**IN THE HIGH COURT OF JUDICATURE AT PATNA**
**Civil Writ Jurisdiction Case No.10686 of 2013**

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Mithila Dugdh Utpadak Sahkari Sangh Ltd. Industrial Area, P.O.-Harpur Alowth, District- Samastipur through its' Managing Director

... ... Petitioner/s

Versus

1. The State Of Bihar.
2. The Secretary, Department Of Labour, Employment Nd Training, Govt. Of Bihar, Patna
3. Abul Hayat Son Of Late Shekh Bihari Hassan Resident Of Village - Muradpur Bangra, P.O. Kubauli Ram, District - Samastipur

... ... Respondent/s

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**Appearance :**

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| For the Petitioner/s | : | Mr. Rajesh Prasad Choudhary, Adv. |
| For the Respondent/s | : | Mr. S.Raza Ahmad |

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**CORAM: HONOURABLE MR. JUSTICE A. ABHISHEK REDDY**

ORAL ORDER

66 16-07-2026 Heard the learned counsel for both the parties

The present writ petition has been filed for the following relief(s):-

> *"That, this is an application for issuance of an appropriate writ/writs, order/orders, direction / directions for setting aside the order awarddated18/10/2012 passed in Reference Case No.1 of 1998 by Sri Rajesh Kumar III the Presiding Officer, Labour Court, Begusarai, whereby and where under the petitioner/management has been directed to reinstate the respondent no.3 with 25% of the consequential monetary benefits. The petitioner further prays for any other relief/reliefs for which the petitioner management may be found entitled too."*

**3.** The factual matrix of the instant case reveal that Respondent No. 3 has commenced work as a daily wage typist on 12.11.1987. The learned counsel for petitioner-management contends that the respondent No. 3 was an employee of the Baso Kubauli Mahila Dugdh Utpadak Sahyog Samiti Limited, from where he was sent on deputation to the Samastipur Dairy pursuant to are solution dated 10.06.1988. In order to regularize the services of 18 such deputed secretaries, the management constituted an expert team comprising of Managing Director V.K. Srivastava and NDDB Member Dr. G.P. Vijay and scheduled the interviews for 11.04.1990. That out of the 18 candidates, only three candidates appeared that the Respondent No. 3, representing an unorganized union, boycotted the interview process and, assaulted the management and the interview board members. That the respondent No. 3 forcibly extorted signatures on an agreement demanding automatic regularization, prompting the registration of an FIR (Tajpur P.S. Case No. 74 of 1990, later proceeding as G.R. Case No. 475/90). That the respondent No. 3 was subsequently acquitted in the said criminal case by giving benefit of doubt. In the wake of the violent events, that took place on the date of interview, the Board of Directors convened an emergent meeting and resolved to cancel the extorted agreement. The deputation of the respondent No. 3 were terminated on 12.04.1990 via Letter No.

50D/55/907, repatriating respondent No. 3 to his parent society. That the responent No. 3 had approached the Labour Court earlier and a "No Dispute" award was passed by the Labour Court, Muzaffarpur (Ref. Case No. 16/1989) and the Industrial Tribunal, Patna (Ref. Case No. 3/1991). Thereafter, the State Government referred the present dispute on 27.03.1998. The Labour Court, Begusarai, *vide* the impugned Award dated 18.10.2012, concluded that the termination was illegal solely on the ground of non-compliance of Section 25F of the Industrial Disputes Act, 1947. The Labour Court came to the said conclusion citing a lack of evidentiary proof regarding the payment of one month's advance salary in lieu of notice.

**4.** Assailing the impugned Award, the learned counsel for the petitioner- management strenuously urged that Respondent No. 3 was never directly employed by the petitioner but was a daily wager engaged by a distinct Mahila Samiti, making the direction for reinstatement inherently flawed. It is contended that the termination of deputation was a direct consequence of the gross indiscipline and physical violence exhibited on 11.04.1990. That the Labour Court's finding regarding the violation of Section 25F of the ID Act is factually incorrect, as the ledger extracts and Cheque No. 2399 dated

29.05.1990 unequivocally demonstrate that one month's advance salary and deputation allowance were indeed paid in compliance of 25F of the ID Act. That there was no employer/ employee between the petitioner and the respondent No. 3. That the respondent No. 3 had earlier approached the Labour Court which had passed a no dispute award, therefore, the second reference is impermissible under law.

