

No. Labr/ 878 /(LC-IR)/ 22015(16)/97/2025

Date: 01-08-2025

ORDER

WHEREAS an industrial dispute existed between M/s. Bengal Chamber of Commerce and Industry, Royal Exchange, 6, Netaji Subhas Road, Kolkata-700001 and its workman Smt. Piyasa Bhawal, P-18A, Raja Rajkrishna Street, Kolkata-700006, regarding the issues, being a matter specified in the second schedule of the Industrial Dispute Act' 1947 (14 of 1947);

AND WHEREAS the 5th Industrial Tribunal, Kolkata has submitted to the State Government its Award dated 22.07.2025 in Case No. 03/2009 on the said Industrial Dispute Vide e-mail dated 28.07.2025 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/ 878 /1(5)/(LC-IR)/ 22015(16)/97/2025

Date: 01-08-2025

Copy forwarded for information and necessary action to :-

- 1. M/s. Bengal Chamber of Commerce and Industry, Royal Exchange, 6, Netaji Subhas Road, Kolkata-700001.
- 2. Smt. Piyasa Bhawal, P-18A, Raja Rajkrishna Street, Kolkata-700006.
- 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/ & 78 /2(3)/(LC-IR)/ 22015(16)/97/2025

Date: 01-08-2025

Copy forwarded for information to :-

- 1. The Judge, 5th Industrial Tribunal, N. S. Building, 1, K.S. Roy Road, Kolkata 700001 with reference to e-mail dated 28.07.2025.
- 2. The Joint Labour Commissioner (Statistics), West Bengal, 6, Church Lane, Kolkata 700001.
- 3. Office Copy.

Assistant Secretary to the Government of West Bengal

In the matter of an industrial dispute filed by the workman Piyasa Bhawal residing at P-18A, Raja Rajkrishna Street, Kolkata-700006 against the Bengal Chamber of commerce and Industry of Royal Exchange. Registered Office at 6, Netaji Subhas Road, Kolkata-700 001 U/s. 33(A) of the Industrial Disputes Act, 1947.

(Case No - 03/2009, u/s 33(A)

Present : Sri Bibekananda Sur, Judge, 5th Industrial Tribunal, Kolkata <u>A W A R D</u>

DATED, 22.07.2025

The Present case is Under Section 33A of Industrial Dispute Act, challenging the dismissal of the applicant. The further case of the applicant is that the management with a vindictive nature dismissed her due to her nexus with the Union, without any real cause and accordingly, the applicant relied upon her documents and prayed reinstatement in her service with full back wages. Hence this application Under Section 33A of Industrial Dispute Act.

The Management appeared, filed the written statement and relied upon the documents to justify dismissal of the applicant as applicant was indisciplined, unbecoming in nature and indulged insubordination activities against the management . The management further contested the case on the ground that on 23rd April 2008 the applicant started shouting and caused disturbance to others as the letter of increment was not issued prior to disbursing the salary for the month of April 2008 and thereafter again on 28th April 2008 the applicant again started shouting with abusive languages after attending the office and also at the time of recess insulted the financial advisor Mr. Venugopalan and thereafter On 29.04.2008 at 10.30 a.m. the applicant again starting shouting at the top of her voice and issued slang and abusive language against the Management by uttering chammer, Suorerbachcha (SWINE) and such indecent behaviour, unbecoming conduct and insubordination activities in the chamber premises, grossly violated discipline and caused disturbance and annoyance at the workplace, damaging the reputation and image of the chamber arising out of unruly and indisciplined behaviour of the applicant and afterwards charge was framed against the applicant and after accepting the enquiry report, the management dismissed the applicant and on the same day the management filed the petition Under Section 33 (2b) of the Industrial dispute Act, upon complying all the statutory provisions, for approval, as the applicant through Union filed an earlier application for demand of charter, was the then found pending.

In view of the same the following issues were framed **ON 07.03.2018**

- 1) Whether the application filed U/S 33A of Industrial Disputes Act, 1947 is maintainable in law and fact?
- 2) Whether the order of dismissal of Payasa Bhowal from service passed by the Management w.e.f. 10.06.2009 is justified?
- 3) To what other relief, if any, the applicant is entitled to?

