

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
APPELLATE SIDE

Present:

The Hon'ble Justice Shampa Dutt (Paul)

WPA 22663 of 2024

Bata India Limited
Vs
The State of West Bengal & Ors.

For the Petitioner : Mr. Ranjay De, Sr. Adv.
Mr. B.B. Banerjee,
Mr. A.A. Bose.

For the Respondents : None.

Hearing concluded on : 07.05.2025

Judgment on : 20.05.2025

Shampa Dutt (Paul), J.:

1. The present writ application has been preferred praying for setting aside of an Award dated 07.06.2024 passed by the 2nd Industrial Tribunal, Kolkata in Case No. VIII-47 of 2010.
2. The petitioner herein/company's case before the tribunal was as follows:-

“.....The OP Company has submitted in its written statement that the case is not maintainable in its present form and law and the reference is not maintainable as appointment as a temporary employee does not confer any right to the post and appointment for a stipulated period becomes infructuous after the expiry of the stipulated period leaving no scope either for continuance or for any benefit in any manner whatsoever

and a temporary employee cannot have any vested right to the post and engagement of daily wage cannot be construed to be retrenchment under The Industrial Disputes Act, 1947 and interview for the temporary appointment does not confer any right to the post or right to appointment and the petitioner, being a temporary hand, was engaged by the shop manager to cater the need of temporary requirement and the temporary employment for a stipulated period comes to an end after the expiry of the said period and no requirement of giving any notice or any course as wrongly contended arises and there is no question of any reinstatement since no illegal action has been taken by the OP company and the statutory dues have been paid to the petitioner and accordingly this OP company has prayed for dismissal of this case.....”

3. The employee/respondent's case before the tribunal was as follows:-

*“.....The petitioner has submitted in its written statement that he was recruited by the shop manager of the OP company as **temporary hand** in 1990 and he worked till 1993 and then his service was terminated by the OP company and he challenged the said termination before the Ld. 7th Industrial Tribunal, Kolkata and by award dated 29.08.1997 the Ld. 7th Industrial Tribunal, Kolkata reinstated his service and thereafter he was posted in different shops of the OP Company and he used to get salary directly from the OP Company and being the temporary hand he had to perform duties like attending the customers, provide the shoes as per the choice of the customers, maintaining the shoe box in proper manner and all other jobs like the permanent employee as per the directions of the shop manager of the OP company and in this way he worked for more than 240 days continuously without any interruption and then suddenly on 20.10.2008, the shop manager of the OP company without any notice directed him not to join in his duty in the shop of the opposite party and without his laches, the OP company illegally terminated his service and he made one representation dated 20.10.2008 to the OP company but the OP company did not give any reply and then he moved the Labour Commissioner, West Bengal, and raised his grievances and then the Labour Department has referred this case to this Tribunal for adjudication of the present dispute.....”*

4. Before the tribunal, though the petitioner has examined himself as PW 1 on and from 19.09.2014, he did not file any affidavit in chief in respect of his evidence. But he has proved some documents in chief and he has been cross-examined.
5. The OP Company has examined one witness as the OPW 1 and the OPW 1 has filed affidavit in chief in respect of his evidence and he has been cross-examined in full by the petitioner.
6. The tribunal considering the materials on record came to the finding that:-

*“.....It has been proved that since 1990 to 19.10.2008 the petitioner worked in the shop of the OP Company as the **temporary hand** and admittedly on and from 20.10.2008 he was not allowed to join his duty in the shop of the OP Company.....”*

7. Admittedly the workmen's service was terminated by the petitioner company in 1993, on the ground that the company was passing through a lean period on account of labour trouble at the factory at Batanagar.
8. The workman challenged the said illegal termination before the Ld. 7th I.T. Kolkata in case no. VIII-160/1994 and in that case on 29.08.1997 the Ld. 7th I.T. Kolkata passed an Award directing reinstatement of the respondent/workman by the petitioner company as a temporary hand. The respondent has proved the said Award dated 29.08.1997 passed by the said Ld. 7th I.T. Kolkata as the Exhibit 1. Exhibit 3 dated 01.04.1998 shows that the OP company asked the petitioner to join his service in the OP company on purely temporary basis and one letter dated 01.04.1998 (Exhibit 4) issued by the OP company shows that the OP company

directed the manager of Bata Shoe Store at Park Circus to allow the petitioner to join his duty as a temporary Shop Assistant.