**5.** Furthermore, during the pendency of this writ, statutory wages under Section 17-B of the ID Act were dutifully paid until August 2022, at which point the respondent attained the age of superannuation (Date of Birth: 15.08.1962), thereby extinguishing any continuing liability. To bolster these submissions, heavy reliance was placed on the judgments of the Hon'ble Supreme Court in ***Jagbir Singh v. Haryana State Agriculture Marketing Board & Anr., (2009) 15 SCC 327*** and ***U.P. State Brassware Corporation Ltd. v. Uday Narayan Pandey, (2006) 1 SCC 479***, asserting that industrial courts must not mechanically apply the cold letter of the statute. That even if Section 25F was violated, automatic reinstatement with back wages for a daily wager is not the rule; rather, adequate monetary compensation is the sole appropriate relief. Learned counsel has therefore, prayed this Hon’ble Court for allowing the present CWJC and for setting aside the award of the Labour Court dated 18.10.2012.

**6.** *Per contra,* the learned counsel representing Respondent No. 3 has vehemently defended the Labour Court's Award. Learned counsel has stated that the respondent No. 3 was directly appointed against a permanent vacancy by the Manager of the Milk Union and had rendered continuous service of more than 240 days, a fact substantiated by the testimony of AW-2 (Tej Narayan Choudhary) confirming that the aforementioned Mahila Samiti only employs females. In support of his case, reliance is placed on ***Director, Fisheries Terminal Department v. Bhikubhai Meghajibhai Chavda, (2010) 1 SCC 47***, to assert that once the workman deposed he had worked for 240 days continuously, the burden of proof shifted entirely to the management, which failed to adduce any evidence or produced the muster rolls to disprove his continuous service. It is argued that the termination of the respondent No. 3 was a vindictive measure designed to break the employees' union of which the respondent was an executive member. That the management's abrupt dismissal of the respondent No. 3 on allegations of gross misconduct without ever conducting a mandatory domestic departmental enquiry stands in stark violation of the principles of natural justice. The respondent points out that the management's allegations of assault falls flat given the fact that the respondent No. 3 was honourably acquitted in the criminal case (G.R. Case No. 475/90). That the management has utterly failed to adduce any evidentiary proof before the Labour Court that the mandatory Section25F payment was actually tendered. Relying on the Constitution Bench judgment of the Hon'ble Supreme Court in ***Syed Yakoob v. K.S. Radhakrishnan, AIR 1964 SC 477***, the learned counsel for respondent submitted that a writ of certiorari is purely supervisory and the Hon’ble High Court cannot act as an appellate court to re-appreciate findings of fact recorded by the Labour Court.

**7.** Further reliance is placed on ***Hindustan Tin Works Pvt. Ltd. v. Employees of M/s Hindustan Tin Works, (1979) 2 SCC 80*** to assert that once an unfair labour practice is established and termination is held to be illegal, reinstatement with full back wages remains the normal and inevitable rule.

**8.** During the pendency of this writ, this Court directed the payment of Section 17-B wages vide an order dated24.08.2015, which the management paid until August 2022.

**9.** This Court after giving a thoughtful consideration to the rival submissions made by the counsels is of the opinion that the judicial system, as a cohesive framework, is designed to deliver justice grounded in the sound application of legal principles. The fulcrum of the Labour Court's decision rests on the premise that Section 25F of the ID Act was violated due to the non-payment of one month's salary in lieu of notice. However, this conclusion of the Labour Court is erroneous and contrary to the record, a bare perusal of the supplementary affidavit and the annexed wage ledgers leaves no modicum of doubt that the petitioner- management had explicitly disbursed the said one month delay *vide* Cheque No. 2399 dated 29.05.1990 in compliance of the Section 25F.

**10.** Though, the respondent No. 3, has heavily relied on ***Syed Yakoob v. K.S. Radhakrishnan, AIR 1964 SC 477***, contending that a writ court exercising certiorari jurisdiction cannot re appreciate evidence or disturb the findings of fact, the same is misplaced in the present context. It is a settled canon of law, as elucidated by the Hon'ble Supreme Court in ***General Manager, Electrical Rengali Hydro Electric Project, Orissa v. Giridhari Sahu, (2019) 10 SCC 695***, that if a tribunal arrives at a finding of fact by ignoring vital, incontrovertible documentary evidence that goes to the very root of statutory compliance, it commits an error of law apparent on the face of the record. Such a glaring omission by the Labour Court renders the finding patently perverse and fully amenable to correction under Article 226 of the Constitution of India. Therefore, the restrictive principles of Syed Yakoob do not afford an absolute shield to the respondent in the face of demonstrable factual perversity.

