

I/700001/2025

Government of West Bengal
Labour Department, I. R. Branch
N. S. Building, 12th Floor, 1, K. S. Roy Road, Kolkata – 700001

No. Labr/ 1187 /(LC-IR)/ 22015(16)/36/2023

Date : 16/10/2025

ORDER

WHEREAS an industrial dispute existed between M/s Himalaya Wellness Company (formerly The Hmalaya Drug Company), Makali, Bengaluru, Pin – 562162, State office at Alampur, National Highway - 6, Near Indian Oil Petrol Pump, Howrah – 711302 and its workman Jyotirmay Mukhopadhyay, S/o. Late Laxmi Narayan Mukhopadhyay, Tribeni Masterpara, Tribeni, Hooghly, Pin Code-712503, regarding the issues, being a matter specified in the second schedule of the Industrial Dispute Act' 1947 (14 of 1947);

AND WHEREAS the 2nd Industrial Tribunal, Kolkata has submitted to the State Government its Award dated 29.08.2025 in Case No. 10 of 2022/2A(2) on the said Industrial Dispute Vide e-mail dated 24.09.2025 in compliance of Section 10(2A) of the I.D. Act' 1947.

NOW, THEREFORE, in pursuance of the provisions of Section 17 of the Industrial Dispute Act' 1947 (14 of 1947), the Governor is hereby pleased to publish the said Award in the Labour Department's official website i.e **wblabour.gov.in**

By order of the Governor,



Assistant Secretary
to the Government of West Bengal

No. Labr/ 1187 /1(5)/(LC-IR)/ 22015(16)/36/2023

Date : 16/10/2025

Copy forwarded for information and necessary action to :-

1. M/s Himalaya Wellness Company (formerly The Hmalaya Drug Company), State office at Alampur, National Highway - 6, Near Indian Oil Petrol Pump, Howrah – 711302.
2. Jyotirmay Mukhopadhyay, S/o. Late Laxmi Narayan Mukhopadhyay, Tribeni Masterpara, Tribeni, Hooghly, Pin Code-712503.
3. The Asstt. Labour Commissioner, W.B. In-Charge, Labour Gazette.
4. The OSD & EO Labour Commissioner, W.B., New Secretariat Building, 11th Floor, 1, Kiran Sankar Roy Road, Kolkata – 700001.
5. The Deputy Secretary, IT Cell, Labour Department, with request to cast the Award in the Department's website.


Assistant Secretary
to the Government of West Bengal

No. Labr/ 1187 /2(3)/(LC-IR)/ 22015(16)/36/2023

Date : 16/10/2025

Copy forwarded for information to :-

1. The Judge, 2nd Industrial Tribunal, N. S. Building, 1, K.S. Roy Road, Kolkata - 700001 with reference to e-mail dated 24.09.2025.
2. The Joint Labour Commissioner (Statistics), West Bengal, 6, Church Lane, Kolkata - 700001.
3. ✓ Office Copy.


Assistant Secretary
to the Government of West Bengal

Case No. 10 of 2022/2A(2)

Jyotirmay Mukhopadhyay

S/o. Late Laxmi Narayan Mukhopadhyay, residing at Tribeni Masterpara, Tribeni, Hooghly, PIN
Code-712503

-Vs-

M/s. Himalaya Wellness Co.

State Office at Alampur, National Highway-6, Near Indian Oil Petrol Pump, Howrah-711302

AND

Office at Makali Bengaluru, PIN Code-512162

Present: Sri Bibekananda Sur

Judge, 5th Industrial Tribunal , Kolkata

JUDGMENT

DATED 29th AUGUST 2025

The workman filed his case under Section 2A(2) of Industrial Dispute Act before the Ld. Second Industrial Tribunal seeking an Award of reinstatement of the applicant / workman in the service of the Opposite Party/ Company in the same status and for setting aside of retrenchment and also for an Award for full back wages with consequential service benefit.

