

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.**FAO (OS) No. 19 of 2026****Date of decision: 09.09.2026**

State of H. P. & Anr.	...Appellants
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Versus

Smt. Bhawani Devi	...Respondent
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*Coram****The Hon'ble Mr. Justice G. S. Sandhawalia, Chief Justice.******The Hon'ble Mr. Justice Bipin C. Negi, Judge.****Whether approved for reporting?*

For the Petitioner: Mr. Rakesh Dhaulta, Additional Advocate General.

G. S. Sandhawalia, Chief Justice (Oral)
CMP(M) No. 1476 of 2026

Keeping in view the averments made in the application, duly supported by the affidavit of the official-respondents, the delay of 320 days in filing the appeal is condoned. Application stands disposed of.

Appeal be registered.

FAO(OS) No. 19 of 2026

2. The State is aggrieved by the allowing of the application filed under Section 17-B of the Industrial Disputes Act, 1947 (for short the '**Act**'), whereby, full wages last drawn i.e. full pay to the workman during the pendency of the writ petition was granted, keeping in view the provisions of Section 17-B of the Act.

3. The grievance of the State is as such that the directions were issued to pay full wages from the date of filing of the writ petition and not from the date of the application, which was filed and, thus, reference is made to the provisions of Section 17-B of the Act.

4. We are of the considered opinion that the issue stands squarely covered against the State in a similar matter being **FAO(OS) No. 05 of 2025**, titled as **State of H.P. & Anr. vs. Bir Singh**, decided on 18.07.2026, whereby the same issue was subject matter of consideration.

5. The brief facts are that the award as such was passed on 25.11.2017 and the State had chosen not to file writ petition against the said award till 13.10.2020 and, therefore, the workman apparently was handicapped to file the application under Section 17-B of the Act. The writ petition was apparently listed on 07.12.2020 and notice was directed to be issued on 09.12.2020. The service upon the workman apparently could not be completed and the counsel put in appearance only on 13.06.2022. The application under Section 17-B of the Act which had been filed on 07.03.2022 was also listed on the said date and the counsel for the State had taken three weeks' time to file reply to the application.

6. It is, thus, apparent that the filing of the application under Section 17-B of the Act could not have been done on

account of delay in filing of the writ petition. The moment, the service was effected, the application under Section 17-B of the Act, which was actually prepared on 01.11.2021, signed and verified by way of affidavit at Jogindernagar was then filed by the counsel on putting in appearance on having been served. In the application itself, it was mentioned that the joining report had also been submitted on 26.02.2018 in terms of the award dated 25.11.2017 and the applicant had not been re-instated.

7. A perusal of the writ petition would go on to show that the State had dedicated paragraph 15 to explain how the delay took place in filing the writ petition and in fact, apparently, the matter was pending on and off and reference is also made that there was no decision to file LPA and apparently, the decision had somewhere been taken in the year 2020. The State had apparently took its sweet time to file writ petition, as noticed, on 13.10.2020. Apparently, the workman had been placed in a precarious position due to the non -filing of the writ petition.

8. In reply filed to the application filed under Section 17-B of the Act, the State does not refer to the fact or deny the fact that the joining report as such was given and, therefore, the State on its own, did not take work from the employee, but chose and sat back for a period of three years causing prejudice to the

employee as such, who was divested of the right to file application under Section 17-B of the Act.

9. The said issue has been dilated by us in ***Bir Singh's case supra***, while placing reliance upon various judgments that once there is no valid reason for filing the writ petition, the workman cannot be put at a dis-advantage and prejudice, therefore, right of wages would thus start from the filing of the writ petition, rather, we had upheld the right from the date of passing of the award as directed by the learned Single Judge.

Relevant portion of the judgment reads as under:-

"22. It is in such circumstances that we have now to deal with the issues in the appeal, as to whether the State could take advantage of its own wrong having chosen not to file the writ petition within a reasonable time and having only filed the writ petition on 30.12.2021, after four years from the date of passing of the Award dated 21.11.2017, and whether it could preclude the workman from getting the benefits of the application filed under Section 17-B of the ID Act, 1947.

23. We are of the considered opinion that the beneficial aspect of the legislation cannot be lost sight of. Its purpose and intent is to ensure that the award is implemented without delay. Therefore, the employer must firstly avail of their remedy at the earliest and cannot take advantage of delaying tactics to the detriment of the poor employee. The employees having fought an uphill battle against the State to secure reinstatement and having succeeded in their pursuit of justice, cannot be denied the fruits of the litigation, especially when the State had successfully delayed the filing of the petition by four years and subsequently

had obtained a stay order on 03.01.2022, leading to the employee expeditiously filing an application, which was prepared on 04.04.2022 and filed on 20.05.2022.

