2026:DHC:636-DB

$~

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

Reserved on: 15.01.2026
Date of Decision: 28.01.2026

\+ LPA 706/2019 & CM APPL. 48416/2019

SARITA TIWARI .....Appellant

Through: Mr. Rishi Raj Singh, Adv. with Appellant in person

versus

M/S DECCAN CHARTERS PVT LTD .....Respondent

Through: Mr. Praveen Kumar and Mr. Rishi Raj, Advs.

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE TEJAS KARIA

J U D G M E N T

DEVENDRA KUMAR UPADHYAYA, C.J.

1. Heard the learned counsel for the parties and perused the records available before us on this letters patent appeal.

2. This *intra-court* appeal seeks an exception to the judgment and order dated 27.08.2019 passed by the learned Single Judge whereby W.P.(C) 3422/2014, which was preferred by the respondent challenging the award dated 04.10.2012 passed by the Presiding Officer, Central Government Industrial Tribunal-cum-Labour Court-II, New Delhi (hereinafter referred to as the Tribunal), was allowed and the award of the Tribunal was set aside.

3. Learned Single Judge by the impugned judgment and order has, however, directed that the amount paid to the appellant under Section 17-B of the Industrial Disputes Act, 1947 (hereinafter referred to as the Act) shall not be recovered.

4. At this juncture, we may note that while passing the award dated 04.10.2012, which was under challenge before the learned Single Judge in the proceedings of the writ petition, the learned Tribunal has found that termination of the services of the appellant w.e.f. 09.08.2007 was unjustified and illegal, and that she was entitled to be reinstated with full backwages and continuity in service, along with all consequential benefits.

5. It has been argued on behalf of the appellant that the learned Single Judge has wrongly held that merely because the appellant was a probationer, she was not a 'workman' within the meaning of the said term occurring in Section 2(s) of the Act. In this regard, it has been vehemently submitted that so far as the applicability of the provisions of the Act is concerned, the provisions therein do not carve out any distinction between the probationer and a confirmed employee.

6. Drawing our attention to Section 2(s) of the Act, it has been argued that 'workman' has been defined in the said provision to mean any person (including a 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 are express or implied. It is the case, thus, set up by the appellant that since Section 2(s) of the Act does not differentiate between a probationer and a confirmed employee, the

findings recorded by the learned Single Judge in the impugned judgment and order holding that since the appellant was a probationer, she was not a 'workman', is erroneous.

7. Further submission of the learned counsel for the appellant is that the learned Single Judge has set aside the award dated 04.10.2012 made by the Tribunal wrongly holding that the order terminating her services was an order of termination simpliciter and since services of a probationer can be terminated without assigning any reason as such, the order terminating the services of the appellant did not suffer from any illegality. In this respect, it has been argued that the order dated 09.08.2007 terminating the services mentions that some misbehaviour with and insubordination of superiors was observed on the part of the appellant, and therefore, the foundation of the order of termination is the alleged misconduct, misbehaviour and insubordination hence the said order cannot be said to be an order of termination simpliciter; rather it is an order with cast stigma to the conduct of the appellant. His submission is that since the order terminating the services of the appellant was stigmatic, it cannot be termed to be an order of termination simpliciter, and therefore, without holding any inquiry and affording opportunity of hearing and stating her case, the services of the petitioner could not have been terminated.

8. Learned counsel for the appellant has, thus, urged that the findings recorded by the learned Single Judge in this regard are not sustainable for the reason that if applying the doctrine of *lifting the veil*, the order terminating the services of the appellant dated 09.08.2007 is examined, it is clearly found that the same was not an order of termination simpliciter,

rather it was punitive in nature. It has, therefore, been argued that the learned Single Judge has erred in arriving at the said conclusion, and accordingly, for the aforesaid reasons, the impugned judgment and order passed by the learned Single Judge, is not sustainable.