The present application under Section 33(A) of Industrial Dispute Act arises against dismissal of the applicant Piyasa Bhowal.

For the sake of convenience all the issues are taken together.

The case of the applicant is that the applicant being a Lady Stenographer alongwith two other stenographers agitated and made demand of charter through union for revision of grade and scale of pay and other service conditions and that was referred to the Tribunal.

The further case of the applicant is that out of grudge and vengeance the management adopted punitive measure against the applicant and on some false plea and pretext the applicant was chargesheeted on some fabricated instance through Mr. Subhodip Ghosh, Deputy Secretary of the Bengal Chamber of Commerce and Industry and thereafter disciplinary proceedings was initiated on 28.05.2008 and was concluded on 12.03.2009 on following **charge**:-

- 1) On 23.04.2008 the applicant started shouting and hurling invectives against the Management for not handing over the increment letter before payment of salary.
- 2) On 28.04.2008 at 10.00 a.m. at the office premises the applicant started shouting at the top of the voice and issued abusive and derogatory language against the Management and on the same date at 1.15 p.m. in the office premises the applicant started hollering and insulted the financial advisor Mr. Venugopalan.
- 3) On 29.04.2008 at 10.30 a.m. the applicant again started shouting at the top of her voice and issued slang and abusive language against the Management like chammer, shuorerbachcha and such acts on different dates altogether constitute disorder and indecent behaviour, unbecoming conduct of the applicant and insubordination in the chamber premises, grossly violated discipline and caused disturbance and annoyance at the workplace damaging the reputation and image of the chamber due to unruly and indisciplinedbehaviour of the applicant which actually defamed the Management.

The applicant replied to the charge in following manner:-

1. On 23rd April 2008 on receiving her pay packet for the month of April 2008 she along with other stenographers were simply discussing about the departure of the policy of the Management. Previously the Chamber Management before disbursing the salary with increment always used to inform the concerned person in writing about the increment while in the current year the applicant have not received any such letter. However, there was no shouting and/or disturbance to the others.\

- 2. On 28th April 2008 immediately after coming to the office around 10.00 AM normally the applicant went to the cloak-room and nothing was happened like shouting and/or using abusing languages on the said date and time.
- 3. On 28th April 2008 at about 1.15 PM while in the Lunch Break the applicant and other ladies were talking among themselves on issues not even related to any industrial problem when Mr. M. Venugopalan, Financial Adviser came out of his Cabin and intervened into their discussion, the applicant simply told him not to intervene in their private discussions. There was no hollering and no disrespect was shown to him. Instead, Mr. Venugopalan, had tried to instigate her to get agitated while she remained unprovoked.
- 4. In regard to the alleged charges that since 23rd April 2008 the shouting and vituperative remarks continued in high intensity resulting disturbances in the office work have been termed as all false and concocted.

The applicant relied upon the following documents:

