



(2026:HHC:29442)

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

FAO (OS)No. 05 of 2025
Reserved on 15.05.2026
Pronounced on: 18.07.2026
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State of HP and AnotherAppellants

Bir Singh Vs. ...Respondent

Coram:

The Hon'ble Mr. Justice G.S. Sandhawalia, Chief Justice.
The Hon'ble Mr. Justice Bipin Chander Negi, Judge.

Whether approved for reporting? **Yes.**

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

For the respondent: Mr. Rahul Mahajan, Advocate.

G.S. Sandhawalia, Chief Justice.

The present Appeal has been preferred by the appellant/State challenging the interim order dated 27.07.2023, passed by the learned Single Judge in CMP No.10900/2022 (in Civil Writ Petition No. 8386 of 2021), whereby the application filed by the applicant/respondent herein under Section 17-B of the Industrial Disputes Act, 1947, (hereinafter referred to as "the ID Act 1947") has been allowed

and the appellant/State was directed to pay full wages last drawn by the applicant/respondent herein, inclusive of allowances, to the respondent, from the date of passing the award, i.e., 21.11.2017.

2. The present case apparently pertains to a daily wage casual labourer, who was performing various seasonal forestry works right from the year 1987 with respondent No.2- the Divisional Forest Officer, Parvati Forest Division at Shamshi District Kullu, HP in Bhuntar Forest Range and presents a saga of misery of a poor labourer by termination of his services, time to time without complying with the provisions of the ID Act, 1947.

3. The question arising in the present appeal is whether, due to the employer's delay in filing the writ petition, the workman's right to seek wages under Section 17-B of the ID Act, 1947, should be determined from the date of the Award or from the date of filing of the application under Section 17-B of the ID Act, 1947, which is accompanied by the necessary affidavit.

4. To decide the matter in controversy, a brief narration of facts to the extent relevant, may be noticed.

5. The respondent, namely, Bir Singh w.e.f. January, 1987 had worked intermittently as per availability of works and funds up to April, 2010 with the appellants/State and thereafter abandoned the work at his own will against which he was deployed and stopped altogether to report for his duty as per the case of the State. The respondent had not completed 240 days in any calendar year except the years 1999 and 2000 right from the year 1987 till the year 2010, as is evident from the Mandays chart **(Annexure P-II)**.

6. The respondent herein served demand notice under Section 2-A of the ID Act, 1947 dated 08.03.2013 **(Annexure P-III)**, upon Conservator of Forests, Kullu, District Kullu, H.P. alleging therein that his services were retrenched by the department during April, 2010 without following procedure under Sections 23-F, 23-G & 25-H of ID Act, 1947 and demanded re-engagement in service and to condone fictitious breaks given to him.

7. Respondent No.2-the Deputy Conservator of Forest filed reply **(Annexure P-IV)** to the said demand notice before the Labour Officer-cum-Conciliation Officer Kullu, whereby he has denied that the respondent worked continuously from 01/1987 to 04/2010. It was further averred that the

respondent worked with the petitioner department intermittently as per his own convenience on seasonal works which is evident from **Annexure-P-I**. It has been stated that the respondent had never been retrenched during 04/2010. In fact he had never turned up to the work on his own accord for the reasons best known to him and himself had abandoned the work.

8. The Labour Officer-cum-Conciliation Officer Kullu tried to settle the dispute during conciliation proceedings, but could not succeed and submitted the report under section 12 (4) of the ID Act, 1947 to the Labour Commissioner H.P. Shimla.

9. The Labour Commissioner, Himachal Pradesh Shimla, vide Notification No. 11-3/93 (Lab) ID/2014-Kullu dated 05.12.2014 (**Annexure P-V**) referred the Industrial Dispute to the Labour Court-cum-Industrial Tribunal Dharamshala, H.P. for adjudication on the following question:

"Whether time to time termination of the services of Sh. Bir Singh son of Shri Paras Ram, R/o Village Linghar, Post Office Kharihar, Tehsil & Distt. Kullu, H.P. during year 2000 to year 2010 and finally during April, 2010 by the Divisional Forest Officer, Parbati Forest Division Shamshi, District Kullu, H.P., without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation

the above worker is entitled to from the above employer(s)?"

10. The respondent had filed claim petition (**Annexure P-VI**) under reference No. 342/14 before the Labour Court-cum-Industrial Tribunal Kangra at Dharamshala on 16.12.2014 directing the appellant/State to take back the respondent in service and continue from the date of his appointment. The said claim petition was decided by the Labour Court, vide award dated 21.11.2017 (**Annexure P-I**) directing reinstatement of the respondent forthwith holding the petitioner in continuous uninterrupted service with the respondent from 2000 to 2010. The respondent was held to be in continuous service with all consequential benefits, except back wages.