9. On the other hand learned counsel representing the respondent has defended the impugned judgment and order passed by the learned Single Judge and has submitted that from a plain reading of the order terminating the services of the appellant, dated 09.08.2007 it is apparent that it does not cast any stigma on the conduct of the appellant, rather it is an order of termination simpliciter and accordingly the findings recorded by the learned Single Judge in this regard does not suffer from any legal flaw. Heavy reliance in this regard has been placed by the learned counsel for the respondent on ***Pavanendra Narayan Verma v. Sanjay Gandhi PGI of Medical Sciences and Anr.*** *[(2002) 1 SCC 520]*. Based on the law laid down in the said judgment, it has been argued that merely because prior to passing of the order terminating the services of the appellant, a show-cause notice was issued to her and she was also warned, it cannot be said that the order terminating her services was founded on misconduct. In his submission, he has argued that the misbehaviour and insubordination, which was observed during the period of probation of the appellant, impelled the respondent to terminate her services by passing an order of termination simpliciter. It is thus stated that the reported insubordination and misbehaviour of the appellant was a 'motive' and not 'foundation' to pass an order of termination simpliciter, and therefore, in view of the law laid down in ***Pavanendra Narayan Verma*** *(supra),* the order cannot be said to be

stigmatic or punitive.

10. As regards the contention of the appellant that she was a 'workman', learned counsel for the appellant has argued that the learned Single Judge in this regard has correctly arrived at the conclusion that she was not a 'workman' within the meaning of Section 2(s) of the Act for the reason that she was a probationer. He has also argued that the said finding arrived at by the learned Single Judge in the impugned judgment and order is based on pronouncement of this Court in ***Kamal Kumar v. J.P.S. Malik, Presiding Officer***, *1998 (45) DRJ*, ***Management of M/s Otis Elevator Co. (India) Ltd. vs. Presiding Officer, Industrial Tribunal-III***, *2003 LLR 701*, ***R. Kartik Ramchandran v. Presiding Officer, Labour Court***, *2006 LLR* 223 and ***Raj Kumar Rastogi v P.O. Labour Court-X***, *(2015) 221 DLT 242*, and therefore, such finding does not call for reversal by this Court in this appeal.

11. On the aforesaid counts, the appeal has been opposed by learned counsel for the respondent.

12. We have given our anxious consideration to the competing submissions made by the learned counsel for the respective parties. The first issue that arises for our consideration in this case is as to whether in the facts of the case and having regard to the background in which the order terminating the services of the appellant was passed, the order of termination is an order of termination simpliciter or it is punitive casting stigma on the appellant.

13. The Hon'ble Supreme Court has discussed the law in respect of the aforesaid issue in detail in ***Pavanendra Narayan Verma*** *(supra)*. In

Pavanendra Narayan Verma *(supra)* Hon'ble Supreme Court while noticing that the law relating to termination of services of a probationer had developed along apparently illogical lines in determining whether termination of temporary appointee or probationer services amount to punishment, has on review of all past judgments, arrived at a conclusion that whenever a probationer challenges his termination, the Court's first task is to apply the test of stigma or form 'test'. It has further been observed that if the order survives this examination, the 'substance of the termination will have to be found out'. Such observations have been made in paragraphs 8 and 28 of the report, which are extracted herein below:-

> *"**8.** Since the decision in Parshotam Lal Dhingra v. Union of India [AIR 1958 SC 36] courts have had to perform a balancing act between denying a probationer any right to continue in service while at the same time granting him the right to challenge the termination of his service when the termination is by way of punishment. The law has developed along apparently illogical lines in determining when the termination of a temporary appointee or probationer's services amounts to punishment.*
>
> *... ... ...*
>
> ***28.** Therefore, whenever a probationer challenges his termination the court's first task will be to apply the test of stigma or the "form" test. If the order survives this examination the "substance" of the termination will have to be found out."*