- 1) Photocopy of enquiry in the matter of charge sheet dated 05.05.2008 (Exbt.A)
- 2) Photocopy of enquiry report with findings 2nd Copy dated 04.04.2009 (Exbt.B)
- 3) Photocopy of appointment letter dated 10.02.1995 (Exbt. C)
- 4) Photocopy of confirmation letter dated 21.11.1995 (two pages) (Exbt.D)
- 5) Photocopy of promotion letter dated 18.08.2006 (three pages) (Exbt. E)
- 6) Photocopy of letter dated 23.03.2005 written by the then Secretary General (Exbt.F)
- 7) Photocopy of letter dated 03.05.2005 written by the then Secretary General (Exbt.G)
- 8) Photocopy of letter dated 19.05.2005 (Exbt.H)
- 9) Photocopy of letter dated 19.03.2005 (Exbt.I)
- 10) Photocopy of letter dated 18.07.2005 (Exbt.J)
- 11) Photocopy of letter dated 27.10.2005 (Exbt.K)
- 12) Photocopy of letter dated 06.12.2005 (two pages) (Exbt.L)
- 13) Photocopy of Order of reference dated 28.12.2006 (Exbt.M)
- 14) Photocopy of letter dated 22.04.2008 (Exbt.N)
- 15) Photocopy of letter dated 02.05.2008 written by the then Labour Advisor of BCCI (Exbt.O)
- 16) Photocopy of letter dated 05.05.2008 (Exbt.P)
- 17) Photocopy of letter dated 09.06.2008 (Exbt.Q)
- 18) Photocopy of letter dated 20.06.2008 (Exbt.R)
- 19) Photocopy of letter dated 05.11.2008 (Exbt.S)
- 20) Photocopy of letter dated 15.01.2009 (Exbt.T)
- 21) Photocopy of letter dated 20.01.2009 (Exbt.U)
- 22) Photocopy of letter dated 27.01.2009 (Exbt.V)
- 23) Photocopy of letter dated 31.01.2009 (Exbt.W)
- 24) Photocopy of letter dated 29.04.2009 (Exbt.X)
- 25) Photocopy of letter dated 17.03.2023 (Exbt.Y)

List of documents filed by the Management on merit (Exhibited on 24.12.2021)

- 1) Xerox copy of the Pay Slip of Piyasa Bhowal for the month of April,2008 (Exbt. 5)
- 2) Xerox copy of the dismissal letter dated 10.06.2009 (Exbt.6)
- 3) Xerox copy of cheque dated 10.06.2009 amounting to Rs. 8,150/-(Exbt.7)
- 4) Xerox copy of Postal AD Card duly received by Piyasa Bhowal on 13.06.2009 (Exbt.8)
- 5) Xerox copy of postal receipt vide No. RLADJ 3161 dated 10.06.2009 (Exbt. 9)
- 6) Xerox copy of 3(three) vouchers dated 23.03.2009, 24.02.2009 and 28.01.2009 (Exbt. 10 collectively)
- 7) Xerox copy of one letter dated 15.01.2009 (Exbt. 11)
- 8) Xerox copy of another letter dated 05.05.2008 containing two pages (Exbt.12)
- 9) Xerox copy of Identity Card of H.S. Das (Exbt. 13)

Evidence adduced by the Management

- 1. Sri Harisadhan Das, MW-1
- 2. Ms. Sukanya Bose, MW-2
- 3. Sri Sanjay Mukherjee, MW-3
- 4. Sri Manik Kath Venugopalan Menon, MW-4

Evidence adduced by the Workman

1. Mrs. Piyasa Bhowal, W.W.-1

The applicant Piyasa Bhowal stated that the complaint so lodged by the Assistant Secretary, Subhodip Ghosh was although suppressed by the Management and the copy of the same was handed over to the applicant in the midst of enquiry proceedings.

In the present case the company raised a preliminary point that Piyasa Bhowal was the Secretary of the Secretary General of the Bengal Chamber of Commerce and is not a workman at all and she was an Executive holding a confidential position in the Company.

In view of the above discussion it appears that the applicant Piyasa Bhowal admitted she discussed on 23.04.2008 that the letter intimating increment was not handed over to her, prior to disbursing the salary.

That apart, she denied the incident dated 28.04.2008 at 10.00 a.m. but admitted that 1.15 p.m. during the lunch break on that day Mr. M. Venugopalan, Financial Advisor came out of his cabin and intervened into discussion and at that point of time there was no hollering or no disrespect was shown to him.

In view of above discussion it appears that the incident relates to withholding of letter intimating increment and that was the matter of discussion by Piyasa Bhowal and by other stenographers on 23.04.2008 and on 28.04.2008 at 1.15 p.m. Venugopalan Came out of his cabin and approached to the said Piyasa Bhowal and Piyasa Bhowal dissuaded the said

Venugopalan by asking him that it is their private discussion which altogether admitted interaction with the financial advisor.

