



2026:DHC:1698



\$~104 and 107

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

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Date of Decision: 16.02.2026

+ **W.P.(C) 2140/2026, CM APPL. 10396/2026**

(104) BRIJMOHAN

.....Petitioner

versus

M/S LAL BAHADUR SHASTRI HOSPITAL & ORS.

.....Respondents

+ **W.P.(C) 2157/2026, CM APPL. 10490/2026**

(107) SUKHDEV

.....Petitioner

versus

M/S LAL BAHADUR SHASTRI HOSPITAL & ORS.

.....Respondents

Presence: Mr. Rohit Kumar and Mr. Karan Sharma, Advocates for petitioners in Item Nos.104 and 107.

None for the Respondents in Item Nos.104 and 107.

CORAM:

HON'BLE MR. JUSTICE SACHIN DATTA

SACHIN DATTA, J. (Oral)

1. The present petitions have been filed by the petitioners assailing awards dated 04.12.2023 passed by the Additional District and Sessions Judge, Presiding Officer, Labour Court-IV, Rouse Avenue, New Delhi in LIR Nos. 2246/2022 and 2294/2022.

2. By way of the impugned awards, the Labour Court adjudicated the references made under Section 10(1) and 12(5) of the Industrial Disputes



Act, 1947 (hereinafter referred as “the IDA”) by the Joint Labour Commissioner, East/North East District, on complaints filed by the petitioners/claimants against the respondent nos. 1 and 2; and dismissed the same on account of the failure of the petitioners to provide any documentary evidence/s to corroborate their claim of being employed and/or illegally terminated by the respondent no.1.

3. At the outset, it is noticed that the present petitions have been filed in identical factual conspectus and the petitioners (who claim to be employees of respondent no.1) raise similar grounds of challenge against the common respondents. In circumstances, it is considered apposite to dispose of the petitions by way of a common order.

4. Learned counsel on behalf of the petitioners submit that the petitioners are workmen who have been in continuous employment of respondent no.1 since 01.01.2010 [in W.P(C) 2140/2026] and 10.03.2017 [in W.P(C) 2157/2026], in capacity of nurse orderlies. However, despite being appointed directly by the respondent no.1 and performing duties that were permanent in nature, the respondent no.1 purposefully, to circumvent legal obligations, engaged the petitioners through contractor/s, and denied them benefits of a permanent employment.

5. It is also contended that even the contracts executed between the respondent no.1 and concerned contractor is a mere sham and the ultimate supervision and control over the petitioners has always been exercised by respondent no.1.

6. It is further submitted that in 2022, the contract of respondent no.2 concluded with respondent no.1, and thereafter respondent no.1 entered into



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a contract with respondent no.3 for outsourcing nursing orderlies. However, the respondent no.3 demanded a sum of Rs. 30,000/- from workmen engaged through contractor, as a pre-condition for retaining their employment with respondent no.1. When the petitioners refused to comply with the said demand, on 30.04.2022 [in W.P(C) 2140/2026] and 01.05.2022 [in W.P(C)2157/2026] the respondents without issuing any notice/memo/chargesheet, after obtaining signature of petitioners on blank papers and vouchers, illegally terminated them.

7. Against the aforementioned actions, it is submitted that the petitioners through their Union issued formal demand letters dated 25.06.2022 to the respondent no.1 for reinstatement and payment of outstanding salary etc. The petitioners also made written complaints to the medical superintendent on 26.05.2022, reporting the illegal demand made by the respondent no.3; however, to no avail. Statement of claims were also filed before the Conciliation Officer by the petitioners. However, since no settlement could arrive between the parties, reference was made to the Labour Court under Section 10(1) and 12(5) of the IDA by the Joint Labour Commissioner, East/North East District for adjudication of the disputes, which ultimately led to passing of the impugned awards.

8. Learned counsel for petitioners also contends that the petitioners have been prejudiced inasmuch as the Authorized Representative of the petitioners erroneously omitted cross examination of the respondents before the Labour Court.