11. The appellant/State feeling aggrieved by the aforesaid award challenged the same before the learned Single Judge of this Court by filing CWP No. 8386 of 2021. The learned Single Judge, while admitting the writ petition on 27.07.2023 allowed the application (CMP No. 10900/2022) filed by the respondent under Section 17-B of the ID Act, 1947 for grant of full wages last drawn by the respondent, inclusive of

allowances, which order is under challenge, by way of the present appeal.

12. The learned Single Judge, while allowing the application noticed that the impugned award directing reinstatement of the respondent was passed on 21.11.2017 and respondent had submitted his joining on 18.01.2018. The petition was filed on 30.12.2021 and operation of the impugned award was stayed on 03.01.2022. Since, there was considerable long delay in assailing the order passed by the Industrial Tribunal-cum-Labour Court, it was observed that the application duly supported by the affidavit would go on to show that applicant was unemployed and he was unable to get employment anywhere either in government/semi government and private institutions and therefore, he was not gainfully employed in any establishment since his termination.

Arguments of counsel for the appellants-State:-

13. Counsel for the appellants-State, while placing reliance upon the bare provisions of Section 17-B of the ID Act, 1947 submitted that the provision mandates that in case of an award directing reinstatement which is challenged in the High Court or the Supreme Court, the employer is liable to pay the

workman full wages last drawn during the pendency of such proceedings. This is applicable, if the workman has not been employed in any establishment during **Yes.** that period and has filed an affidavit as such to that effect.

14. It is thus contention of the counsel for the appellants-State that the workman had filed the necessary affidavit along with the application only on 04.04.2022/ 20.05.2022, respectively and therefore, the learned Single Judge had erred in allowing the application under Section 17-B of the ID Act, 1947 from the date of the Award dated 21.11.2017.

15. Reliance is placed upon the judgment of the learned Single Judge passed by the Delhi High Court in W.P. (C) 1782/2019, titled as ***M/s Capital Maintenance Corporation Vs. Government of NCT Delhi and Others***, decided on 24.02.2022, wherein the provisions of Section 17-B of the ID Act, 1947 as such had been discussed and the necessity as such to file the affidavit that the workman has not been gainfully employed. Accordingly, it is contended that the said judgment noted that Section 17-B of the ID Act, 1947, was enacted to relieve hardship caused to the workman. Furthermore, it was argued that because the workman was

doing agricultural work, he was not entitled to the benefit of the said period from the date of passing of the Award. It is further contended that even the son was a government employee, the benefit could not have been granted retrospectively from 21.11.2017, when the award was passed and would be due from the belated filing of the application, which was only prepared in April, 2022 and filed in May, 2022.

Arguments of counsel for the respondent-workman:-

16. On the other hand, counsel for the respondent-workman has submitted that Section 17-B of the ID Act, 1947, is a beneficial piece of legislation. He argued that the employee should not be penalized for belated filing of the writ petition by the employer, which prevented him from receiving benefits during the intervening period, as it was the employer's duty to have filed the petition at the earliest. It is contended that notice was issued in the petition on 03.03.2022, when the operation of the Award dated 21.11.2017 had been stayed. Prior to this, the workman had already filed his joining report on 08.01.2018 (**Annexure A-2**), which he had attached along with his application under Section 17-B of the ID Act, 1947. Although these documents

were duly received by the Superintendent of the Divisional Forest Officer, Parbati Forest Division, Shamshi, District Kullu, Himachal Pradesh, the workman was not allowed to be reinstated.

17. It is further submitted that apparently, an application bearing CMP No. 20641 of 2024 for vacation of stay was also filed before the learned Single Judge seeking directions for the payment of the last drawn wages of Rs.110 per day and in the reply filed by the appellants-State, it had admitted that Rs. 2,29,460/- had been duly vetted by the Controller (F&A) in the O/o Principal Chief Conservator of Forests, Himachal Pradesh, as the last wages drawn for the period from 21.11.2017 to 07.08.2023. Thereafter, it was opined to challenge the orders dated 27.07.2023, passed by the learned Single Judge by filing a First Appeal (FAO). Although the application for a non-vacation of stay was contested, but no order has been passed on it, as of now by the learned Single Judge.

18. Accordingly, it is submitted that the judgment of the Delhi High Court in ***M/s Capital Maintenance Corporation*** case (*supra*) is not applicable, as it was a case where the workman had already been employed for a period of six years

in a school and had superannuated from the said school. The workman had chosen not to apprise his counsel of this fact and deliberately had filed a false affidavit before the Delhi High Court. Therefore, in those facts and circumstances of the case, a sum of Rs. 50,000/- was the only relief granted and the writ petition was allowed, and the relief of reinstatement was not granted. In fact, it was an admitted position that the workman was employed, therein.