That being so the admitted position is that Piyasa Bhowal did not get the letter of increment for the concerned year for which she was displeased against the management and raised objection about the policy of the management and the matter of such displeasure continued on 28.04.2008 at the recess time when Mr. Venugopalan approached her and the said Piyasa Bhowal informed him that it is their personal affair.

The applicant Piyasa Bhowal admitted her displeasure over the issue of withholding the letter intimating increment prior to disbursing of salary and also admitted Venugopalan approached her and the applicant on the other hand denied the allegations of her indecent behaviour, unbecoming conduct and insubordination activities, her indisciplined behaviour causing disturbance and annoyance at the working place which lowered down the reputation and image of the chamber and peaceful condition of the work place.

Now, the question is how far the charge is proved against the applicant Piyasa Bhowal?

Management's case is that her indecent behaviour, unbecoming conduct and insubordination, her indisciplined behaviour altogether causing disturbance and annoyance at the working place which lowered down the reputation and image of the chamber and peaceful condition of the work place.

MW-1 Harisadhan Das adduced evidence to the effect that misconduct, indecent behaviour, insubordination and indisciplined activity of Piyasa Bhowal was reported by a complaint dated 29.04.2008 by Subhodip Ghosh the then Assistant Secretary.

MW-2 Sukanya Bose stated that on 23.04.2008 when she at her cabin at day time, Piyasa Bhowal shouted against the management for late delivery of increment letter and Piyasa Bhowal abused the management as Zamadar and inefficient management but in the charge relates to incident dated 23.04.2008 the contention is otherwise and this MW-2 stated that delayed supply of increment letter was the reason but the charge reflects that increment letter was not at all handed over and that apart there is no whisper of abusive language in the alleged incident dated 23.04.2008.

MW-2 stated that on 28.04.2008 Piyasa Bhowal was shouting and issued abusive language for which she could not take any follow up telephonic action and thereby MW2 was prevented which was reported to her Boss. But the M.W 2 is silent as to What kind of telephonic action was not executed and that apart there is no whisper from M.W.2 with whom her telephonic instruction was exchanged or failed, due to

unbecoming behaviour and shouting of Piyasa Bhowal . Neither the O.P nor the M.W2 brought those materials before this Tribunal.

Sanjay Mukherjee, MW-3 adduced to the effect that in the year 2008 Piyasa Bhowal and MW-3 used to sit in the same floor and on 23.04.2008 Piyasa Bhowal shouted at the top of her voice and issued slang language against the Management personnel by uttering jamadar, inefficient management (Apadartha) and on 28.04.2008 after attending the office Piyasa Bhowal created chaotic situation by shouting against the management and abused Senior Personnel Management and insulted Venugopalan Menon by asking him to go back to his cabin and on 29.04.2008 Piyasa Bhowal started shouting and issued slang language like *coward, Chammer, Shuorerbachcha, oder juto khule mara utich* and this MW-3 further stated that he and other colleagues requested Piyasa Bhowal not to behave in such manner which caused severe disturbance due to such behaviour of Piyasa Bhowal.

That apart during cross examination of MW-3 it is admitted that his son Sougata Mukherjee is a permanent employee in Management Company since November, 2021. The applicant Piyasa Bhowal intended to shake the credibility of the witness for adducing evidence tilted in favour of the Management but this Tribunal thinks it fit to hold that the evidence is subject to cross examination and so the evidence of MW-3 should not be thrown away only for the reason of his son's employment with the Management Company

The evidence of MW-3 reflects that Piyasa Bhowal issued language against the management on 23.04.2008 but in the charge there is no such allegation that Piyasa Bhowal issued slang language with the remarks zamadar or uttered inefficient management on that day.

The MW-3 in his evidence stated that on 28.04.2008 Piyasa Bhowal after coming in the office became violent and created chaotic situation by shouting and issued abusive language against Senior Management Personnel, Mr. Venugopal but in the charge sheet it is reflected that Venugopal was confronted by Piyasa Bhowal on 28.04.2008 at 1.15 p.m. but the evidence of MW-3 reflects that after coming to office Piyasa Bhowal created chaotic situation by shouting with abusive language to Venugopal. Such discrepancy of timing revealed in the evidence of MW3 altogether reflects weak credibility of the witness.

