of dismissal of the applicant, Sri Tapan Chatterjee w.e.f. 24.03.2011 by the management of O.P. Company justified and legal?
- (4) To what relief, if any, is the applicant entitled?**"**

Regarding issues No. 1 and 2, the Tribunal has held that the same has territorial jurisdiction duly vested in it and the instant industrial dispute is maintainable before it. As regards issues No. 3 and 4 the Tribunal has held that dismissal of service of the private respondent was illegal and directed for his reinstatement with payment of back wages from the date of his alleged illegal termination, till the date of resumption of service by the respondent. The writ petitioner/company, being aggrieved with such Award of the Tribunal, has filed the instant writ petition. The petitioner has prayed for the relief inter alia that the Award of the Tribunal dated March 31, 2016, may be set aside

3. This case has a chequered background. Facts relevant for determination of issues involved in this writ petition, may be narrated in a nut-shell. From February 1, 1990, the private respondent was appointed as a Medical Representative by the writ petitioner/pharmaceutical company. The appointment letter was formally issued on February 8, 1990. His initial Head Quarter was stated to be Imphal. The said appointment letter of the private respondent was issued from the company's registered office at Mumbai. The management subsequently relied upon a clause in the appointment letter providing that, in case of dispute,

Bombay/Mumbai would have jurisdiction. On June 1, 1991, his service was confirmed by the company. Dispute arose on 2009. On the allegation of various irregularities, financial and otherwise, the petitioner/company issued a letter dated March 29, 2010, intimating that the respondent/employee should attend a preliminary enquiry to be held on April 9, 2010.

4. On the said stipulated day the preliminary enquiry was held. The management subsequently stated that the preliminary enquiry disclosed sufficient grounds for issuing a formal charge-sheet. The employee, on the other hand, subsequently alleged that the person who conducted the preliminary enquiry ought not to have thereafter acted as the Enquiry Officer because of apprehended bias. Be that as it may, an order of suspension was issued thereafter against the private respondent, on April 13, 2010. On April 16, 2010, a formal charge-sheet was issued containing eight principal charges. These included alleged false reporting of work on February 28, 2010, negligence concerning stockists, failure to maintain proper contact with doctors/stockists, discrepancies in Daily Call Reports, failure to follow the approved itinerary, delayed leave application and other alleged acts of negligence/misconduct. On April 24/28, 2010, the employee submitted his explanation to the charges. He denied misconduct and attributed the disputed entries to inadvertence. He also alleged that reports relied upon by the management had not been supplied to him and disputed the substantive allegations. He also wrote letter of objection dated April 26, 2010, against the suspension order.

5. On May 19, 2010, the company issued notice fixing the domestic enquiry on June 2, 2010, appointing one Mr. Dwarkanath N. Waykul as the Enquiry Officer and Mr. P. Bhaskaran as the Presenting Officer. Vide letter dated May 27, 2010, the private respondent/employee requested that the enquiry be held in West Bengal, where he was employed, and also sought permission to be represented by a legal representative. However, on the scheduled date, the enquiry commenced at the company's Head Office in Mumbai. The

Enquiry Officer rejected the employee's request to shift the venue to West Bengal. The employee alleged that this caused prejudice to him, because his witnesses were available in West Bengal and could not be taken to Mumbai. Financial stringency has been said to be reason for the same, whereas it has been alleged too, that in spite of prayer made to this effect, the company never bore costs of bringing the witnesses to Mumbai, by the respondent/employee. On June 10, 2010, the employee informed the company that he wished to be represented by Sri Sasanka Mouli Roy and again requested that the enquiry be held in West Bengal. On July 15, 2010, the employee appeared in the enquiry and again sought payment of travelling and accommodation expenses for his representative. On August 16, 2010, the employee informed the Enquiry Officer that he could not attend the enquiry because his Federation had called a two-day strike on 17 and 18 August 2010.

6. On the next date fixed that is, on August 19, 2010, the employee was absent at Mumbai. According to his case, the Enquiry Officer proceeded ex-parte and took several documents on record without formal proof through witnesses. On September 6, 2010, the company changed the Presenting Officer and appointed Mr. Ramesh J. Virdikar in place of Mr. P. Bhaskaran. The employee appeared on September 8, 2010 with his defence representative, Mr. T.V. Sridhar. He protested against the procedure adopted in the enquiry and the refusal to change the venue. His defence representative also objected to the replacement of the Presenting Officer by an advocate. On September 24, 2010, the employee filed a written objection concerning the appointment of the new Presenting Officer and other aspects of the enquiry. The Enquiry Officer rejected the objections. On November 9, 2010, the defence representative partly cross-examined the management witness. The cross-examination later completed on December 2 and 3, 2010. On December 29, 2010, the domestic enquiry was concluded. The Enquiry Officer submitted his enquiry report dated January 12, 2011, holding the employee guilty of the charges levelled against him.