14. Hon'ble Supreme Court in ***Pavanendra Narayan Verma*** *(supra)* has also observed that one of the judicially evolved tests to determine whether order of termination in substance is punitive is to see whether prior to termination there was (a) a full scale formal enquiry (b) into allegation involving moral turpitude or misconduct which (c) culminated in a finding of guilt. The Court further observed that in case all these three factors are

present, the termination order will have to be held punitive irrespective of the form of termination order, and conversely, if any of the three factors is missing, the termination will have to be upheld as termination simpliciter. Paragraph 21 of the report in ***Pavanendra Narayan Verma*** *(supra)* is extracted herein:-

> *"**21.** One of the judicially evolved tests to determine whether in substance an order of termination is punitive is to see whether prior to the termination there was (a) a full-scale formal enquiry (b) into allegations involving moral turpitude or misconduct which (c) culminated in a finding of guilt. If all three factors are present the termination has been held to be punitive irrespective of the form of the termination order. Conversely if any one of the three factors is missing, the termination has been upheld."*

15. Thus, as per the dictum in ***Pavanendra Narayan Verma*** *(supra)*, what we need to ascertain in the instant case is as to whether the order of termination of the services of the appellant is stigmatic in nature or it is an order of termination simplicitor.

16. The appellant was appointed on probation by means of the appointment order dated 01.08.2006. The duration of probation of her appointment was three months from the date of her joining until confirmed in writing. The appointment letter provided that till she was confirmed in service, she would be deemed to continue on probation, and any such period after the initial period of probation shall be deemed to be an extension of probation. Clause 'D' of the appointment letter of the appellant is extracted herein below:-

> *"**D.** You will be on probation for a period of three months from the date of your joining until confirmed in writing you shall be deemed*

to continue on probation and any such period after initial period of probation shall be deemed to be extension of probation."

17. It is not in dispute that at the time the order terminating her services was passed by the respondent, the appellant continued on probation, and by that time no order confirming her services in writing was passed. While on probation, *vide* letter dated 13.10.2006, a warning was issued to the appellant stating therein that it was observed that she was not punctual in reporting to the office during the recent sang notification on Bell 206 B3, VT-NTV helicopter. The warning letter dated 13.10.2006 also noted that the appellant had little interest in the work being performed and accordingly she was warned that such lapse on her part should not be repeated in future and that she should be more dedicated, punctual and sincere to her job and future. The warning letter dated 13.10.2006 is extracted herein below:-

"DECCAN AVIATION LIMITED
WARNING LETTER

Dated 13th Oct. 2006

Ms. Saritha Tiwari
Trainee AME
During recent sang notification on Bell 206 B3, VT-NTV helicopter, it was observed that you were not punctual in reporting to the office. It was also notice that you had little interest in the work being performed.

The above lapse on your part must not repeat in future. You are warned that you should be more dedicated, punctual & sincere to your job in future.

Sd/-
XYZ
Dy. Chief Engineer
Delhi."

18. Thereafter, *vide* letter dated 07.08.2007, the appellant was called upon to give an explanation in writing regarding her alleged misbehaviour with a senior officer while the said officer was giving maintenance tips to the appellant to improve work standards. The letter dated 07.08.2007 calling upon the appellant to furnish an explanation into her reported misbehaviour is extracted herein below:-

> *"DECCAN AVITATION LIMITED*
> *IMO*
>
> *Dated: 7th August 2007*
>
> *Ms. Saritha Tiwari*
> *Trainee AME*
>
> *It has been observed you misbehave with our Senior A.M.E. Mr.Akhilesh Kumar while he was giving maintenance tips to you to improve work standard.*
>
> *The matter viewed seriously by our Additional Chief Engineer Mr. Chandra. As per him you have to given explanation in writing regarding your ill behavior with a senior A.M.E. in a week time.*
>
> *Sd/-*
> *xyz*
> *Engg. Manager"*

19. On 09.08.2007, the order terminating the services of the appellant was passed, which stated that inspite of warning, misbehaviour and insubordination with seniors was observed at her end, and therefore, a decision was taken to terminate her services w.e.f. 09.08.2007. The order terminating the services of the appellant reads as under:-

"DECCAN AVITATION LIMITED

August 9, 2007

To
Ms. Saritha Tiwari
Trainee AME
Delhi

Sub: Termination of Service

Dear Sarita,
Inspite of warning you repeatedly we have observed misbehaviour and insubordination with superiors on your end. Hence we have taken the decision to terminate your service w.e.f. from 9.8.2007.