9. So as per the said Award dated 29.08.1997, the OP Company **reinstated** the petitioner in its shop as a temporary Shop Assistant on and from 01.04.1998 and the petitioner started working there.
10. **There is also nothing on record to show that the OP company challenged the said Award dated 29.08.1997 before any higher Forum.**
11. The tribunal further held that according to the West Bengal Amendment, Section 2 Clause (oo) shall be renumbered as Section 2 clause (ooo) and the expression **“by notice or otherwise”** has to be inserted after the words “termination by the employer” in Section 2 clause (ooo).
12. According to the amendment, Section 2 (ooo) of The Industrial Disputes Act, 1947, **notice has to be given** to the workman concerned for his retrenchment and according to Section 25-F of the said Act, notice has to be given by the employer to the employee regarding reasons for retrenchment, but in this case, before termination of service of the petitioner on 20.10.2008, **admittedly** no such notice was issued to the petitioner by the OP company.
13. Admittedly, the petitioner worked as a temporary staff in the OP company from 19.06.1990 to 19.10.2008 and the provision of Section 2(s) does not **specifically mention a temporary staff** as a workman. On the contrary, this section mentions that workman means **any person employed** in any industry to do any manual, unskilled, etc. work for hire or reward.

14. The tribunal finally held that according to the amendment, Section 2-A of the Industrial Disputes Act, 1947, refusal of employment of a workman by his employer has to be considered as termination of service of the said workman. So it is clear that the petitioner of this case was a workman according to Section 2(s) of The Industrial Disputes Act, 1947 and **as the OP Company did not allow him to join on 20.10.2008, it is to be held that the OP Company refused employment to him and his service was thus terminated on and from 20.10.2008.**
15. It appears that the company has admitted that there was **no allegation** against the petitioner, for his termination from 20.10.2008 and the OP Company only raised dispute regarding completion of statutory period for termination of the petitioner on 20.10.2008.
16. The contention of the petitioner company before this Court is that these “temporary” employees were engaged only for periods when there was increase in work load (seasonal). As such, it is contended that on reduction in load of work, these workmen were not retained for work as there was no necessity to do so.
17. This stand had not been taken before the tribunal (dealt with in Para 1 at page 22 of the award).
18. **The specific contention of the company before the tribunal was:-**

*“..... Appointment as a temporary employee does not confer any right to the post and appointment for a **stipulated period** becomes infructuous after the expiry of the stipulated period leaving no scope either for continuance or for any benefit in any manner whatsoever.....”*
19. As to what is the **“stipulated period”** is not on record.

20. Admittedly, the workman was employed through an interview.
21. The learned tribunal relying upon Section 25 B(1) of the Industrial Disputes Act, held as follows :-

*“.....According to Section 25-B (1) of the Industrial Disputes Act, 1947, a workman **shall be said** to be in **continuous service** for a period if he is, for that period, **in uninterrupted service**, including service which may be interrupted on account of sickness or authorized leave or an accident or a strike which is not illegal or a lock out **or a cessation of work which is not due to any fault on behalf of the workman.***

*So this section says that if a workman is in continuous service **without any interruption**, it is to be presumed that he was in continuous service for the period concerned.*

*The petitioner could not work for the abovementioned 05 years from 1993 to 1998 as his service was terminated by the OP company and **it was not the fault on behalf of the petitioner** and accordingly as per Section 25-B(1) of the Industrial Disputes Act, 1947, **a cessation of work which is not due to any fault on behalf of the workman cannot be treated as the interrupted service.** On the other hand, it has to be treated as the **uninterrupted service** according to this section and it has to be taken into account that **the petitioner was in continuous service from 19.06.1990 to 19.10.2008 without any interruption.....”***

22. It is further the case of the petitioner/company that as the workman has crossed the age of superannuation he cannot be reinstated.
23. Written notes has been filed by the petitioner relying upon the following judgments:-

- a. State of Uttar Pradesh & Ors. vs. Rekha Rani, (2011) 11 SCC 441.**
- b. Sita Ram & Ors. Vs. Moti Lal Nehru Farmers Training Institute, (2008) 5 SCC 75.**

c. Rajasthan State Ganganagar S. Mills Ltd. vs State of Rajasthan & Anr., (2004) 8 SCC 161.

d. Director of Settlements, A.P. & Ors. vs. M.R. Apparao & Anr., (2002) 4 SCC 638.

e. Oshiar Prasad & Ors. vs. Employers in relation to management of sudamdih coal washery of M/s. Bharat Coking Coal Limited, Dhanbad, Jharkhand, (2015) 4 SCC 71.

f. State of Odisha & Anr. vs. Satish Kumar Ishwardas Gajbhiye & Ors., (2021) 17 SCC 90.