<u>That</u> apart the MW3 stated in examination in chief that he and the applicant Piyasa Bhowal used to sit in the same floor, for which he came to know the incident mentioned in the charge sheet.

But this witness failed to specify the place where the PA (Piyasa Bhowal) of the Secretary General used to sit. Such answer revealed during cross examination reflects that this MW-3 is ignorant about the place of seat of the applicant Piyasa Bhowal but in examination in chief this MW3 asserted that he (MW3) used to sit with the applicant Piyasa Bhowal in the 2nd floor of Bengal Chamber of Commerce, which altogether reflects that this MW-3 is a tutored witness and had no knowledge about the alleged incident.

MW-4 Manik Kath Venugopalan Menon adduced that he was the Financial Advisor in the Bengal Chamber of Commerce and Piyasa Bhowal was the Secretary of the Secretary General of the Bengal Chamber of Commerce and Piyasa Bowal used to handle confidential matter for the Chamber of Commerce and on 23.04.2008 Piyasa Bhowal made derogatory statement and abused the Management

created chaos by shouting on 28.04.2008 at 1.00 O'clock when Piyasa Bhowal again started shouting made derogatory statement and this MW-4 called H. S. Das over telephone and informed the unpleasant situation and further stated that on 29.04.2008 Piyasa Bhowal continued disturbance and did not allow the Executive to do his work.

During cross examination the PW-1 denied the incident dated 23.04.2008, 28.04.2008 and 29.04.2008 and the applicant PW-1 failed to specify the contravention by the Management for violating the provision 33(A).

Admitted during cross examination that she was not a member of the Union and did not authorise the union to proceed her case.

The charge relates to 29.04.2008 did not reflect that on 29.04.2008 Piyasa Bhowal continued disturbance and prevented to execute to do their work.

MW1, MW2, MW3 all adduced that the applicant Piyasa Bhowal insulted the financial advisor Venugopalan on 28.04.2008 but the M.W.4 Venugopalan financial advisor did not adduce that Piyasa Bhiowal insulted him.

During cross examination it is revealed that Mr. Subhodip Ghosh was the Deputy Secretary of the Bengal Chamber of Commerce.

During cross examination of WW-1 it is revealed that Bengal Chamber of Commerce holds Conferences and members contribute subscription amount.

Allegations regarding causing loss of work due to chaotic situation or lowering down the prestige and reputation of the Company in the estimation of others ,has not been substantiated by showing that due to indisciplined activity by creating chaotic situation at the behest of the said Piyasa Bhowal the Bengal Chamber of Commerce lost its goodwill and reputation in the estimation of their members who cancelled their repeated conferences.

Management failed to substantiate it thatapplicant's indecentbehaviour, unbecoming conduct and insubordination activities grossly violated discipline and caused disturbance and annoyance at the workplace damaging the reputation and image of the chamber and thereby the chamber lost its earnings and reputation due to activity of Piyasa Bhowal.

The charge brought against the applicant was based on a written complaint lodged by the Deputy Secretary, Sri Subhodip Ghosh and that Subhodip appeared on the enquiry as witness but did not choose to come on witness box to prove written complaint on the basis of which the charged was drafted.

The Assistant Secretary ,Subhodip Ghosh authorised MW-1 to depose in this case but MW-1 did not reveal the source as to how the author of the complaint accrued his knowledge and that apart MW-1 also did not adduce any evidence disclosing the mode as to how she acquired her personal knowledge about the complaint and in the absence of which the complaint cannot be said to have been proved. That being so the charge based on the complaint stands frustrated.

When the complaint itself is not proved by the author of the complaint or by otherwise that complaint should not be allowed to put its head on and accordingly the charge as levelled against the said Piyasa Bhowal (on the basis of the complaint) stands failed and frustrated.