7. The company issued a second show-cause notice dated March 4, 2011, enclosing the enquiry report and calling upon the employee to submit his explanation. Though on March 23, 2011, the employee/respondent requested for extension of time to submit his reply till April 5, 2011, the management, without paying any heed to the said request of the employee, issued the order of dismissal of the respondent on March 24, 2011. Subsequently the respondent has sent two letters of protest to the management, on March 26 and 29, 2011.

8. Ultimately on April 21, 2011, the respondent raised an industrial dispute before the Labour Commissioner, Government of West Bengal, seeking intervention against his dismissal. Conciliation proceedings followed thereafter. On August 10, 2011, the management submitted its written response before the Assistant Labour Commissioner, principally objecting to the territorial jurisdiction of the West Bengal authorities/Tribunal, relying upon the Mumbai registered office and the jurisdiction clause in the appointment letter. The management stated that it received the communication at the residential address of its Zonal Sales Manager on August 8, 2011. On September 1, 2011, the employee submitted his counter-reply before the Conciliation Officer, disputing the management's objection to territorial jurisdiction and asserting that his employment and the cause of action were substantially connected with West Bengal. On November 11, 2011, The Conciliation Officer issued the Form-S certificate, following which the employee proceeded to invoke the jurisdiction of the Seventh Industrial Tribunal, West Bengal. The employee instituted Case No. 16/1008(d) of 2012 before the Seventh Industrial Tribunal, West Bengal. The Seventh Industrial Tribunal passed an Award on December 31, 2014.

9. The Tribunal's Award dated December 31, 2014, was challenged in writ petition W.P. No. 23859(W) of 2015 and the Single Judge passed an order on October 15, 2015, remanding the industrial dispute to the Tribunal and directing the Tribunal to properly deal with the jurisdiction issue. The writ petitioner company challenged the said order

of the Hon'ble Single Bench dated October 15, 2015 in an appeal being MAT No. 109 of 2016. In the said appeal, the Hon'ble Appeal Bench of this Court by an order dated February 24, 2016, had directed the Tribunal to proceed as per order of the Hon'ble Single Judge and pass an Award upon completion of the entire proceeding, before March 31, 2016. The Appeal Court had kept all points of dispute regarding jurisdiction open, to be decided by the Tribunal. Hence, the matter was remanded back to the Tribunal and the Tribunal proceeded with the reference from February 15, 2016 and finally, by dint of the impugned Award dated March 31, 2016 directed as stated above.

10. The argument of the petitioner company is principally three-fold. Dr. Samir Chakraborty, learned advocate appearing for the petitioner has submitted firstly, that the Tribunal has erred in coming into conclusion that it had territorial jurisdiction to entertain and adjudicate the dispute. He has submitted that in terms of the contract of service of the private respondent/employee, only Courts/Tribunals in Mumbai have exclusive jurisdiction to entertain and adjudicate the industrial dispute in question. It is submitted further that even otherwise, the 7th Industrial Tribunal, West Bengal had no jurisdiction to entertain and decide the reference in view of jurisdictional restriction notified by the Government of West Bengal vide Notification No. 101-1R/12L-14/1 dated February 02, 2012. Secondly, it has been submitted that in the event, the Tribunal has come into conclusion about impropriety and illegality as to the domestic enquiry procedure conducted by the company, due to violation of principles of natural justice or otherwise, the only avenue left is to remand back the domestic enquiry procedure for being conducted afresh. The company's contention is that, there is no violation of the principles of natural justice in conduct of domestic enquiry procedure by the company, the respondent employee has been given adequate and ample opportunity of defending his own case, he has been allowed opportunity to cross-examine the company's witness and on every stage all documents relied on by the company or exhibited in the enquiry proceeding have been duly supplied to the said employee. Thus, that

the Tribunal has erred in law in finding the domestic enquiry procedure to be not in accordance with law and also has erred in not remanding the case for conduct of domestic enquiry afresh allowing opportunity to the employee concerned which he says has not been accorded to him. Thirdly, Dr. Chakraborty, learned advocate has submitted that the relief granted by the Tribunal in the impugned Award of reinstatement with full back wages is illegal and disproportionate. He has emphasized upon the judicial pronouncements which dealt with the issue as to whether the relief of reinstatement can be granted but without the benefit of full back wages. He submits that the respondent's case fall within the settled criteria of that standard. Hence, the Tribunal has erred and committed illegality in awarding reinstatement with full back wages to the respondent.