19. Counsel for the respondent-workman has placed reliance upon the judgments of the Apex Court in ***Dena Bank Vs. Kiritkumar T. Patel (1999) 2 SCC 106 and Dena Bank Vs. Ghanshyam (2001) 5 SCC 169.*** Relying upon these cases, Counsel contends that Section 17-B of the Industrial Disputes (ID) Act, 1947, does not preclude High Courts from granting better benefits if deemed just and equitable on the facts of the case.

20. It is also contended that the Division Bench of the Delhi High Court in ***Municipal Corporation of Delhi Vs. Santosh Kumari and Another (2012 SCC OnLine Del 4390)*** had held the reverse proposition: that the filing of a belated application under Section 17-B of the ID Act, 1947, would not grant the workman the right to seek payments from

the date of the award. In such circumstances, it was noticed that the workman should be paid wages with effect from the date of passing of the Award and the interest of both the workman as well as the employer have to be kept in mind.

21. Similarly, reliance has been placed upon another judgment of the Division Bench of the High Court of Delhi in ***Surender Kumar Vs. North Delhi Municipal Corporation (2022) SCC OnLine Del 3451***, wherein it was held that restricting a workman's claim for full wages to the date of filing the application under Section 17-B of the Industrial Disputes Act, 1947, was liable to be set aside and noting a delay of four and a half months in filing the writ petition, the Court had condoned the delay and directed the employer to pay the statutory wages from the date of the Award, keeping in mind the underlying objects and reasons of Section 17-B of the ID Act, 1947.

Our Reasoning:-

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*¹) 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

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 abovementioned 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.

No valid reasons for filing the writ petition belatedly:-

34. We are of the considered opinion that the delay in filing the writ petition has been hardly explained. Apparently, for the first time, the appellants-State had acted upon the matter on 16.04.2018, when they had issued a letter to the Conservator of Forests, Kullu, seeking a legal opinion on whether the Award should be complied with or agitated. The matter was then referred to the Additional Chief Secretary (Forests) to the Government of Himachal Pradesh on 27.10.2018 to render a legal opinion. It was only on 26.02.2019 that a response was received from the Additional Chief Secretary (Forests), opining that the Award was unfit for further agitation. However, on account of the Finance Department objecting to the same, it was directed that action be taken on the ground that a connected matter of the workman was pending and as he had also filed an Execution Petition in the Court of the learned Civil Judge (Senior Division), Kullu. Therefore, justification was given that the writ petition could not be filed immediately after the decision of the Labour Court. The matter had again been taken up on 23.08.2021 to seek legal opinion. Approval was given on

17.09.2021, and the Additional Chief Secretary (Forests) had finally granted approval on 21.09.2021. It is thus apparent that the appellant-State had initially decided not to contest the same, as per the opinion given by the Law Department and the Finance Department. The relevant portion of the explanation given in the writ petition reads as under:-

“The impugned award has been opined as unfit for further agitation by the Ld. Dy. District Attorney, Labour Court Kangra at Dharamshala. In the facts and circumstances of the case, this Department tends to agree with the opinion so tendered by Dy. District Attorney as the impugned award passed by the Ld. Court appears to be just, proper and in consonance with the scheme of things envisaged in the Industrial Dispute Act, 1947. The Forest Department is, therefore, advised to contemplate implementing the impugned award as assailing the same further is not going to achieve any fruitful purpose.”

35. It is thus apparent that the State only took into account the objections of the Finance Department and the Administrative Department had waken up from its slumber **(Annexure P-VIII)** to file the writ petition.

36. A perusal of **Annexure P-VIII** would also go on to show that the Government took its sweet time to process the filing, kick-starting the process of challenging the Award only because the execution proceedings had begun. Therefore, the

Government cannot take advantage of its own belated filing of the writ petition to the detriment or prejudice of the workman.

37. However, it is clarified that the right to receive wages would only continue until the workman reaches the age of superannuation, as an issue has been raised regarding that aspect.

38. Resultantly, we do not find any ground to interfere with the well reasoned orders passed by the learned Single Judge and we uphold the same. Accordingly, the present appeal stands dismissed.

39. Pending miscellaneous application(s) if any, shall also stand disposed of.

(G.S. Sandhawalia)
Chief Justice

(Bipin Chander Negi)
Judge

18th July, 2026
(C.M. Thakur/Munish Thakur)