The charge relates to the allegation dated 29.04.2008 is incomplete and defective and thereby confusing and misleading because the charge does not disclose the person against whom such remarks was passed. Until the same is specified, it carries no meaning at all. Hence the charge No.4 relates to the incident dated 29.04.2008 is not proved and dropped.

Answer to the Defence plea

1. Management argued that the application U/S 33(A) of I.D Act does not disclose any cause of action as to how violation of Section-33 was made.

This Tribunal thinks it fit to hold that dismissal being an admitted issue gives a rise to have the cause of action for seeking remedy.

- 2. Further defence case is that the application Under Section 33-(A) of I.D Act is not made in format as per Rule.
 - This Tribunal holds that application if not made in format that is a technical fault and due to technicalities, the merit of the case should not be allowed to suffer.
- 3. Further defence case is that Application u/s 33(2b) is made without prejudice.
 - This Tribunal holds that filing of case under Section 33(2b) itself admits pending case relates to demand of charter and as such the pending application is admitted and thereby procedure Under 33(2B) of Industrial Dispute Act is required to be followed.
- 4. Further defence case is that Section 33 (A) cannot be invoked in the present case as 33 (2B) has been filed.

The record reflects that filing date and filing number of 33 (A) application if construed with the filing number of the 33 (2)(b) application, in that event filing of application Under Section 33 (2)(b) reflects violation of condition for filing the instant application by the O.P for seeking approval.

5. Further defence case is that Applicant was the Secretary of the Secretary General of the Chamber and she was above the rank of supervisory and her application is not maintainable as the applicant is not a workman.

Considering nature of duty and work done by the applicant and considering her gross pay of Rs. 8,150/- per month at the time of her dismissal, considering no administrative and managerial duty was discharged by the applicant in supervisory capacity and considering the applicant had no authority to take independent decision and considering the applicant Piyasa Bhowal had no power to sanction leave and considering the applicant Piyasa Bhowal had no power to issue show cause notice or charge sheet to any employee, this Tribunal does not hesitate to hold that the applicant Piyasa Bhowal was a workman and present proceedings initiated by her is well maintainable.

In view of above discussion, this Tribunal discard the defence case, in toto.

The charge allegations have not been proved by convincing evidence and the workman is entitled to get the relief.

What should be the relief:

Considering strained relationship in between the workman and the management, order of reinstatement should not be passed due to lack of confidence of the management for which the petitioner workman is entitled to get compensation to meet the ends of justice

Therefore, considering materials on record I am of the view that it would be a sound exercise of judicial discretion to allow a lump sum compensation of Rs.10,000,00/- (Rupees Ten Lakh) instead of reinstatement to the service.

Hence, it is,

ORDERED

That the charge against the applicant Piyasa Bhowal has not been proved accordingly the termination of service of the applicant Piyasa Bhowal is illegal and invalid and the Tribunal set aside the order of termination.

Since the management has lost its confidence, the Tribunal is of the view that it is not advisable to order for reinstatement of the applicant workman and the only course left is to award a lump sum compensation to the applicant workman to the extent of Rs.10 (Ten) Lakh

Accordingly, the management is further directed to pay the lump-sum amount of Rs. 10 lakhs to the applicant workman within one month from this date.

Dictated and corrected and Award Delivered by

Sd/
BIBEKANANDA SUR

Judge, 5th 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/5th I.T/028/2025

Dated Kolkata, the 24/07/2025

From: Shri Bibekananda Sur,

Judge,

5th Industrial Tribunal 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: The Award between M/s Bengal chamber of commerce and Industry Vs Piyasa Bowal (Case No. 03 of 2009 U/s. 33A of the I.D. Act.1947)

Sir,

I am sending herewith the Award passed in the matter of an industrial dispute between M/s Bengal chamber of commerce and Industry, Royal Exchange, 6, Netaji Subhas Road, Kolkata- 700001 and workman Piyasa Bhawal of P-18A, Raja Rajkrishna Street, Kolkata-700006

Encl: As stated above. Yours faithfully,

(Bibekananda Sur)
Judge,
Fifth Industrial Tribunal
Kolkata
22.07.2025