11. The argument of the writ petitioner may be summarized in the following manner: -

Territorial jurisdiction

12. The appointment letter expressly provided that Mumbai would have exclusive jurisdiction over all disputes arising from the contract of service, and respondent No. 2 accepted this condition as part of the employment contract. By agreeing to this jurisdiction clause, the parties effectively excluded the jurisdiction of other competent Courts and Tribunals. Such an agreement is legally valid and is neither contrary to public policy nor prohibited by Sections 23 or 28 of the Indian Contract Act. Although the Tribunal recognised that both Mumbai and West Bengal could otherwise have jurisdiction, it failed to give effect to the contractual exclusion clause. Consequently, only the Courts or Tribunals in Mumbai were competent to adjudicate the dispute. The Tribunal's decision to entertain and determine the matter despite this clause constituted a jurisdictional error, rendering the impugned Award without jurisdiction, legally invalid and unsustainable in law.

13. The contention that the 7th Industrial Tribunal has concurrent jurisdiction with the 1st Industrial Tribunal over

a cause of action arising at Ariadaha (Kamarhati), merely because it falls within Greater Kolkata, is legally untenable. The territorial limits of the Kolkata district have been specifically defined by Government Notifications and do not extend to the entire Kolkata Metropolitan Area or Greater Kolkata. The relevant notification expressly confines the jurisdiction of the 7th Industrial Tribunal to the district of Kolkata, whose boundaries are separately demarcated and administered. The Kolkata Metropolitan Area, on the other hand, is governed under a distinct statutory framework and cannot be equated with the administrative district of Kolkata. Therefore, expansion of the metropolitan area does not automatically enlarge the territorial jurisdiction of the Kolkata district or the 7th Industrial Tribunal. Consequently, in respect of a dispute arising at Ariadaha (Kamarhati), the 7th Industrial Tribunal cannot claim concurrent jurisdiction with the 1st Industrial Tribunal merely on the basis that the location forms part of Greater Kolkata.

Domestic enquiry proceedings

14. The Tribunal, after finding that the domestic enquiry conducted by the petitioner was improper and in violation of the principles of natural justice, ought to have permitted the petitioner to lead fresh evidence to establish the charges against respondent No. 2 and justify the order of dismissal, particularly since such an opportunity had been specifically sought in the petitioner's written statement. By failing to grant this opportunity, the Tribunal acted contrary to settled principles of law. Consequently, the impugned award stands vitiated by a material error of law and is liable to be regarded as illegal, invalid and unsustainable.

Full back wages

15. The petitioner contends that the Tribunal erred in directing reinstatement of respondent No. 2 with full back wages and consequential benefits, particularly when the materials on record demonstrated a complete loss of confidence in him. The charges levelled against the respondent, coupled with

several complaints received from doctors, chemists and other persons with whom he interacted while promoting the petitioner company's pharmaceutical products, indicated that the employer could no longer reasonably repose trust in him; therefore, reinstatement ought not to have been ordered automatically. It is further contended that even where termination is found to be illegal or unjustified, reinstatement with full back wages is not an absolute or automatic consequence, and the Tribunal was required to consider all relevant circumstances before granting such relief. The petitioner could not reasonably be compelled to pay wages for a period during which the respondent rendered no service or contribution, particularly when more than five years had elapsed since his dismissal on March 24, 2011. Moreover, apart from a bare assertion in the written statement and affidavit evidence, the respondent produced no substantive material establishing that he remained continuously unemployed until the award dated March 31, 2016. Accordingly, the Tribunal ought to have held that respondent No. 2 was not entitled to reinstatement with full back wages and consequential benefits.

16. In support of his argument as above, Dr. Chakraborty has relied on the following judgments –

17. Concerning argument relating to lack of territorial jurisdiction of the 7th Industrial Tribunal, Kolkata –

I. Swastik Gases Private Limited v. Indian Oil Corporation Limited (2013) 9 SCC 32 - The Apex Court has held that a clause making an agreement "subject to the jurisdiction of courts at Kolkata" confers exclusive jurisdiction upon Kolkata courts, notwithstanding the absence of words such as "alone" or "exclusive," provided such courts otherwise have jurisdiction. Such a clause is valid and enforceable and does not offend Sections 23 or 28 of the Indian Contract Act, 1872.

18. Concerning argument relating to validity of domestic enquiry -

I. ***Karnataka State Road Transport Corporation v. Lakshmidevamma*** (2001) 5 SCC 433 - The Supreme Court held that Labour Courts and Tribunals have procedural flexibility under Section 11 of the Industrial Disputes Act, 1947, and may call for additional evidence or documents at any stage, subject to the principles of natural justice, where necessary to secure the ends of justice.

II. ***Divyash Pandit v. Management, NCCBM*** (2005) 2 SCC 684 - It was held that the Labour Court/Tribunal may permit additional evidence even without a prior plea in the written statement and, where a domestic enquiry is *non est*, should ordinarily allow the employer an opportunity to prove the charges before passing the award.

III. ***Kurukshetra University v. Prithvi Singh*** (2018) 4 SCC 483 – The Court found that the Labour Court must first determine the validity of the domestic enquiry and, if upheld, consider whether the punishment is proportionate under Section 11-A of the Industrial Disputes Act, 1947.