9. It is noticed that for substantiating their claims before the Labour Court, the petitioner in W.P(C) 2140/2026 placed reliance upon a temporary



pass issued by the respondent no.1 (as Ex. WW1/7) and a certificate issued by the Director General of Health Services (as Ex. WW 1/8). The petitioner in W.P(C) 2157/2026 placed on record E-Pehchan Card issued by ESIC (as Ex. WW1/9), two certificates issued by the respondent no.1 [i.e., certificate dated 03.03.2021 (as Ex. WW1/10) and a certificate of appreciation (as Ex. WW 1/11)] and a member passbook of EPFO (as Mark A).

10. The Labour Court after considering the aforesaid documents categorically recorded a finding/observation that the petitioners have failed to produce any document and/or testimony which corroborates their claim of employment, and illegal termination by the respondent no.1. The relevant portion of the impugned award [in W.P(C) 2140/2026] reads as under: -

“13..... The witness/WW1/claimant has not filed any document regarding his appointment or payment of any salary by management no.1. The claimant has not produced any documentary proof regarding her employment with management no.1 for the period as claimed in statement of claim and his affidavit of evidence. The claimant has not called even his coworkers to examine and prove that he ever worked with management no.1 as claimed by him. Ex.WW1/7 i.e. temporary pass relied upon by the workman itself shows that he was contractual staff on outsource basis with the management no.1. None of the documents relied by the claimant are in respect of his employment or payment of salary by the management no.1. No document was summoned or produced by the claimant in respect of his employment with the management no.1. In fact, the claimant did not take any steps to summon or prove any document regarding her employment, attendance or payment of wages. The claimant in his cross-examination also admits that –

"Management no.1 has not issued any documents to me regarding my employment like appointment letter or joining; I was paid salary by management no.2".

Merely oral and bald averments by the claimant is not sufficient to prove that he was employed by the management no.1 as mentioned in the claim petition. There is no admission by the management no.1 and management



no.1 has denied that the claimant was its employee.

14. In the present case, there is absolutely no document from which it can be ascertained that the claimant has worked or paid any amount by the management no.1 herein. There is also no document from which it can be ascertained that the workman herein was on the rolls of the management no.1. With the above deficiencies in the evidence of the claimant herein, it cannot be said that onus shifted on the management no.1. I have perused all the documents relied by claimant in support of his claim and none of these documents prove that the claimant was the employee of management no.1 as claimed in the statement of claim.

15. No doubt that claimant has examined himself as WW-1 vide her affidavit Ex. WW-1/A, wherein, he has claimed that he worked with the management no.1 for the period as claimed in the statement of claim. The claimant has failed to bring on record any cogent documentary evidence to prove that he worked with the management since 01.01.2010. Neither the testimony of the claimant nor any of the documents relied/ produced by him are sufficient to hold that the claimant had worked in the management no.1 as regular employee for the said period, as claimed by him in the statement of claim. Therefore, this court is of the considered opinion that the self-serving affidavit Ex. WW1/A of claimant and the documents relied by him are not sufficient to conclude that claimant had worked in the management no.1 for the period as claimed by him. Issue No.1 is accordingly decided against the claimant and in favour of management no.1.

16. The contention of the management no.2 that the contract of management no.1 and management no.2 was terminated by the management no.1 we.f. 01.05.2022 has substance as the claimant in his statement of claim as well as in his evidence by way of affidavit Ex.WW1/A claimed that her services was terminated by M/s. Bhoomi Enterprises and the officials of hospital. Nothing has been placed on record by the claimant to show that he was working with the management no.2 at the time of his termination. Accordingly, issue no.2 is decided in favour of the management no.2 and against the claimant.

17.....It is reiterated that the claimant in his statement of claim as well as in his evidence by way of affidavit claimed that his services were terminated by M/s. Bhoomi Enterprises and the officials of school management. I have gone through the reference in issue dated 28.11.2022 by the Appropriate Govt. and no dispute for adjudication has been referred regarding either the relationship between the claimant and



M/s. Bhoomi Enterprises nor there is any reference for adjudication of the issue regarding illegal termination of the claimant by M/s. Bhoomi Enterprises. M/s. Bhoomi Enterprises has not been impleaded in this petition as well. There is no document on record to show that the workman was appointed by the management no.1 or any employee employer relationship existed between the workman and management no.1 or that the management no.2 terminated the services of claimant. The claimant has not even summoned/examined any witness from managements to show that there existed any relationship between the claimant and the management no.1 or he was appointed by management no.1 only and his services were terminated by the management no.2.