24. The objects and reasons for enacting the provisions of Section 17-B of the ID Act, 1947 reads as under:-

“When the Labour Courts pass award of reinstatement, these are often contested by an employer in the Supreme Court or High Court. It was felt that the delay in the implementation of the award causes hardship to the workman concerned. It was, therefore, proposed to provide the payment of wages last drawn by the workman concerned, under certain conditions, from the date of the award till the case is finally decided in the Supreme Court or High Courts.”

25. It was in such circumstances that Section 17-B of the ID Act, 1947, was incorporated into the Statute Book by the Industrial Disputes (Amendment) Act, 1982 w.e.f. 21.08.1984 and it reads as under:

“17-B. Payment of full wages to workman pending proceedings in higher courts-Where in any case a Labour Court, Tribunal or National Tribunal by its award directs reinstatement of any workman and the employer prefers any proceedings against such award in a High Court or the Supreme Court, the employer shall be liable to pay such workman, during the period of pendency of such proceedings in the High Court or the Supreme Court, full wages last drawn by him, inclusive of any maintenance allowance admissible to him under any rule if the workman had not been employed in any establishment during such period and an affidavit by such workman had been filed to that effect in such Court;

Provided that where it is proved to the satisfaction of the High Court or the Supreme Court that such workman had been employed and had been receiving adequate remuneration during any such period or part thereof, the Court shall order that no wages shall be payable under this section for such period or part, as the case may be.”

26. From a reading of the Objects and Reasons of Section 17-B of the Industrial Disputes (ID) Act, 1947, it

is clear that delays in the implementation of an award caused hardship to the workman concerned so to mitigate this, a provision was made for the payment of interim relief equal to the last drawn wages from the date of the award. Under the substantive part of Section 17-B, this benefit of full wages last drawn is made mandatory upon the filing of an affidavit stating that the workman is not employed. This liability arises when an award directs reinstatement and the employer challenges the award in the High Court or the Supreme Court, and the proceedings remain pending in those higher Courts. The proviso states that if the workman was employed and received adequate remuneration during any such period or part thereof, no wages shall be payable for that period or part, as the case may be. Therefore, the quantification is left to the concerned Court, solely to ensure that the benefit is denied only in cases of actual employment period.

27. In the first case of Dena Bank (supra), decided in the year 1999, the Apex Court had dealt with the issue of "full wages last drawn" under Section 17-B of the ID Act, 1947. Relying on the Statement of Objects and Reasons, the Court had concluded that this benefit was intended to relieve the hardship caused to the workman on account of delays in implementing the order. Consequently, it was held that the object underlying the provision was to relieve the workman's hardship to a certain extent. Such payments cannot be recovered or refunded in any manner, even if the Award was set aside. Therefore, the workman was entitled to the full wages last drawn, and not any revised wages that may have been given to similarly situated workmen.

28. In the second case of Dena Bank (supra), decided in the year 2001, the primary issues were whether the employer was liable to pay full salary from the date of

filing of the writ petition or whether the salary was to be paid at par with other employees working on the same post, and whether the workman was entitled to regular pay-scale instead of the Rs.900/- per month, he last drew as wages. Resultantly, it was held that the relevant provisions empowered the Courts to grant more just and equitable interim benefits based on the facts of the case, and that such excess amounts would be liable to be refunded, if the writ petition was allowed, however, there could be no recovery of the actual wages last drawn. The relevant part reads as under:-

"12. We have mentioned above that the import of Section 17-B admits of no doubt that Parliament intended that the workman should get the last drawn wages from the date of the award till the challenge to the award is finally decided which is in accord with the Statement of the objects and reasons of the Industrial Disputes (Amendment) Act, 1982 by which Section 17- B was inserted in the Act. We have also pointed out above that Section 17-B does not preclude the High Courts or this Court from granting better benefits more just and equitable on the facts of a case -- than contemplated by that provision to a workman. By interim order the High Court did not grant relief in terms of Section 17-B, nay, there is no reference to that section in the orders of the High Court, therefore, in this case the question of payment of full wages last drawn to the respondent does not arise. In the light of the above discussion the power of the High Court to pass the impugned order cannot but be upheld so the respondent is entitled to his salary in terms of the said order.

13. It must, however, be pointed out that while passing an interlocutory order the interests of the employer should not be lost sight of. Even though the amount paid by the employer under Section 17-B to the workman cannot be directed to be refunded in the event he loses the case in the writ petition (see Dena Bank case) any amount over and above the sum payable under the said provision, has to be refunded by him. It will, therefore, be in the interests of justice to ensure,

if the facts of the case so justify, that payment of any amount over and above the amount payable under Section 17-B to him, is ordered to be paid on such terms and conditions as would enable the employer to recover the same.

14. It is brought to our notice that pursuant to the orders of the High Court under challenge the appellant had paid the amount to the respondent. It is clarified that if the appellant succeeds in the writ petition, it will be entitled to recover the difference of amount (i.e. amount paid under the impugned order less the amount payable under Section 17-B of the Act) from the respondent in accordance with law."