19. Concerning argument relating as to whether the Tribunal could award full back wages to the respondent –

I. ***Novartis India Limited v. State of West Bengal*** (2009) 3 SCC 124 - The Supreme Court held that back wages are not automatic or a matter of right and must be determined on the facts of each case, including the workman's conduct.

II. ***Jagbir Singh v. Haryana State Agriculture Marketing Board*** (2009) 15 SCC 327 - Reinstatement with back wages is not automatic upon illegal termination; depending on the circumstances, monetary compensation may be awarded instead to meet the ends of justice.

III. ***Shriram Refrigeration Industries v. Hon'ble Addl. Industrial Tribunal-cum-Addl. Labour Court, Hyderabad*** (2002) 9 SCC 708 - Considering the loss of confidence in the workman employed as a Security Guard, the Court confined the relief to appropriate compensation in lieu of reinstatement.

IV. ***Assembly of God, Hospital & Research Centre v. First Industrial Tribunal, West Bengal*** 2002 (4) LLN 721 (Cal) - Reinstatement under Section 11-A is not absolute; where it is inexpedient or prejudicial to the establishment, compensation may be awarded in lieu thereof.

V. ***Workmen v. Bharat Fritz Werner (P) Ltd.*** (1990) 3 SCC 565 - The Apex Court held that where the employer has lost trust and confidence in the employee, reinstatement may not be an appropriate remedy, and the Tribunal may instead award compensation in lieu of reinstatement.

VI. ***PVK Distillery Limited v. Mahendra Ram*** (2009) 5 SCC 705 - The Supreme Court held that reinstatement with full back wages is not automatic upon illegal termination and must depend upon the facts, passage of time, and equitable considerations of each case.

VII. ***Rajasthan State Road Transport Corporation, Jaipur v. Phool Chand (Dead) through legal representatives*** (2018) 18 SCC 299 - Back wages are not an automatic right merely because an employee's dismissal or termination has been set aside and reinstatement ordered. The initial burden lies on the workman to plead and prove that, during the period of unemployment; they were not gainfully employed and had no sufficient earnings, while the employer may produce evidence to the contrary. The Court must exercise judicial discretion, considering the facts and evidence of each case, and may award full or partial back wages or decline them altogether.

VIII. ***Hindustan Tin Works Pvt. Ltd. v. Employees of Hindustan Tin Works Pvt. Ltd.*** (1979) 2 SCC 80 - The Supreme Court earlier held that reinstatement with full back wages is ordinarily appropriate where termination is illegal, particularly when arising from unfair labour practice.

However, the Tribunal erred in relying on the said principle without considering subsequent Supreme Court decisions modifying the legal position.

20. Mr. Suvadip Bhattacharjee has appeared for the private respondent No. 2/employee concerned. The argument of the respondent may be summarised in the following manner : -

I. ***Non-maintainability of writ petition*** - The writ petition is wholly misconceived and not maintainable, as the award passed by Respondent No. 3 suffers from no legal infirmity, perversity, procedural irregularity, or miscarriage of justice. The petitioner, in effect, seeks re-appreciation of findings of fact recorded by the competent fact-finding authority, which is impermissible in exercise of the writ jurisdiction under Article 226 of the Constitution of India. This Hon'ble Court, while exercising its power of judicial review, does not sit as a Court of Appeal and cannot examine the adequacy or sufficiency of evidence or substitute its own findings for those of the competent authority.

II. ***Territorial jurisdiction*** - At the time of dismissal, Respondent No. 2 was posted at Hooghly Headquarters, West Bengal. As the situs of employment and cause of action, including service of the dismissal letter, arose in West Bengal, jurisdiction lies there and cannot be determined merely by agreement or consent.

III. ***Domestic enquiry proceedings*** - The alleged complaints forming the basis of the misconduct charges were never furnished to Respondent No. 2, causing serious prejudice. Respondent No. 2 specifically raised this objection in his explanation dated 28.04.2010.

Respondent no. 2 participated in the domestic enquiry and wanted to be represented by his lawyer, which was not allowed and request was also made in writing to hold the enquiry in West Bengal but that was also turned down.

IV. ***Full back wages*** - Respondent no. 2 properly discharged his duties by stating in the written statement before the Tribunal and also in the evidence adduced before the Tribunal that he is not gainfully employed elsewhere after dismissal from service and remain totally unemployed and for the necessary relief has also been granted by this

Hon'ble Court under Section 17B of the Industrial Disputes Act, 1947.