**11.** Furthermore, the reliance placed by the Respondent No. 3 on ***Hindustan Tin Works Pvt. Ltd. v. Employees of M/s Hindustan Tin Works, (1979) 2SCC 80***, for demanding automatic reinstatement is entirely distinguishable. That judgment primarily dealt with the retrenchment of regular, permanent employees. In the instant case, the respondent was admittedly a daily wager who had worked for a brief period of less than three years before his termination in 1990. The law in this regard has significantly evolved. As cogently laid down by the Hon'ble Supreme Court in ***BSNL v. Bhurumal, (2014) 7 SCC 177***, the mechanical application of reinstatement with back wages for daily wagers whose termination is found to be in violation of Section 25F is wholly unjustified; the proper relief is an award of lump-sum compensation. This view was firmly reiterated in ***Assistant Engineer, Rajasthan Development***

***Corporation v. Gitam Singh, (2013) 5 SCC 136***, establishing that the relief of reinstatement for a daily wager after a hiatus spanning several decades is legally unsustainable. The Labour Court, thus, erred in adopting an inflexible approach by ordering reinstatement 22 years after the cessation of a brief, daily-wage engagement.

**12.** Insofar as the respondent's reliance on ***Dena Bank v. Ghanshyam, (2001) 5 SCC 169 and Dilip Mani Dubey v. SIEL Limited, (2019) 4 SCC 534***, is concerned, the said judgment explicitly clarifies that while wages paid under Section 17-B of the ID Act are in the nature of a non-refundable subsistence allowance, the payment of such interim relief does not preclude the Hon'ble High Court from adjudicating the legality of the underlying Award. The disbursement of 17-B wages during the pendency of the writ petition does not cure the inherent perversity of the Labour Court's Award, nor does it grant an indefeasible right to physical reinstatement. This court is in respectful agreement with the principles of Dena Bank (supra) only to the extent that the wages already disbursed tot he respondent up to his superannuation in August 2022 shall not be recovered.

**13.** Finally, this court must advert to the payment of wages under Section17-B of the ID Act. The record indicates that the petitioner-management complied with this Court's interim orders and disbursed the statutory maintenance allowance up to August 2022. As Respondent No. 3reached his age of superannuation (60 years) in August 2022, the management was well within its statutory rights to cease further payments. As observed in ***K.V. Anil Mithra v. Sree Sankaracharya University of Sanskrit, (2022) 17 SCC 505***, statutory benefits or claims tied to an active service lifespan cannot be extended beyond the date of superannuation. The passage of time and the attainment of superannuation render the relief of physical reinstatement both a legal and practical impossibility.

**14.** The reliance on ***Director, Fisheries Terminal Department v. Bhikubhai Meghajibhai Chavda, (2010) 1 SCC 47***, regarding the burden of proof for establishing 240 days of continuous service, is well-taken as a general proposition of law but provides no succor to the respondent in the present factual matrix. The petitioner-management's primary defense was not merely a denial of the 240 days of service, but rather that the mandatory pre-conditions of retrenchment under Section 25Fwere, in fact, affirmatively complied with through the payment of advance salary via Cheque No. 2399. When incontrovertible documentary evidence proves compliance with Section 25F, the shifting of the evidentiary burden regarding the completion of 240 days becomes a moot academic point

**15.** However, addressing the management's potential claim for recovery of these paid wages, we find merit in the respondent's reliance on ***DenaBank v. Ghanshyam, (2001) 5 SCC 169*** and ***Dilip Mani Dubey v. SIEL Limited, (2019) 4 SCC 534***. The law is no longer res integrathat proceedings under Section 17-B are independent in nature. As held in Dilip Mani Dubey, even if the Hon'ble High Court eventually upholds the termination order and quashes the Labour Court's award, the employer has no right to recover the amount already paid under Section17-B, as it is in the nature of a non-refundable subsistence allowance. Thus, while the relief of physical reinstatement is a legal and practical impossibility, the wages disbursed to the respondent as interim relief remain legally non-recoverable.

**16.** In light of the aforesaid discussion, this Court find that the impugned Award passed by the Labour Court suffers from patent illegality and jurisdictional overreach. The Labour Court not only failed to appreciate the factual matrix regarding the compliance of Section 25F of the ID Act but also erred in law by ordering the reinstatement of a daily wage employee after an inordinate delay, contrary to the settled jurisprudence of the Hon'ble Supreme Court. Consequently, the writ petition is allowed. The impugned Award dated 18.10.2012 passed by the Presiding Officer, Labour Court, Begusarai, in Reference Case No. 1 of 1998, is hereby quashed and set aside.

**17.** This court further clarify that the wages already paid to Respondent No. 3 under Section 17-B of the ID Act during the pendency of this litigation cannot be recovered by the petitioner-management, and the claims of the respondent-workman stand finally extinguished.

**18.** Registry is directed to return the Lower Court Record of Reference Case No. 01 of 1998 from the Presiding Officer, Labour Court, Begusarai.

**19.** The present CWJC stands allowed to the extent indicated.

**20.** Pending interlocutory applications, if any, also stand disposed of.

**(A. Abhishek Reddy, J)**

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