Dues if any will be cleared with your final settlement.

Thanking you,
Sd/-
xyz
Manager- Human Resources
T.C.
abc"

20. If we examine closely the warning dated 13.10.2006 and even the letter dated 07.08.2007 calling upon some explanation from the appellant regarding her reported misbehaviour and she being not punctual and apply the test for determining as to whether the order terminating her services is punitive as laid down in ***Pavanendra Narayan Verma*** *(supra)*, what we find is that neither any full scale formal inquiry was instituted into the allegation of misconduct nor any finding of guilt was recorded. Accordingly, in view of the test as per ***Pavanendra Narayan Verma*** *(supra)*, we are of the considered opinion that the order terminating services of the appellant cannot be said to be punitive on any count.

21. Merely because the order terminating the services of the appellant records that it was observed that she had misbehaved with her senior and that she was not found punctual, in our opinion, will not change the actual purport of the order, which is in the nature of termination simpliciter. Admittedly, the appellant was on probation at the time her services were terminated *vide* letter dated 09.08.2007 and since the said order does not pass the muster of the test as laid down in ***Pavanendra Narayan Verma*** *(supra)*, it is difficult to hold that the order was punitive, and therefore, the findings recorded in this regard by the learned Single Judge in the impugned judgment and order cannot be faulted with. The language which occurs in the order terminating the services of the appellant dated 09.08.2007 does not lead us to conclude that the said order was punitive, as the reported misconduct, misbehaviour, insubordination and non-punctuality are the factors which apparently motivated the respondent to terminate her services, and such reported misconduct is not the foundation of the order of termination.

22. Discussing the service jurisprudence developed around 'motive' and 'foundation', Hon'ble Supreme Court in ***Pavanendra Narayan Verma*** *(supra)* held that 'the decisions are legion and it is an impossible task to find a clear path through the jungle of precedents'. The said observations have been made by Hon'ble Supreme Court in paragraph 19 of the ***Pavanendra Narayan Verma*** *(supra)*, which is extracted herein below:-

> *"**19.** Thus some courts have upheld an order of termination of a probationer's services on the ground that the enquiry held prior to the termination was preliminary and yet other courts have struck down as illegal a similarly worded termination order because an*

inquiry had been held. Courts continue to struggle with semantically indistinguishable concepts like "motive" and "foundation"; and terminations founded on a probationer's misconduct have been held to be illegal while terminations motivated by the probationer's misconduct have been upheld. The decisions are legion and it is an impossible task to find a clear path through the jungle of precedents."

23. After making the observations as embodied in paragraph 19 of the report in ***Pavanendra Narayan Verma*** *(supra)* Hon'ble Supreme Court in paragraph 21 laid down the test to determine whether in substance an order of termination is punitive or not, and accordingly, it was held that to determine this aspect in relation to an order of termination what needs to be examined was as to whether prior to termination a full scale formal inquiry into the allegation involving misconduct was held and further as to whether such inquiry culminated in a finding of guilt. The Court observed that in fact, only in a situation where all the aforesaid three factors are present, the order of termination will be punitive irrespective of the form of termination order.

24. We have examined the facts of the present case, and after applying the test as laid down in ***Pavanendra Narayan Verma*** *(supra),* we find that the order terminating the services of the appellant is an order of termination simpliciter and is not punitive. The ratio laid down in ***Pavanendra Narayan Verma*** *(supra)* has subsequently been followed by Hon'ble Supreme Court in yet another case i.e. ***Chaitanya Prakash & Anr. v. H. Omkarappa*** *[(2010) 2 SCC 623]*.