21. The following judgments have been cited by Mr. Suvadip Bhattacharjee;
With respect to territorial jurisdiction –

I. ***Novartis India Limited v. State of West Bengal*** W.P. 21443 (W) of 2015 (unreported) - The Tribunal ought to have ascertained whether the writ petitioner maintained an established place of business at Murshidabad. If so, the 5th Industrial Tribunal, Murshidabad would have jurisdiction; however, if Murshidabad was merely a temporary camp office and the controlling office was situated in Kolkata, jurisdiction would lie with the 7th Industrial Tribunal, Kolkata.

II. ***V.G. Jagdishan v. Indofos Industries Ltd.*** (2022) 6 SCC 167 - The Court observed that as the workman was employed, worked, and was terminated at Ghaziabad, the Court at Ghaziabad alone had territorial jurisdiction. His subsequent shifting to Delhi and service of a demand notice at the management's Delhi Head Office did not create any cause of action in Delhi.

III. ***M/s. Ranbaxy Laboratories Limited v. The State of West Bengal*** 2012 SCC OnLine Cal 4373 - In service matters, an unreasonable contractual term causing inequality or injustice may violate Article 14. A jurisdiction clause compelling an employee to litigate in Delhi despite working in Bhubaneswar and receiving termination at Kolkata was held arbitrary, unreasonable, and therefore illegal.

IV. **Alembic Limited v. State of West Bengal** 2022 SCC OnLine Cal 2108 - The Court affirmed that situs of industrial dispute between workmen and employer will confirm territorial jurisdiction of the Court and location of head office/registered office only may not be sufficient for concluding the territorial jurisdiction of the labour court/industrial tribunal.

V. ***Bikash Bhushan Ghosh v. Novartis India Ltd.*** (2007) 5 SCC 591 - The situs of employment is relevant in determining jurisdiction. As the termination orders were served at Calcutta and were directly connected with the transfer orders, West Bengal had sufficient nexus with the dispute and was therefore the appropriate Government.

22. The following judgments have been cited by the respondent no. 2 with respect to <u>full back wages</u> –

I. ***Jasmer Singh v. State of Haryana*** (2015) 4 SCC 458 - Reinstatement following illegal termination ordinarily restores the employee to the position he would have occupied and carries entitlement to full back wages. To deny such wages, the employer must plead and prove that the employee was gainfully employed during the intervening period.

II. ***Deepali Gundu Surwase v. Kranti Junior Adhyapak Mahavidyalaya*** (2013) 10 SCC 324 - The Apex Court elucidated that in wrongful termination cases, reinstatement with continuity and back wages is the normal rule, subject to relevant circumstances. Once the workman asserts unemployment, the burden shifts to the employer to prove gainful employment.

23. The writ petitioner/company has strongly relied upon a notification No. 101-IR dated February 2, 2012, in its endeavour to substantiate its point that the 7th Industrial Tribunal did not have the territorial jurisdiction, to adjudicate the instant industrial dispute. This notification redefines and specifies the territorial jurisdictions of various Industrial Tribunals across the state for referring and adjudicating labour/industrial disputes under Section 10 of the Industrial Disputes Act, 1947. It dictates exactly which Industrial Tribunal handles cases for specific regions. The notification allocates territorial and sector-specific industrial dispute scopes across tribunals. For better understanding the relevant part of the notification is reproduced below:

Labour Courts/Industrial Tribunals	**Constituted under Notification No.**	**District**
1	**2**	**3**
First Labour Court	** ** **	West Midnapur
Second Labour Court	** ** **	East Midnapur
First Industrial Tribunal	** ** **	24 Parganas (North)
Second Industrial Tribunal	** ** **	Howrah
Third Industrial Tribunal	** ** **	Hooghly
Fourth Industrial Tribunal	** ** **	Nadia
First Industrial Tribunal	** ** **	Murshidabad
Sixth Industrial Tribunal	** ** **	1. Cooch Behar 2. Jalpaiguri 3. Darjeeling 4. Dakshin Dinajpur 5. Dakshin Dinajpur 6. Malda
Second Industrial Tribunal	** ** **	Kolkata
Eighth Industrial Tribunal	** ** **	24 Parganas (South)
Ninth Industrial Tribunal	** ** **	1. Burdwan 2. Birbhum 3. Bankura 4. Purulia

24. The Tribunal has considered the rival contentions on the four issues framed by it and has returned findings on both jurisdiction and illegality of the dismissal order. The jurisdiction of this Court under Article 226 of the Constitution, while undoubtedly wide, is supervisory and not appellate in character. The Court is concerned with the decision-making process and the legality, rationality and procedural propriety of the decision under challenge; it does not ordinarily undertake a re-appreciation of evidence as if sitting in appeal over a statutory fact-finding Tribunal.

25. The writ petitioner's contention is that firstly in accordance with the contract of employment, which has been accepted and acted upon by him, in case of a dispute the situs of a

Court or Tribunal to decide upon the same, should be at the place of the company's head office at Mumbai. Even if it is not, then in accordance with the notification dated February 2, 2012, the 1st Industrial Tribunal should have to be considered as the appropriate forum having jurisdiction and not the 7th Industrial Tribunal, which has ultimately passed the impugned Award. It therefore addresses the impugned Award as a nullity, having been passed by a Tribunal without jurisdiction.