The case of the applicant that he was a trainee Medical Representative, a Sales Promotion Employee for Zandra Strategic Business Unit of the Himalaya Drug Company from 02.04.2010 and during course of his employment he suffered due to unfair labour practice for which he being a member of Trade Union made protest against the Management for which suddenly on 13.03.2021 the applicant was charge-sheeted on the ground of wilfull disobedience, misuse of company's promotional input, non-submission of daily report and expense statement, neglect of work against the interest of the company and violation of discipline and the applicant denied the same on 29.03.2021 and the company was not satisfied with the reply and appointed as Enquiry Officer on 11.08.2021 for holding enquiry in Bengaluru. The applicant did not attend the Enquiry sitting on 03.09.2021 and informed on 27.09.2021, 21.12.2021 and 23.02.2022 and Enquiry Officer submitted an ex parte proceedings and found the applicant as guilty on 28.03.2022 and thereafter the applicant was served with a second show cause notice and was illegally retrenched / dismissed by Order dated 29.08.2022.

The 2nd Industrial Tribunal vide its Order dated 19.12.2024 allowed the petition under Section 2A(2) of Industrial Dispute Act on contest with a compensation of Rs.10 lakhs and also declared the order of termination dated 16.08.2022 as illegal and invalid and directed to reinstate the applicant with full back wages together with an interest @ 10% p.a. since 16.08.2022 till the date of payment. Against such Award the Management preferred the review application. Hence this case under Rule 27 of The West Bengal Industrial Disputes Rules, 1958.

Workman was served with the copy of application and did not place any written objection though vehemently raised verbal objection and contested the application thereof.

For the purpose of adjudication, following points is required to be determined:-

POINT FOR CONSIDERATION

- 1) Whether the present application is maintainable due to overlapping the process of examining the validity of Domestic Enquiry? If so, what should be the fate of the application?

DECISION WITH REASON

The above point is taken up consideration?

Workman relied upon the case reported in AIR 1971 Supreme Court (2204), 1997 (9) Supreme Court (25), AIR 2016 Supreme Court, AIR 1956 Supreme Court (153).

The Ld. Advocate for the workman Opposite Party submitted that the format of review not followed in the present case which should be followed like the format of appeal.

Further argued that there is no apparent error.

Further argued that the workman are the sales promotion employees and according to Section 6 of Sales Promotion Employee (Condition of Service) Act, 1976, there is neither any model Standing Order nor any certified Standing Order. As there was no Standing Order of the Company, no Domestic Enquiry is permitted to be held. In the absence of Standing Order punishment is not prescribed and Domestic Enquiry cannot be held.

Further argued that under Section 25F of Industrial Dispute Act one month's notice is required but in the present caswe the notice date was 12.01.2021 and termination was effected on 31.01.2021 and accordingly the notice is termed as bad in law.

Further argued that no compensation has been paid.

Further argued that Company reduced the workforce on the plea of restructuring but there is no evidence as to restructuring

Further argued that other Division of the Company Management absorbed employee but the applicant were not afforded any chance.

Further argued that Company violated the provision of Section 25F, 25H and 25T of I.D. Act. there was no notice for clear one month served upon the workman.

The Company argued the case that the validity of the Enquiry was not challenged from the side of workman and accordingly it should have been deemed that the workman admitted his guilt.

Further argued that the workman admitted the Domestic Enquiry and as such they are the nonest to attack the Domestic Enquiry in any manner whatsoever.

Further argued that till date objection against review application has not been preferred and accordingly the review application should be taken up at par.

Management's case is that the Ld. 2nd Industrial Tribunal, Kolkata decided the case against the statute viz. Section 11 of Industrial Act and further erred to pass an award on merit, holding the enquiry as illegal in a slip sod manner without affording any opportunity to examine the validity of the Domestic Enquiry and further erred to ignore the fact that the Domestic Enquiry was not at all challenged by the workman.

Management's further case is that when the Domestic Enquiry was not challenged, there was no scope to declare the Domestic Enquiry is illegal and the quantum of punishment should have been considered and not the merit of the case.