24. From the materials on record and the impugned award, it is evident that:-

- i. The respondent no. 3/workman was appointed as a temporary employee in 1990 on the basis of an interview.
- ii. He was terminated from his service in 1993.
- iii. He was then reinstated as a temporary employee by virtue of an award dated 29.08.1997, passed by the learned 7th Industrial Tribunal, Kolkata.
- iv. After 18 years of providing service by doing the work as required of a permanent employee, he was again terminated in 2008, without notice, on the ground of being a temporary employee and that the said termination was not as a punishment.
- v. Relying upon the judgments the petitioner company has contended that, a temporary employee cannot be directed to be reinstated/regularized and that it is the duty of the workman to

prove that he had put in 240 days of work in a year continuously for a minimum period of 5 years.

- 25.** Materials on record substantiate that the workman has put in continuous service for 18 years doing the job of a regular employee.
- 26.** In ***Bharat Heavy Electricals Ltd. Vs. Mahendra Prasad Jakhmola and Ors.***, (2019) 13 SCC 82, the Supreme Court held:-

“24. We may hasten to add that this view of the law has been reiterated in Balwant Rai Saluja v. Air India Ltd. [Balwant Rai Saluja v. Air India Ltd., (2014) 9 SCC 407 : (2014) 2 SCC (L&S) 804] , as follows : (SCC pp. 437-38, para 65)

“65. Thus, it can be concluded that the relevant factors to be taken into consideration to establish an employer-employee relationship would include, inter alia:

- (i) who appoints the workers;*
- (ii) who pays the salary/remuneration;*
- (iii) who has the authority to dismiss;*
- (iv) who can take disciplinary action;*
- (v) whether there is continuity of service; and*
- (vi) extent of control and supervision i.e. whether there exists complete control and supervision.*

As regards extent of control and supervision, we have already taken note of the observations in Bengal Nagpur Cotton Mills case [Bengal Nagpur Cotton Mills v. Bharat Lal, (2011) 1 SCC 635 : (2011) 1 SCC (L&S) 16] , International Airport Authority of India case [International Airport Authority of India v. International Air Cargo Workers' Union, (2009) 13 SCC 374 : (2010) 1 SCC (L&S) 257] and Nalco case [NALCO Ltd. v. Ananta Kishore Rout, (2014) 6 SCC 756 : (2014) 2 SCC (L&S) 353] .”

- 27.** In ***Hussainbhai, Calicut vs The Alath Factory Thezhilali Union, Kozhikode & Ors.***, (1978) 4 SCC 257, the Supreme Court held:-

“Held:

The facts found are that the work done by the workmen was an integral part of the industry concerned, that the raw material was supplied by the management, that the factory premises belonged to the management, that the equipment used also belonged to the management, and that the finished product was taken by the management for its own trade. The workmen were broadly under the control of the management and defective articles were directed to be rectified by the management. This concatenation of circumstances is conclusive that the workmen were the workmen of the petitioner.

(Para 2)

The true test is where a worker or group of workers labour to produce goods or services and these goods or services are for the business of another, that other is, in fact, the employer. He has economic control over the workers' subsistence, skill and continued employment. If he, for any reason, chokes off, the worker is virtually laid off.....”

(Para 5)

28. The Supreme Court's decision in ***Jaggo v. Union of India (2024 INSC 1034)*** sets a significant precedent for the regularization of long-serving temporary employees in government institutions. The judgment clarifies that:-

- *Lengthy and uninterrupted service in essential functions can warrant regularization, even if initial appointments were irregular.*
- *The misuse of temporary or part-time labels to deny employees their rightful claims is unacceptable and contrary to principles of fairness and equity.*
- *The decision discourages the exploitation of workers through temporary contracts and arbitrary terminations, encouraging government institutions to adhere to fair employment practices.*
- *The judgment is likely to influence future cases involving similar disputes, guiding courts to look beyond the initial terms of engagement and consider the actual nature and duration of service.*

- *It reinforces the responsibility of government departments to lead by example in providing stable and fair employment, thereby setting a higher standard for the private sector as well.*

29. Thus in the guidelines of the Supreme Court, to consider a prayer for regularization of a casual worker the criterias are:-

- Length of service,
- Whether working in the vacancy of a permanent post.
- Whether the worker carried out the duties of a regular employee for a substantial period of his service.
- Etc.

30. Admittedly, the petitioner/company in the present case did not challenge the award of reinstatement passed in 1997 and permitted the workman to continue till the year 2008.