29. Counsel for the respondent-workman has rightly placed reliance upon the Division Bench judgment of the Delhi High Court in Santosh Kumari (supra). In that case, the Court had considered whether the entitlement under Section 17-B of 17 the ID Act, 1947, should run from the date of the Award or from the date of the application. The employer had contested this on the grounds of belated filing of the application. Consequently, it was held that it was obligatory for a workman to explain any delay and file an affidavit and workman cannot claim the benefits of Section 17-B for several years in arrears without an explanation, as it would be impossible for an employer to establish whether the workman was gainfully employed during that delayed period. Therefore, the Division Bench in various cases had accordingly granted benefits, choosing not to interfere, if there was no delay in filing the application, but choosing to interfere when there was an unexplained delay.

30. The said view was thereafter followed in Surender Kumar's case (supra) ten years later. In that case, it was held that the entitlement to wages under Section 17-B hinges on whether the workman remained unemployed since his termination, and that this benefit must be granted from the date of the Award. Therefore,

even if an application is filed belatedly, the workman can still be given the said benefit while placing reliance upon the provisions of the second case of Dena Bank (supra). Resultantly, it was held that the words of the statute must be understood in their natural and ordinary grammatical sense unless such a conclusion leads to absurdity.

31. Accordingly, the appeal was allowed, since the Award had been passed on 31.08.2019, and the State had taken four and a half months to file the writ petition and the workman filed his applications immediately after a period of nine months from his first appearance in the Court. Consequently, it was held that the delay in filing the application could not work to the detriment of the workman. The relevant portion reads as under:-

"12. A perusal of the above-mentioned judgment shows that the general rule is that the workman is entitled to the benefits under Section 17-B of the Act from the date of passing of award unless it is shown that the workman has been indolent and negligent in not pursuing the relief under Section 17-B of the Act and has filed his application under Section 17-B of the Act after considerable delay or at his whim and fancy.

13. In view of the above, the law is clear that ordinarily the payment of wages under Section 17-B of the Act would be from the date of passing of award and only in cases of undue delay on the part of the workman in approaching the Court, the payment can be directed to be made from the date of filing of application under Section 17-B of the Act.

14. As stated earlier, the Apex Court in Dena Bank (supra) has held that the Statement of Objects and Reasons for inserting Section 17-B of the Act is to ensure that the workman does not continue to live in penury and await the final outcome of the challenge to the award of reinstatement. Once the award of reinstatement has been passed, the employer should reinstate the workman. The employer cannot be permitted to keep the workman in limbo just by challenging the award

and even if the employer fails to get a stay of the award, the employer cannot be permitted to not allow the workman from working and at the same time he also cannot be permitted not to pay wages to the workman as this would go against the purpose of inserting Section 17-B of the Act.”

32. *The Full Bench of the Kerala High Court took a similar view in The South Indian Workers Congress Vs. Sree Sankara University of Sanskrit (2010) 3 SCT 846. The Court held that an unemployed workman was entitled to receive wages under Section 17-B of the Industrial Disputes Act from the date when the writ petition was instituted, provided the workman satisfied the Court by filing an affidavit stating that he had been unemployed since that date. In that case, the industrial award was passed in favour of the workman on 14.11.2005. The application under Section 17-B was allowed despite a delay in filing, against which the proceedings had been preferred. Resultantly, it was held that the workman was entitled to receive wages from an anterior date prior to the institution of the proceedings initiated by the employer, to give proper effect to the words employed by the Legislature. It was accordingly held that the court only needed to be satisfied by the filing an affidavit stating that the workman was unemployed from the date when the proceedings were instituted. The reference was answered accordingly.*

33. *Thus, keeping in view the overall perspective, and the fact that the Statement of Objects and Reasons provided that the purpose was to ensure payment of the wages last drawn due to delays in implementing the Award, it would not lie in the mouth of the appellant-State to object. The State delayed filing of the writ petition for a period of four years, despite the petitioner having submitted his joining report on*

18.01.2018 well within three months of the Award passed in his favour on 21.11.2017. The appellants-State had taken its sweet time as such in filing the writ petition on 30.12.2021, had obtained a stay on 03.01.2022. Consequently, it cannot now argue that the payment of the last drawn wages, under Section 17-B of the Industrial Disputes Act, should only be granted from the date the application and affidavits were filed. The State cannot rely on a strict interpretation of the Section to escape this liability, especially since it failed to explain satisfactorily the delay in filing the writ petition in any manner."

10. Accordingly, the matter is squarely covered against the State and there is no valid reason to issue notice to the workman. Accordingly, the appeal is dismissed in view of the above reasons.

(G. S. Sandhawalia)
Chief Justice

(Bipin C. Negi)
Judge

9th September, 2026
(sanjeev)