26. The first question, therefore, is whether the 7th Industrial Tribunal, West Bengal lacked territorial jurisdiction. The petitioner places considerable reliance upon the jurisdiction clause contained in the appointment letter, according to which Bombay/Mumbai was stipulated as the place of jurisdiction, and upon the notification dated February 2, 2012 delineating the territorial jurisdiction of the Industrial Tribunals in West Bengal. The submission is that the contractual stipulation operated as an exclusion of the jurisdiction of all other forums and, in any event, that the dispute ought to have been dealt with by the 1st Industrial Tribunal and not by the 7th Industrial Tribunal.

27. The proposition that parties may, in appropriate circumstances, agree to submit their disputes to one amongst several competent forums is not in doubt. The decisions in ***Hakam Singh (supra), A.B.C. Laminart (P) Ltd (supra)*** and ***Swastik Gases (P) Ltd (supra)***, relied upon by the petitioner, recognise that where more than one Court possesses jurisdiction, parties may select one such Court and exclude the others. In ***Swastik Gases (supra)***, the Supreme Court explained the principle by reference to the maxim *expressio unius est exclusio alterius*, holding that where a contract stipulates that it shall be subject to the jurisdiction of a particular Court, the intention to exclude other competent Courts may, in an appropriate case, be inferred. The principle, however, contains its own limitation of fundamental importance: the forum selected by agreement must possess jurisdiction in the first place. Contract cannot create jurisdiction where the law does not

confer it. The Supreme Court has reiterated this very limitation in ***Rakesh Kumar Verma versus HDFC Bank Ltd.*** reported in ***2025 SCC OnLine SC 752***, while explaining that an exclusive jurisdiction clause can be enforced only when, inter alia, the designated court is competent under the governing statutory regime to entertain the dispute.

28. There is, therefore, a distinction between an agreement regulating the choice amongst otherwise competent civil forums and an attempt to displace a statutory adjudicatory jurisdiction. An Industrial Tribunal is not a private forum created by contract. It is a creature of statute, and its jurisdiction flows from the Industrial Disputes Act, 1947 and the order of reference made thereunder. The source of its jurisdiction is thus statutory and not consensual. The parties cannot by agreement either confer jurisdiction upon a forum which does not possess it or, conversely, by private stipulation render a competent statutory forum incompetent where the statutory conditions of jurisdiction are otherwise satisfied.

29. The present dispute has, moreover, a substantial and direct nexus with West Bengal. The private respondent was working within West Bengal at the relevant time, his employment was connected with the State, and the industrial dispute concerned the termination of that employment. The employee had specifically asserted that he was employed in West Bengal and had sought that the domestic enquiry itself be held there. The situs of employment is consequently not an incidental circumstance but a material component in determining where the industrial dispute arose. The Supreme Court in ***Workmen of Shri Rangavilas Motors (P) Ltd. versus Shri Rangavilas Motors (P) Ltd*** reported in ***1967 SCC OnLine SC 59*** recognised that, ordinarily, where there is a separate establishment and the workman is working at that establishment, the dispute would arise at that place, provided there is a nexus between the dispute and the territory concerned. The principle was reiterated and applied

in ***Bikash Bhushan Ghosh (supra)*** and ***Alembic Limited (supra)***, where the Supreme Court held that the fact that another State may also possess jurisdiction does not denude West Bengal of jurisdiction when a part of the industrial dispute substantially arose within its territory. The situs of employment and the place where the dispute substantially arises are material considerations. The mere fact that the petitioner's registered office is at Mumbai, or that the appointment letter emanated from Mumbai, cannot by itself erase the substantial connection which the dispute bears with West Bengal.

30. As regards the notification dated February 2, 2012, the submission of the petitioner proceeds upon the assumption that the notification, by its territorial allocation, conclusively establishes that the 7th Industrial Tribunal lacked jurisdiction. Such an assumption cannot be accepted without examining the nature of the reference, the territorial allocation under the notification and, above all, the actual nexus of the dispute with the area assigned to the Tribunal. The Tribunal, having considered the jurisdictional objection and having returned a positive finding on its jurisdiction, that finding cannot be displaced in writ jurisdiction merely by reproducing the competing interpretation of the notification. The petitioner has not demonstrated that the Tribunal's construction of the statutory allocation is so patent or manifestly erroneous or irrational as to warrant supervisory correction.