25. What language in a termination order would amount to a stigma has

also been considered by Hon'ble Supreme Court in ***Pavanendra Narayan Verma*** *(supra),* and it has been held that when a probationer's appointment is terminated, it means that the probationer is unfit for employment, whether by reason of misconduct or ineptitude, whatever the language used in the termination order may be. The Hon'ble Supreme Court has clearly held further that the stigma is implicit in the termination; a simple termination is not stigmatic. The Hon'ble Supreme Court further observed that a termination order which explicitly mentions what is implicit in every order of termination of the services of a probationer is also not stigmatic. Paragraph 29 of the judgment in ***Pavanendra Narayan Verma*** *(supra)* is extracted herein below:-

> *"**29.** Before considering the facts of the case before us one further, seemingly intractable, area relating to the first test needs to be cleared viz. what language in a termination order would amount to a stigma? Generally speaking when a probationer's appointment is terminated it means that the probationer is unfit for the job, whether by reason of misconduct or ineptitude, whatever the language used in the termination order may be. Although strictly speaking, the stigma is implicit in the termination, a simple termination is not stigmatic. A termination order which explicitly states what is implicit in every order of termination of a probationer's appointment, is also not stigmatic. The decisions cited by the parties and noted by us earlier, also do not hold so. In order to amount to a stigma, the order must be in a language which imputes something over and above mere unsuitability for the job."*

26. The said observations have been noticed by Hon'ble Supreme Court subsequently as well in ***State of Punjab & Ors. v. Jaswant Singh*** *[(2023) 9 SCC 150]*. Thus, if we examine the language used in the order terminating services of the appellant and apply the principle laid down in para 29 of the

judgment in ***Pavanendra Narayan Verma*** *(supra)*, we come to the indefeasible conclusion that the said order is not an order which can be said to be punitive in nature; rather it is an order of termination simpliciter.

27. For the aforesaid reasons, we find ourselves in agreement with the finding recorded by the learned Single Judge in the impugned judgment and order whereby it has been held that the order terminating the services of the appellant was justified.

28. The other issue which needs our consideration is as to whether the appellant is a 'workman'. In this regard, we may notice that the learned Single Judge has returned a finding that the appellant was not a 'workman' within the meaning of Section 2(s) of the Act and in support of such a finding, reliance has been placed by learned Single Judge on certain judgments, which have already been mentioned above. However, all the judgments relied upon by the learned Single Judge to arrive at such a conclusion are the judgments rendered by learned Single Judges of this Court. To the contrary, a Division Bench of this Court in ***Delhi Cantonment Board v. Central Government Industrial Tribunal & Ors.*** *[2006 (88) DRJ 75 (DB)]*, has given a clear finding that in terms of the definition of 'workman' occurring in Section 2(s) of the Act, there is no distinction between a permanent employee and a temporary employee in industrial law. The Division bench in this case has held that as long as a person is employed to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, he is a 'workman' under the Act and will get the benefit of that Act.

29. In view of the law laid down by the Division Bench in ***Delhi Cantonment Board*** *(supra)*, we do not agree with the findings recorded by learned Single Judge in the impugned judgment and order that the appellant was not a 'workman'.

30. Learned Single Judge *vide* the impugned judgment and order has directed that the amount paid by the respondent to the appellant under Section 17-B of the Act shall not be recovered. In this regard, we may refer to the order dated 21.02.2019 passed by the learned Single Judge during the pendency of W.P.(C) 3422/2014 on an application moved by the appellant under Section 17-B of the Act seeking a direction for paying the appellant her wages last drawn by her from the date of the award i.e. from 04.10.2012 till 02.07.2013 and thereafter from 01.01.2016 till the disposal of the writ petition. The learned Single Judge, while passing the said order dated 21.02.2019, has clearly recorded a finding that there was nothing available before the Court to show that the appellant was ever gainfully employed after passing of the award i.e. from 04.10.2012 to 02.07.2013 and thereafter from 01.01.2016 till the time of passing of the said order.