18. In the given facts and circumstances, on the basis of material placed and proved on record and in view of aforesaid discussions, it is held that the claimant has failed to prove the contention that he was employed by the management no.1 nor he was illegally terminated by the management no.1. Further, the claimant did not allege illegal termination by the management no.2 nor claimed any relief against the management no.2; there is no allegation by the claimant in the claim petition or affidavit against management no.2 nor there is any reference against M/s. Bhoomi Enterprises 2 as noted. Issue no.3 is accordingly decided against the claimant.”

11. A plain reading of the aforementioned documents (annexed in the present petitions) clearly establishes that the relied upon documents are either inadequate to substantiate the claims made by the petitioners or unequivocally reflects that the petitioners were contractual employees, outsourced by the respondent no.1 through contractor.

12. Thus, the impugned award renders a categorical finding to the effect that:

- i. The claimants (petitioners herein) have not produced any documentary proof regarding their employment with the respondent no.1;
- ii. The claimants did not adduce any evidence of their co-workers to corroborate / substantiate their case;



- iii. None of the documents relied by the petitioners / claimants are in respect of their employment of payment of salary by the respondent no.1;
- iv. No document was summoned or produced by the petitioners / claimants in respect of their employment with the respondent no.1;
- v. There is absolutely no document from which it can be ascertained that the petitioners / claimants had worked for the respondent no.1 or was paid any amount by the respondent no.1;
- vi. There is also no document from which it can be ascertained that the petitioners / claimants were on the rolls of the respondent no.1;

13. The impugned award is premised on the above deficiencies / shortcomings in the case set up by the petitioners / claimants. The impugned award essentially holds that the deficiencies were so fundamental that the onus never shifted on the respondent no.1 to controvert / repel the case set up by the petitioners / claimants; it was concluded that the petitioners / claimants failed to bring on record / establish their employment with the respondent no.1 for the concerned period.

14. The impugned award notes that the temporary pass (Ex. WW1/7) relied upon by the petitioner in W.P(C) 2140/2026, *“itself shows that he was contractual staff on outsource basis with the management no.1”* (management no.1 is respondent no.1 in the present petition). The said temporary pass is reproduced as under:-



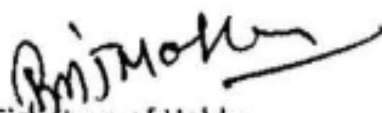
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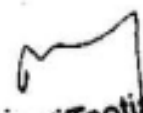


**Lal Bahadur Shastri Hospital, Khichripur,
GNCTD, Delhi-110091**
E-mail:- mslbs@ymail.com mslbsh.delhi@gov.in
Phone: - 011-21200709 , 11
Temporary Pass(Valid till 31st March 2020)

Name - **BRIJ MOHAI**
Address - **H.No 9/230, Trilok Pur
Delhi - 110091**
Designation - **NURSING ORDERLY**
(Contractual staff on Outsource basis)
This is to certify that above mention employee
may be allowed to commute from hospital to residence
and vise versa.


Dr. Manoj Teotia
Chief Casualty Medical Officer


Signature of Holder


Signature with stamp of issue
Dr. Manoj Teotia
Chief Casualty Medical Officer

15. The E-Pehchan Card issued by ESIC (Ex.WW1/9) and the member passbook of EPFO (as Mark A) relied upon by the petitioner in 2157/2026 records respondent no.2 as the employer. The E-Pehchan Card issued by ESIC (Ex.WW1/9) reads as under:-



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EMPLOYEES' STATE INSURANCE CORPORATION
e-Pehchan Card

Insured Person : Sukhdev
Insurance No. : 2016689585
Date of Registration : 01/06/2017