31. In the facts of the present case, the situs of employment and the place where the industrial dispute substantially arose bear a close and intimate nexus with each other. The private respondent was employed and posted in West Bengal and was discharging his duties within the territorial area of the State. The dispute itself arises out of the termination of such employment, and the circumstances preceding and surrounding the disciplinary proceeding are substantially connected with the respondent's employment in West Bengal. The situs of employment, therefore, cannot be treated as a mere fortuitous or incidental circumstance

having no bearing upon the territorial jurisdiction of the industrial adjudicatory forum. Once such substantial nexus between the employment, the cause of the dispute and the territory of West Bengal is established, the assumption of jurisdiction by the Seventh Industrial Tribunal cannot, in itself, be faulted. The fact that the employer has its registered or head office at Mumbai, or that certain administrative acts connected with the disciplinary proceeding were undertaken there, does not sever the territorial nexus which the industrial dispute otherwise bears with West Bengal. The jurisdiction assumed by the Seventh Industrial Tribunal, therefore, cannot be characterised as either arbitrary or without foundation in law.

32. The next question concerns the domestic enquiry. The petitioner contends that the employee had adequate opportunity, participated in the enquiry, cross-examined the management witness and was ultimately heard; consequently, the Tribunal ought not to have held the enquiry to be vitiated. It is further argued that, even assuming the enquiry to be defective, the Tribunal was bound to permit the employer to lead fresh evidence to establish the charges. The principles of natural justice do not prescribe an inflexible ritual. Their essential purpose is to ensure a fair opportunity to meet the case, to know the material relied upon and to effectively defend oneself. The test is not whether some opportunity was technically afforded, but whether the opportunity was real, reasonable and effective in the circumstances of the particular case.

33. The circumstances here cannot be examined in isolation. The employee had specifically requested that the enquiry be held in West Bengal, where he was working, and had asserted that his witnesses were available there. The request was rejected and the enquiry proceeded at Mumbai. He also sought representation and raised objections regarding the procedure adopted. It is further his specific case that material complaints and reports relied upon against him were not supplied. The Tribunal, as the primary fact-finding

authority, considered these matters and found the domestic enquiry improper. The mere fact that the employee ultimately participated in portions of the enquiry cannot retrospectively cure a denial of an effective opportunity. Participation in a proceeding does not amount to waiver of every procedural objection, particularly where the employee has contemporaneously protested against the manner and venue of the enquiry. The record indicates that objections were raised at different stages and that the employee did participate through a defence representative, including by cross-examining the management witness. The Tribunal was therefore required to examine whether the participation was meaningful and whether the procedural defects caused prejudice; it was not required to treat participation itself as conclusive proof of fairness. The subsequent course of events further assumes significance. The enquiry report was submitted on January 12, 2011. A second show-cause notice enclosing the report was issued on March 4, 2011. The employee sought time until April 5, 2011 to submit his explanation, on March 23, 2011, but the order of dismissal was passed on the very next day, March 24, 2011. The employee thereafter lodged protests. The chronology is thus not merely one of a technical procedural objection. It is part of the factual matrix which the Tribunal was entitled to take into consideration while determining whether the disciplinary process as a whole satisfied the requirements of fairness.

34. Ratio decided in ***Karnataka State Road Transport Corporation(supra), Divyash Pandit (supra), Kurukshetra University (supra)***, undoubtedly recognise the procedural flexibility available to an Industrial Tribunal and the power to permit additional evidence in an appropriate case. They do not, however, establish an inflexible rule that every time a domestic enquiry is found defective, the employer must necessarily be given another opportunity irrespective of the circumstances. The power to receive further evidence is a discretionary procedural power to be exercised to advance the ends of justice; it cannot be converted into an automatic right to repair every defective

disciplinary proceeding. The question is ultimately one of prejudice and fairness in the particular proceeding. The Tribunal considered the enquiry record and reached the conclusion that the domestic enquiry was not conducted in accordance with the principles of natural justice. No material has been demonstrated before this Court to show that such finding is based upon no evidence or upon an irrelevant consideration. Nor has the petitioner demonstrated such perversity in the Tribunal's reasoning as would justify interference under Article 226. The question before this Court is not whether the Tribunal could have exercised its discretion differently, but whether its exercise of discretion is legally impermissible or manifestly arbitrary. On the materials available, that threshold has not been crossed.