31. Learned Single Judge has recorded a finding in the said order dated 21.02.2019, that the respondent was not willing to reinstate the appellant on the job from which her services were terminated and the appellant fulfils all the conditions for grant of benefit under Section 17 B of the Act and, accordingly, directed the respondent to pay last drawn wages of Rs.15,000/- to the appellant w.e.f. 01.01.2016. The Court also directed for payment of arrears as well. Further direction was issued that the respondent shall continue to make a monthly payment of Rs.15,000/- to the appellant during

the pendency of the writ petition.

32. Learned counsel for the respondent has submitted that since the said interim order dated 21.02.2019 now stood merged with the final judgment and order dated 27.08.2019, whereby the award passed in favour of the appellant was set aside, the respondent is not liable to make any payment under Section 17-B of the Act.

33. The said submission in our considered opinion is highly misconceived for the reason that liability to make payment under Section 17-B of the Act does not arise from the interim order passed by the learned Single Judge during the pendency of the writ petition; rather, such entitlement had accrued to the appellant by virtue of Section 17-B of the Act. The interim order dated 21.02.2019 passed by the learned Single Judge only reiterated the liability of the respondent to make payment in terms of Section 17-B of the Act, recognising appellant's statutory right flowing from the said provision while holding that the appellant was not employed in any gainful employment. Reference in this regard may be made to a judgment of Hon'ble Supreme Court in ***Dena Bank v. Ghanshyam*** *[(2001) 5 SCC 169]*, wherein the provisions of Section 17-B of the Act have been considered and it has been held that the employer shall be liable to pay the 'workman' full wages last drawn by him during the period of pendency of such proceedings in the High Court or the Supreme Court if the 'workman' had not been employed in any establishment during such period and an affidavit of such 'workman' had been filed to that effect in such Court.

34. Hon'ble Supreme Court has also noticed the import of the proviso

appended to Section 17-B of the Act and has held that if the High Court or the Supreme Court finds that the 'workman' had been employed and had been receiving adequate remuneration during 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. Discussing the statement of objections and reasons for inserting the provisions of Section 17A of the Act it has been observed that the purpose of such a provision is that when the Labour Court passes an award of reinstatement, such awards are often contested by the employer in the higher Courts and to mitigate hardship that would be caused due to delay in implementation of award, it was proposed to provide for payment of wages last drawn by the 'workman' concerned from the date of award till the dispute between the parties is finally decided in the High Court or the Supreme Court.

35. Hon'ble Supreme Court has further observed that in case the employer does not reinstate the 'workman' and where the Court is not inclined to stay such award, the 'workman' has two options, either to initiate proceedings to enforce the award or be content with receiving the full wages last drawn by him without prejudice to the result of the proceedings preferred by the employer against the award till he is reinstated or proceedings are terminated.

36. Admittedly, while entertaining the writ petition challenging the award, this Court did not pass any interim order staying the operation of the award. On the other hand, on the application moved by the appellant, the Court passed an order on 21.02.2019 directing payment to the appellant in terms of Section 17-B of the Act by giving a finding that she was not

gainfully employed elsewhere and that she was neither reinstated in compliance of the award. Paragraph 7, 8 and 9 of ***Dena Bank*** *(supra)* are extracted herein below:-

> *"**7.** Section 17-B which is inserted in the Act by the Industrial Disputes (Amendment) Act, 1982, reads as follows:*
>
> *"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."*
>
> ***8.** Section 17-B provides that where the employer prefers any proceedings against an award directing reinstatement of any workman, 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. The proviso says that if the High Court or the Supreme Court is satisfied that the workman had been employed and had been receiving adequate*

remuneration during such period or part thereof, the Court shall order that no wages shall be payable under that section for such period or part, as the case may be.

