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**(2001) 06 CAL CK 0050**  
**In the Calcutta High Court**  
**Case No : Writ Petition No. 2607 (W) of 2001**

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|-----------------------------------|----|------------|
| Transport Development Corporation | Vs | APPELLANT  |
| State of West Bengal and Others   |    | RESPONDENT |

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**Date of Decision :** 11-06-2001

**Acts Referred:**

Industrial Disputes Act, 1947 — Section 15(2)

**Citation :** (2007) 3 CHN 118

**Hon'ble Judges :** D.K. Seth, J

**Bench :** Single Bench

**Advocate :** Lovely Dasgupta Saha, N.K. Mehta and P.K. Bhaumick, for the Appellant; M.C. Das and Jayanti Dhar Quader, for the Respondent

**Final Decision :** Dismissed

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## Judgement

D.K. Seth, J.—I have gone through the order No. 45 dated 8th September, 2000 passed in Case No. VIII-146/96 impugned in this writ petition. The same is a well reasoned one. Interim relief u/s 15(2)(b) of the Industrial Disputes Act as amended in West Bengal can be granted if prima facie case is made out. It appears from the materials produced that a prima facie case is made out. I do not find any perversity or infirmity in the impugned order in order to invoke writ jurisdiction.

2. Learned Counsel for the petitioner contended that Section 15(2)(b) of the Industrial Disputes Act does not apply in the present case since the workman had left the service on his own accord. Therefore, in the present case, unless the workman is able to establish a prima facie case contrary to the case pleaded by the petitioner employer, Section 15(2)(b) of the said Act cannot be attracted. He has relied on the decision in the case of *Webel Nicco Electronics Limited v. Anima Roy* (1) 1997 CLT 243 and *B.G. Sampat v. State of West Bengal and Ors.* reported in 1999(83) FLR 1078 in order to contend that unless a prima facie case is made out, no order u/s 15(2)(b) of the said Act can be passed. According to him, such prima facie case can be made out only by leading evidence and not

otherwise. He further contended that the case is at the final stage. Therefore, no order should be passed at this stage.

3. So far the above contentions are concerned, the dispute raised by the workman is that he has been refused employment. The defence of the employer is that he has left the service on his own accord. This is the bone of contention which requires determination. This cannot be decided as an issue in order to determine a prima facie case. Prima facie case is to be found out on the basis of the materials produced before the Court. It does not require full-fledged hearing. Even if, ultimately, the workman's case might fail, still then it can be allowed on the basis of the materials produced, if a prima facie case is made out. In the present case after having gone through the impugned order as observed earlier, it appears that prima facie case has been gone into by the learned Tribunal and it found that the prima facie case does exist. The said finding is a finding of fact. Sitting in writ jurisdiction, the said finding of fact cannot be interfered with. It is a revisional jurisdiction which is concerned with the legality of the order, particularly with regard to the jurisdiction. The question whether he has left the service on his own accord or he had resigned is to be determined on the basis of the evidence that might be led by the parties at the time of the trial. Any finding recorded in this order or any order passed by the learned Tribunal are all tentative and not be taken into account at the time of final determination. All points are always kept open in.

4. So far the decisions cited by the learned Counsel for the petitioner are concerned, those are well-settled proposition of law. No one can doubt or dispute the same. It is only to be applied in the given facts and circumstances of the case. Applying the test laid down therein in the facts and circumstances of the present case, particularly having regard to the order passed by the learned Tribunal, I do not find that any other order can be passed in this case because prima facie case has since appeared to have been out. The evidence that the workman had been receiving salary when he left the service cannot be construed to mean that he had left the service for the purpose of finding out a prima facie case at this stage. That part of the evidence shall be considered independently on its merit having regard to the other materials at the time of the trial. Any observation made with regard thereto shall not stand in the way of taking appropriate decision even contrary to what has been taken in the order impugned. All observations made by me in this order are tentative and shall not be taken into account by the learned Tribunal at the time of determining the case finally.

5. This writ application is dismissed.

6. However, the learned Tribunal shall make all endeavour to dispose of the case at the earliest, preferably within six months from date.

7. There will be no order as to costs.

8. Xerox certified copy of this order, if applied for, be given.