35. The third limb of the petitioner's challenge concerns the relief of reinstatement with full back wages. It is correct, as the petitioner submits, that reinstatement with full back wages is not an automatic or mechanical consequence in every case where termination is found illegal. The decisions in ***Novartis India Ltd (supra)***, ***Jagbir Singh (supra)***, ***PVK Distillery Ltd (supra)***, ***Rajasthan State Road Transport Corporation Jaipur (supra)***, recognise that the grant of back wages depends upon the facts and circumstances of each case and that the adjudicatory authority must exercise judicial discretion. Equally, however, the proposition that back wages are not automatic does not mean that they are impermissible whenever reinstatement is directed. The converse proposition is equally well settled: where the termination is found to be illegal and the employee has been kept out of service by an act attributable to the employer, reinstatement with appropriate monetary consequences may be necessary to restore the employee substantially to the position in which he would have stood but for the illegal action. The remedy is ultimately one of judicial discretion informed by the facts, the conduct of the parties, the nature of the illegality and the evidence regarding gainful employment. The decisions in ***Hindustan Tin Works (P) Ltd (supra)***, ***Jasmer Singh (supra)*** and ***Deepali Gundu***

Surwase** (supra)* operate in this field. They cannot be read as establishing an immutable formula applicable to every case, but they demonstrate that where the workman is found to have been wrongfully deprived of employment and there is no established basis for attributing gainful employment to him, denial of consequential monetary relief may itself result in injustice. The Supreme Court in ***Deepali Gundu Surwase (supra) also cautioned against mechanically denying back wages merely because litigation has consumed considerable time.

36. The authorities relied upon by the petitioner do not advance its case beyond the settled propositions that reinstatement with back wages is not an automatic consequence of every illegal termination and that the nature of misconduct, loss of confidence, passage of time and the circumstances of each case are relevant considerations. Those decisions, however, do not lay down any inflexible rule that an employer's mere assertion of loss of confidence is sufficient to defeat reinstatement. In the present case, the very disciplinary process through which the alleged misconduct was sought to be established has been found by the Tribunal to be procedurally defective. The alleged misconduct, therefore, cannot, without more, be relied upon as a basis for denying the consequential relief. Likewise, the passage of time, much of which was consumed in the adjudicatory process and the earlier proceedings before this Court, cannot by itself operate to the prejudice of the workman.

37. The respondent had specifically pleaded and deposed that he remained unemployed and was not gainfully employed after his dismissal. Though the petitioner has questioned the sufficiency of the material establishing such unemployment, it has not demonstrated any material showing gainful employment so as to warrant interference with the Tribunal's exercise of discretion. The fact that Section 17B relief was granted during pendency of the proceedings also does not render the final award of back wages impermissible, since such statutory payment is

distinct from the final adjudication of entitlement to back wages. On a consideration of the totality of the circumstances, therefore, the Tribunal's decision to grant reinstatement with back wages cannot be said to be perverse, arbitrary or disproportionate so as to warrant interference in exercise of the supervisory jurisdiction of this Court.

38. The petitioner has, in substance, invited this Court to revisit the factual assessment made by the Tribunal regarding the fairness of the domestic enquiry, to substitute its own assessment of the consequences of the procedural defects, and to reassess the quantum and nature of relief. Such an exercise falls outside the legitimate boundaries of judicial review in the facts of the present case.

39. For the reasons aforesaid, the challenge to the territorial jurisdiction of the 7th Industrial Tribunal fails. The contractual jurisdiction clause relied upon by the petitioner does not, in the facts of the present case, render the statutory adjudication by the Tribunal without jurisdiction. The reliance upon the notification dated February 2, 2012 also does not establish that the impugned Award is a nullity. The finding of the Tribunal that the domestic enquiry was illegal and contrary to the requirements of fair procedure likewise does not suffer from such perversity or legal infirmity as would justify interference under Article 226. The consequential relief of reinstatement with back wages, having been granted upon consideration of the circumstances found by the Tribunal, cannot also be characterised as so unreasonable or disproportionate as to warrant interference.

40. This Court accordingly finds the impugned Award dated March 31, 2016 passed by the 7th Industrial Tribunal, West Bengal in Case No. 16/10(1B)(d) of 2012 to be legal, just and proper. The writ petition, accordingly, fails and is dismissed.

41. There is, however, one subsequent circumstance which necessarily bears upon the nature of the relief that can now be granted. The respondent No. 2 attained the age of superannuation on April 15, 2021 and consequently, there can be no question of his physical reinstatement in service at this stage. The relief of reinstatement is necessarily confined by the subsistence of the employment relationship and cannot be directed after the date on which the employee would, in the ordinary course, have ceased to be in service on attaining the age of superannuation. This, however, does not obliterate the legal consequence of the finding that his dismissal was illegal. The respondent cannot be placed in a position worse than that in which he would have stood, had the illegal order of dismissal not intervened.

42. The appropriate relief, therefore, would be to treat the respondent, for the purpose of determining his consequential service and retiral benefits, as having continued in service, up to April 15, 2021, and to grant him the consequential monetary and retiral benefits flowing therefrom, after giving due adjustment of any amount already paid to him pursuant to the impugned Award or under Section 17B of the Industrial Disputes Act, 1947, as may be permissible in law. Such relief would adequately balance the consequence of the illegal termination with the present impossibility of actual reinstatement and would substantially place the respondent in the position in which he would have been, had the illegal termination not taken place. The impugned Award is accordingly modified to that extent.

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

(Rai Chattopadhyay, J.)