And in support of the same the Management relied upon the case laws reported in (1973) 1 SCC 813 and (1973) 1 SCC 1227, unreported case bearing No. WPA 25857 of 2018 delivered by Hon'ble Justice Raja Gopal Basu Chowdhury against 7th Industrial Tribunal, Kolkata, (2023) SCC online SC 776, (2018) 18 SSC 299, (1976) 1 SCC 496, (2008) 1 SCC 1, (2002) SCC 542, (2021) 10 SCC 752.

Now the question is whether skipping of examining the validity of Domestic Enquiry becomes a procedural defect ?

A similar case came up before Hon'ble High Court, Calcutta in connection with WPA 8531 of 2021 (M/s Birla Building Ltd. Vs. State of West Bengal and others) in connection with an order dated 23.04.2019 passed by the 2nd Industrial Tribunal, Kolkata. The said Tribunal did not adjudicate the validity of the domestic enquiry conducted against employee, who was dismissed from service on the basis of enquiry report.

In that case, against failure of adjudication to examine the validity of the domestic enquiry, the management moved the Hon'ble High Court, Calcutta urging that the 2nd Industrial Tribunal Calcutta committed gross error by over-stepping its jurisdiction deciding on the validity of the punishment itself.

The Hon'ble Court held that Industrial Tribunal was well within its jurisdiction to decide the preliminary issue as to whether the domestic enquiry conducted was fair and proper but it could not have gone into the merit of the matter and Hon'ble Court further held that skipping the process of adjudication to examine the validity of the domestic enquiry exceeds the jurisdiction of the Industrial Tribunal at the preliminary stage.

Thereby it appears to this Tribunal that Hon'ble High Court, Calcutta did not ratify the process to examine the merit of the case by over stepping the process of examining the validity of the domestic enquiry conducted against the concerned employee.

In view of above observation this Tribunal does not hesitate to hold that the order passed by the 2nd Industrial Tribunal, Calcutta suffers from error and procedural defects on the face of the record and thereby comes within the purview of Rule 27 (ii) of West Bengal Industrial Disputes Rules 1958.

In view of above discussion it appears that the application made under Rule 27 Sub-Clause (ii) of the Rules 1958 is well maintainable and deserves to be allowed.

Hence it is

ORDERED

that the Review Application is allowed on contest without cost and the validity of the enquiry is required to be judged prior to examining the merit of the dismissal.

Judge
5th Industrial Tribunal
& I/C of 2nd Industrial Tribunal
Kolkata

Government of West Bengal
Directorate of Industrial Tribunals
New Secretariat Buildings
Block – ‘A’, 2nd Floor
1, Kiran Sankar Roy Road
Kolkata – 700001

Memo No. Dte/2nd I.T./29/2025

Dated Kolkata, the 02/09/2025

From: Shri Bibekananda Sur,
Judge, 5th Industrial Tribunal &
I/C of 2nd Industrial Tribunal,
Kolkata – 1.

To : The Secretary to the
Govt. of West Bengal,
Labour Department,
New Secretariat Buildings, 12th Floor,
1, Kiran Sankar Roy Road,
Kolkata – 700 001.

Sub: An industrial dispute between workman Jyotirmay Mukhopadhyay S/o. Late Laxmi Narayan Mukhopadhyay, residing at Tribeni Masterpara, Tribeni, Hooghly, PIN Code-712503 and M/s. Himalaya Wellness Co. State Office at Alampur, National Highway-6, Near Indian Oil Petrol Pump, Howrah-711302 and Office at Makali Bengaluru, PIN Code-512162 being **Case No. 10 of 2022/2A(2)** of the Industrial Disputes Act, 1947.

Sir,

I am sending herewith the Award passed in the matter of an industrial dispute between workman Jyotirmay Mukhopadhyay and M/s. Himalaya Wellness Co. being Case No. **10 of 2022/2A(2)** of the Industrial Disputes Act, 1947 for information and necessary action.

Yours faithfully,

(Bibekananda Sur)
Judge
5th Industrial Tribunal
& I/C of 2nd Industrial Tribunal
Kolkata