YOUR REGISTRATION DETAILS

Employee Name:	Sukhdev	Type of Disability :	None
Name of Father / Husband:	RAMPAL	Date of Birth :	10/03/1995
Marital Status :	Unmarried	Gender :	Male
Present Address :	12/286 BLOCK NO 12,KALYANPUR,Dist New Delhi,Delhi,110081	Permanent Address :	12/286 BLOCK NO 12,KALYANPUR,Dist New Delhi,Delhi,110081
Dispensary / IMP for IP :	Mayur Vihar, DL (ESIC Disp.)	Dispensary / IMP for Family:	Mayur Vihar, DL (ESIC Disp.)
UIN	KAD1.0007059958		
Current Employer Details		First Employer Details	
Employer's Code No. :	10000753740001001	Employer's Code No. :	None
Sub Unit's Code No. :	None	Sub Unit's Code No. :	None
Date of Appointment :	22/12/2018	First Insurance No. :	None
Name of Employer :	GREEN HOUSE KEEPING	Name of Employer :	None
Address of Employer :	D-1/102 ST.NO-3 ASHOK NAGAR,NEAR MIG FLATS DELHI,Dist New Delhi,Delhi,110081	Address of Employer :	None

The relevant portion of member passbook of EPFO (Mark A) reads as under: -

 कर्मचारी भविष्य निधि संगठन EMPLOYEES' PROVIDENT FUND ORGANISATION	
सदस्य पासबुक / Member Passbook	
स्थापना आईडी / एनई	Establishment ID/Name
सदस्य आईडी / नाम	Member ID/Name
जन्म तिथि	DOB
यू.आई.एन.	UIN
	DS51-06027857000 / GREEN HOUSE KEEPING
	DS51-060278570000011367 / SUKHDEV
	10-MAR-1995
	101551975891

16. Clearly, the findings/observations rendered in the impugned awards are based upon a detailed appreciation of the factual conspectus and the evidence adduced by the parties. It was also rightly observed that given the



utter lack of evidence to corroborate/ substantiate the assertions of the petitioners, onus was not shifted upon the employer to rebut the same.

17. In the case of **Workmen of Nilgiri Coop. Mkt. Society Ltd. v. State of T.N.**, (2004) 3 SCC 514, the Supreme Court has held that the burden of proof is on the workmen to establish employer employee relationship; an adverse inference cannot be drawn upon the employer on the assumption that on production of employer records, the employer employee relationship would have been established. The said judgment also clearly notes that the question of existence of employer employee relationship is pure question of fact and ordinarily the High Court shall not interfere with the same unless the findings in this regard are manifestly or obviously erroneous or perverse. The relevant observations in the said judgment are as under:-

“Burden of proof

47. It is a well-settled principle of law that the person who sets up a plea of existence of relationship of employer and employee, the burden would be upon him.

48. In N.C. John v. Secy., Thodupuzha Taluk Shop and Commercial Establishment Workers' Union [1973 Lab IC 398 : (1973) 1 LLJ 366 (Ker)] the Kerala High Court held: (LAB IC p. 402, para 9)

The burden of proof being on the workmen to establish the employer-employee relationship an adverse inference cannot be drawn against the employer that if he were to produce books of accounts they would have proved employer-employee relationship.

49. In Swapan Das Gupta v. First Labour Court of W.B. [1976 Lab IC 202 (Cal)] it has been held: (LAB IC para 10)

Where a person asserts that he was a workman of the company and it is denied by the company, it is for him to prove the fact. It is not for the company to prove that he was not an employee of the company but of some other person.

50. The question whether the relationship between the parties is one of employer and employee is a pure question of fact and ordinarily the High Court while exercising its power of judicial review shall not interfere therewith unless the finding is manifestly or obviously erroneous or perverse.”



18. In the factual conspectus of the present case, this Court is unable to find perversity and/or any other infirmity in the impugned awards, so as to warrant interference of this Court.

19. It is well settled that a writ court under Article 226 of the Constitution of India cannot interfere with finding of facts recorded by a labour court unless the same is wholly unsupported by evidence, arbitrary or perverse in nature. A Division Bench of this Court in ***Dinesh Kumar and Ors. vs. Central Public Works Department and Ors.***, 2023 SCC OnLine Del 6518 took note of the various judgments rendered by the Supreme Court in this regard as under: -

“11. The Hon'ble Supreme Court in paragraph 17 of the judgment in Indian Overseas Bank v. I.O.B. Staff Canteen Workers' Union, (2000) 4 SCC 245, has held as under:

“17. The learned Single Judge seems to have undertaken an exercise, impermissible for him in exercising writ jurisdiction, by liberally reappreciating the evidence and drawing conclusions of his own on pure questions of fact, unmindful, though aware fully, that he is not exercising any appellate jurisdiction over the awards passed by a tribunal, presided over by a judicial officer. The findings of fact recorded by a fact-finding authority duly constituted for the purpose and which ordinarily should be considered to have become final, cannot be disturbed for the mere reason of having been based on materials or evidence not sufficient or credible in the opinion of the writ court to warrant those findings, at any rate, as long as they are based upon some material which are relevant for the purpose or even on the ground that there is yet another view which can reasonably and possibly be taken... .. The only course, therefore, open to the writ Judge was to find out the satisfaction or otherwise of the relevant criteria laid down by this Court, before sustaining the claim of the canteen workmen, on the facts found and recorded by the fact-finding authority and not embark upon an exercise of reassessing the evidence and arriving at findings of one's own, altogether giving a complete go-by even to the facts specifically found by the Tribunal below.”

12. The Hon'ble Supreme Court in the aforesaid case has held that the



findings of fact recorded by a fact finding authority (Tribunal) duly constituted for the purpose becomes final unless the findings are perverse or based upon no evidence. The jurisdiction of the High Court in such matters is quite limited.

13. The Hon'ble Supreme Court has taken a similar view in *Hari Vishnu Kamath v. Ahmed Ishaque*, AIR 1955 SC 233, inter alia held as under:

“21. ... On these authorities, the following propositions may be taken as established : (1) Certiorari will be issued for correcting errors of jurisdiction, as when an inferior Court or Tribunal acts without jurisdiction or in excess of it, or fails to exercise it. (2) Certiorari will also be issued when the court or Tribunal acts illegally in the exercise of its undoubted jurisdiction, as when it decides without giving an opportunity to the parties to be heard or violates the principles of natural justice. (3) The court issuing a writ of certiorari acts in exercise of a supervisory and not appellate jurisdiction. One consequence of this is that the court will not review findings of fact reached by the inferior court or tribunal, even if they be erroneous. This is on the principle that a court which has jurisdiction over a subject-matter has jurisdiction to decide wrong as well as right, and when the legislature does not choose to confer a right of appeal against that decision, it would be defeating its purpose and policy if a superior court were to rehear the case on the evidence and substitute its own findings in certiorari. These propositions are well-settled and are not in dispute.

23. It may therefore be taken as settled that a writ of certiorari could be issued to correct an error of law. But it is essential that it should be something more than a mere error; it must be one which must be manifest on the face of the record. ... The fact is that what is an error apparent on the face of the record cannot be defined precisely or exhaustively, there being an element of indefiniteness inherent in its very nature, and it must be left to be determined judicially on the facts of each case.”

14. In *Dharangadhara Chemical Works Ltd. v. State of Saurashtra*, 1957 SCR 152, the Supreme Court, once again observed that where the Tribunal having jurisdiction to decide a question comes to a finding of fact, such a finding is not open to question under Article 226, unless it could be shown to be wholly unsupported by evidence.

15. In *Management of Madurantakam Coop. Sugar Mills Limited v. S. Viswanathan*, (2005) 3 SCC 193, the Apex Court, held that the Labour Courts/Industrial Tribunals as the case be is the final court of facts, unless the same is perverse or not based on legal evidence, which is when the High Courts can go into the question of fact decided by the Labour Court or the



Tribunal. But before going into such an exercise it is imperative that the High Court must record reasons why it intends reconsidering a finding of fact. In the absence of any such defect, the writ court will not enter the realm of factual disputes and finding given thereon.

16. In a Constitution Bench judgment of the Supreme Court in *Syed Yakoob v. K.S. Radhakrishnan*, AIR 1964 SC 477, the Apex Court has inter alia held as under:

“7. The question about the limits of the jurisdiction of High Courts in issuing a writ of certiorari under Article 226 has been frequently considered by this Court and the true legal position in that behalf is no longer in doubt. A writ of certiorari can be issued for correcting errors of jurisdiction committed by inferior courts or tribunals : these are cases where orders are passed by inferior courts or tribunals without jurisdiction, or is in excess of it, or as a result of failure to exercise jurisdiction. A writ can similarly be issued where in exercise of jurisdiction conferred on it, the Court or Tribunal acts illegally or properly, as for instance, it decides a question without giving an opportunity, be heard to the party affected by the order, or where the procedure adopted in dealing with the dispute is opposed to principles of natural justice. There is, however, no doubt that the jurisdiction to issue a writ of certiorari is a supervisory jurisdiction and the Court exercising it is not entitled to act as an appellate Court. This limitation necessarily means that findings of fact reached by the inferior Court or Tribunal as a result of the appreciation of evidence cannot be reopened or questioned in writ proceedings. An error of law which is apparent on the face of the record can be corrected by a writ, but not an error of fact, however grave it may appear to be. In regard to a finding of fact recorded by the Tribunal, a writ of certiorari can be issued if it is shown that in recording the said finding, the tribunal had erroneously refused to admit admissible and material evidence, or had erroneously admitted inadmissible evidence which has influenced the impugned finding.

Similarly, if a finding of fact is based on no evidence, that would be regarded as an error of law which can be corrected by a writ of certiorari. In dealing with this category of cases, however, we must always bear in mind that a finding of fact recorded by the Tribunal cannot be challenged in proceedings for a writ of certiorari on the ground that the relevant and material evidence adduced before the Tribunal was insufficient or inadequate to sustain the impugned finding. The adequacy or sufficiency of evidence led on a point and the inference of fact to be drawn from the said finding are within the exclusive jurisdiction of the Tribunal, and the said points cannot be agitated before a writ court. It is within these limits that the jurisdiction conferred on the High Courts under Article 226 to issue a



writ of certiorari can be legitimately exercised (vide *Hari Vishnu Kamath v. Syed Ahmed Ishaque, Nagendra Nath Bora v. Commissioner of Hills Division and Appeals, Assam, and Kaushalya Devi v. Bachittar Singh*).

8. It is, of course, not easy to define or adequately describe what an error of law apparent on the face of the record means. What can be corrected by a writ has to be an error of law; but it must be such an error of law as can be regarded as one which is apparent on the face of the record. Where it is manifest or clear that the conclusion of law recorded by an inferior Court or Tribunal is based on an obvious misinterpretation of the relevant statutory provision, or sometimes in ignorance of it, or may be, even in disregard of it, or is expressly rounded on reasons which are wrong in law, the said conclusion can be corrected by a writ of certiorari. In all these cases, the impugned conclusion should be so plainly inconsistent with the relevant statutory provision that no difficulty is experienced by the High Court in holding that the said error of law is apparent on the face of the record. It may also be that in some cases, the impugned error of law may not be obvious or patent on the face of the record as such and the Court may need an argument to discover the said error; but there can be no doubt that what can be corrected by a writ of certiorari is an error of law and the said error must, on the whole, be of such a character as would satisfy the test that it is an error of law apparent on the face of the record. If a statutory provision is reasonably capable of two constructions and one construction has been adopted by the inferior Court or Tribunal, its conclusion may not necessarily or always be open to correction by a writ of certiorari.

In our opinion, it is neither possible nor desirable to attempt either to define or to describe adequately all cases of errors which can be appropriately described as errors of law apparent on the face of the record. Whether or not an impugned error is an error of law and an error of law which is apparent on the face of the record, must always depend upon the facts and circumstances of each case and upon the nature and scope of the legal provision which is alleged to have been misconstrued or contravened."

17. The Hon'ble Supreme Court has in the aforesaid case again dealt with scope of interference by High Court in respect of finding of fact arrived at by Tribunals and in light of the aforesaid judgment, the question of interference by this Court does not arise.

18. The Hon'ble Supreme Court in *State of Haryana v. Devi Dutt*, (2006) 13 SCC 32, has held that the writ Court can interfere with the factual findings of fact only if in case the Award is perverse; the Labour Court has applied wrong legal principles; the Labour Court has posed wrong questions; the Labour Court has not taken into consideration all the relevant facts; or the



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Labour Court has arrived at findings based upon irrelevant facts or on extraneous considerations.

(emphasis supplied)

20. In the circumstances, this Court finds no merit in the present petitions; the same, are accordingly, dismissed. Pending application/s also stands disposed of.

SACHIN DATTA, J

FEBRUARY 16, 2026/sl