31. Section 2(S) of the Industrial Disputes Act defines “Work Men”:-

“(s)["workman" means any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person-

- who is subject to the Air Force Act, 1950 (45 of 1950), or the Army Act, 1950 (46 of 1950), or the Navy Act, 1957 (62 of 1957); or*
- who is employed in the police service or as an officer or other employee of a prison, or*
- who is employed mainly in a managerial or administrative capacity, or*

(iv) who, being employed in a supervisory capacity, draws wages exceeding [ten thousand rupees] per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature.]”

32. In ***Lenin Kumar Ray vs M/s. Express Publications (Madurai) Ltd., in Civil Appeal No. of 2024 (arising out of SLP (C) No. 5660 of 2023), decided on 21st October, 2024,*** the Supreme Court held that the determinative factor for workman as:-

“15. The law is well settled that the determinative factor for "workman" covered under section 2(s) of the I.D. Act, is the principal duties and functions performed by an employee in the establishment and not merely the designation of his post. Further, the onus of proving the nature of employment rests on the person claiming to be a "workman" within the definition of section 2(s) of the I.D. Act.”

33. The employee herein is thus covered under the term “workman” as his employment (either temporary or permanent) is not denied.

34. It is also the case of the petitioner/company **M/s. Bata India Ltd.**, that the workman being a temporary employee was not allowed to continue without notice as it was not by way of punishment and he being a temporary employee.

35. Well, the company herein (**M/s. Bata India Ltd.**) has taken such stand with an employee who has put in continuous service doing the same amount/kind of work as that of a permanent employee not for a year or two, but for 18 years (Eighteen Years) long years (a substantial part of his life).

36. If this is not “UNFAIR LABOUR PRACTICE” then what is?

37. The petitioner/company had taken a plea before the tribunal that *“as the stipulated period of service of the petitioner was completed, his service was terminated”*.
38. **But what this “Stipulated Period” was or is has not been stated, this again is a vague plea, which goes against the principle of natural justice.**
39. The petitioner/company’s stand that the workman was engaged temporarily for **“Seasonal work”** is not believable considering that the workman has worked continuously for 18 years, for some time as stated at the Park Circus out (showroom) which is admittedly not a “seasonal” shop, but functions throughout the year during regular hours.
40. **An employee employed continuously for 18 years (Even if with a temporary label) in an establishment which is not “seasonal” and is run on regular basis during regular hours, prima facie shows that the employee has put in the minimum 240 days a year continuously for more than five years, more so in the absence of the company producing any proper documents.**
41. **Section 25D of the Industrial Disputes Act, lays down:-**

“25D. Duty of an employer to maintain muster-rolls of workmen.- *Notwithstanding that workmen in any industrial establishment have been laid-off, it shall be the duty of every employer to maintain for the purposes of this Chapter a muster-roll, and to provide for the making of entries therein by workmen who may present themselves for work at the establishment at the appointed time during normal working hours.”*

42. In **Ranbir Singh vs S.K. Roy, Chairman, Life Insurance, in Misc. Application No. 1150 of 2019, decided on 27 April, 2022**, the Supreme Court held:-

“.....25. It is settled principle of law that while considering the order/judgment of Constitutional Court, this Tribunal is required to keep in mind entire spectrum of the orders as well as background of the case. It is not proper to cull out a single para or a sentence from the order/judgment so as to defeat the very purpose of the order so passed by Hon’ble Supreme Court. If the orders dated 11/5/2018, 7/9/2018 and 10/9/2018 are taken into consideration, it is crystal clear that claims of all such workmen and Union/s who worked as Badli workers during the period from 20/5/1985 to 4/3/1991 are required to be considered by this Tribunal. Although I am in full agreement with the submission made on behalf of the PART B Management/LIC that **initial onus is always upon the workmen concerned to prove that they were in the employment of the Management at the relevant time, however this Tribunal cannot ignore the fact that UC has not filed on record any document/record relating to employment of various workmen rather has simply taken a plea that same being old record is not traceable.**” 22 The Dogra Report noted that LIC had admitted that 321 workers were found to be eligible for absorption in terms of the Srivastav Award. The report found fault with LIC for making contradictory claims that 321 workers were eligible for absorption when the records of workers were allegedly old and not traceable. **The Dogra Report drew an adverse inference against LIC for having failed to maintain the records in pursuance of the burden cast upon it by Section 25-D of the ID Act**, particularly when the reference was pending since 1991. Paragraph 29 of the report is extracted below:

“29) During the course of arguments as well as in the reply filed on behalf of the Management/LIC, it is clear that Management has admitted that till date 321 Nos. of employees were found to be eligible in terms of the Award and they were considered eligible for absorption. It is not

understandable to this Tribunal as to what were the basis for the Management/LIC for coming to the conclusion that only 321 Nos. of workmen/employees were found to be eligible and covered by the Award of CGIT in ID case No.27/1991, when the Management has come up with a plea that record relating to the workmen being old record is not traceable. **It is worthwhile to mention here that Section 25-D of the ID Act specifically provides that it is the duty of every Employer to maintain a muster roll and to provide for the making of entries therein by the workmen who may present themselves for work at the establishment.** This Tribunal has to keep in mind a vital fact that since the reference bearing ID No.27/1991 is pending before various Courts since 1991, **the Management/LIC was/is required to keep the record in safe custody when the case of such a huge magnitude was PART B pending before the Courts. In such circumstances, this Tribunal is constrained to draw adverse inference against the management.”** 23 Based on the above hypothesis, the report proceeded to decide “prima facie” the claims of the Unions and individual workers. While taking up the claims made by the All India Life Insurance Employees Association and its affiliate, Life Insurance Employees Association, Delhi, the report notes that 6998 claims had been filed (as contained in Annexure A). Upon scrutiny, LIC drew the attention of the CGIT to the fact that 3592 duplicate entries were found in the claims which were submitted (as contained in Annexure A-1). Noting that the “Unions have not seriously disputed the same”, the Dogra Report concludes that “such claimants are to be given benefit of absorption only once”. The Dogra Report also notes that workers who had started working beyond the cut-off date of 4 March 1991 would not be covered in the enquiry. This observation in the Dogra Report was in view of the order of this Court in the contempt proceedings arising out of the review of TN Terminated Employees Association (supra) on 7 September 2018, which had specifically observed that whether the benefit of the Srivastav Award should be given to those who had been engaged as badli workers after 4 March 1991 was a matter for interpretation by this Court. Hence, for the time being, CGIT had been directed to limit its enquiry only to

the claims for the period between 20 May 1985 and 4 March 1991 (as contained in Annexure A-2). In this context, the Dogra Report held that those workers who had commenced work after 4 March 1991 would not be covered by its enquiry.

In State of Haryana & Ors. etc. etc. v. Piara Singh & Ors. etc. etc., (JT 1992(5) S.C. 179), the Supreme Court indicated how regularization of adhoc/temporary employees in Government and Public Sector Undertakings should be effected. While PART D laying down the guidelines in this behalf, this court observe in paragraph 43 as under:-

"The normal rule, of course, is regular recruitment through the prescribed agency but exigencies of administration may sometimes call for an adhoc or temporary appointment to be made. In such a situation, effort should always be to replace such an adhoc/temporary employee by a regularly selected employee as early as possible.

Such a temporary employee may also compete along with others for such regular selection/appointment. If he gets selected, well and good, but if he does not, he must give way to the regularly selected candidate.

The appointment of the regularly selected candidate cannot be withheld or kept in abeyance for the sake of such an adhoc/temporary employee."....."

- 43.** Regarding the interpretation of Article 141 of the Constitution by the learned tribunal, it appears that the tribunal while doing so was of the opinion that the judgment relied upon by the petitioner was not applicable to the facts of the case before it. But such observations by an officer in a responsible position should be avoided, as such ignorance is best not put in public that too while carrying out work of quasi judicial nature.

44. From the materials on record, and the discussion herein, it appears that the **reference** in this case has been answered in accordance with law and thus **requires no interference by this Court.**
45. **The workman is unemployed for last 17 years** and as there is no evidence to show that he was gainfully employed in the interim period, the cost imposed by the tribunal to be paid to the workman is also justified.
46. It is submitted by the company that the said employee has superannuated in the interim period and as such the question of reinstatement does not arise.
47. Considering that it has been held that his termination was illegal and against the principles laid down in respect of a beneficial legislation, the petitioner shall pay full back wages along with consequential reliefs from 20.10.2008 till his date of superannuation (not on record) along with **simple** interest of 10 % per annum till date of payment, within 60(sixty) days from the date of this order.
48. **The legislation being a beneficial one, grant of interim relief is an integral part of such proceeding and as such this Court is not inclined to interfere with the order under challenge.**
49. **WPA 22663 of 2024 stands dismissed.**
50. **Tribunal to proceed for expeditious disposal of the case.**
51. All connected application, if any, stands disposed of.
52. Interim order, if any, stands vacated.

- 53.** Urgent Photostat certified copy of this judgment, if applied for, be supplied to the parties, expeditiously after complying with all necessary legal formalities.

(Shampa Dutt (Paul), J.)