9. *The Statement of Objects and Reasons for inserting the said provision indicates that when Labour Courts pass awards of reinstatement, they are often contested by employers in the Supreme Court and High Courts. To mitigate the hardship that would be caused due to delay in implementation of the award, it was proposed to provide for payment of wages last drawn by the workman concerned from the date of the award till the dispute between the parties is finally decided in the High Courts or the Supreme Court. It follows that in the event of an employer not reinstating the workman and not seeking any interim relief in respect of the award directing reinstatement of the workman or in a case where the Court is not inclined to stay such award in toto the workman has two options, either to initiate proceedings to enforce the award or be content with receiving the full wages last drawn by him without prejudice to the result of the proceedings preferred by the employer against the award till he is reinstated or proceedings are terminated in his favour, whichever is earlier. In Dena Bank case [(1999) 2 SCC 106 : 1999 SCC (L&S) 466] this Court elucidated the expression "full wages last drawn" as follows: (SCC p. 115, para 21)*

> *"... Parliament thought it proper to limit it to the extent of the wages which were drawn by the workman when he was in service and when his services were terminated and therefore used the words 'full wages last drawn'."""*

37. We may also refer to yet another judgment of Hon'ble Supreme Court in this regard in ***Dilip Mani Dubey v. Siel Ltd****., (2019) 4 SCC 534,* wherein it has been held by Hon'ble Supreme Court that if the Courts/Tribunal eventually upholds the termination order as being legal against the 'workman', yet the employer will have no right to recover the amount already paid to the 'workman' pursuant to the orders passed under Section 17-B of the Act during pendency of such proceedings. The law laid down in

this regard in ***Dilip Mani Dubey*** *(supra)* is embodied in para 15 of the report, which is extracted herein below:-

> *"**15.** It is ruled that if the court/tribunal, eventually upholds the termination order as being legal against the workman, yet the employer will have no right to recover the amount already paid by him to the delinquent workman pursuant to order passed under Section 17-B of the ID Act during pendency of these proceedings (see Dena Bank v. Kiritikumar T. Patel [Dena Bank v. Kiritikumar T. Patel, (1999) 2 SCC 106 : 1999 SCC (L&S) 466] , Dena Bank v. Ghanshyam [Dena Bank v. Ghanshyam, (2001) 5 SCC 169 : 2001 SCC (L&S) 786] and Rajeshwar Mahto v. Birla Corpn. Ltd. [Rajeshwar Mahto v. Birla Corpn. Ltd., (2018) 4 SCC 341 : (2018) 1 SCC (L&S) 722])."*

38. In view of the aforesaid legal principle, the submission of learned counsel for the respondent to the effect that the appellant is not entitled to be paid the amount in terms of Section 17-B of the Act is highly misconceived, and such argument merits rejection, which is hereby rejected. The direction given by the learned Single Judge in this regard in the impugned judgment and order is upheld.

39. In view of the discussions made and reasons given above, we uphold the order terminating the services of the appellant dated 09.08.2007; however, the finding recorded by learned Single Judge in the impugned judgment and order to the effect that the appellant is not a 'workman' is set aside. We also uphold the directions issued by learned Single Judge in respect of the entitlement of the appellant for payment of amount of the wages in terms of Section 17-B of the Act. Accordingly, it is directed that the amount of wages as directed by the learned Single Judge *vide* order dated 21.02.2019 in terms of Section 17-B of the Act shall be paid to the

appellant, if it has not already been paid, till the date of the decision of the writ petition i.e. till 22.08.2019, within a period of six weeks from today, failing which the amount shall be recovered as arrears of land revenue.

We, however, provide that, in case any amount in terms of Section 17-B of the Act has already been paid to the appellant, the same shall not be recovered.

40. The impugned order dated 27.08.2019 passed by the learned Single Judge, thus stands modified to the aforesaid extent and the appeal, along with the pending application, stands disposed of.

41. No orders as to costs.

(DEVENDRA KUMAR UPADHYAYA)
CHIEF JUSTICE

(TEJAS KARIA)
JUDGE

JANUARY 28, 2026
S.Rawat