

**ORISSA HIGH COURT: CUTTACK**

**A.F.R.**

**W.P.(C) NO. 651 OF 2012,**  
**W.P.(C) NO. 652 OF 2012,**  
**W.P.(C) NO. 653 OF 2012,**  
**W.P.(C) NO. 654 OF 2012**  
**AND**  
**W.P.(C) NO. 3854 OF 2012**

In the matter of applications under Articles 226 and 227 of the Constitution of India.

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**W.P.(C) No. 651 of 2012**

M/s. Bata India Ltd. .... Petitioner

-Versus-

Presiding Officer,  
Industrial Tribunal,  
Bhubaneswar and Anr. .... Opp. Parties

For petitioner : M/s. P. Varma, B.Pasayat,  
P. Priyotosh, T. Verma & L Mishra,  
Advocates.

For opp. parties : Mr. P.K. Muduli,  
Addl. Government Advocate  
(O.P. 1)

Mr. D.K. Pani, Advocate  
(Amicus Curiae)

**W.P.(C) No. 652 of 2012**

M/s. Bata India Ltd. .... Petitioner

-Versus-

Presiding Officer,  
Industrial Tribunal,

Bhubaneswar and Anr. .... Opp. Parties

For petitioner : M/s. P. Verma, B.Pasayat,  
P. Priyotosh, T. Verma & L Mishra,  
Advocates.

For opp. parties : Mr. P.K. Muduli,  
Addl. Government Advocate  
(O.P. 1)

M/s. S.K.Mishra, J. Pradhan,  
P.S. Mohanty & P.K. Mishra,  
Advocates.

Mr. D.K. Pani, Advocate  
(Amicus Curiae)

**W.P.(C) No. 653 of 2012**

M/s. Bata India Ltd. .... Petitioner

-Versus-

Presiding Officer,  
Industrial Tribunal,  
Bhubaneswar and Anr.

सत्यमेव जयते

..... Opp. Parties

For petitioner : M/s. P. Verma, B.Pasayat,  
P. Priyotosh, T. Verma & L Mishra,  
Advocates.

For opp. parties : Mr. P.K. Muduli,  
Addl. Government Advocate  
(O.P. 1)

Mr. D.K. Pani, Advocate  
(Amicus Curiae)

**W.P.(C) No. 654 of 2012**

M/s. Bata India Ltd. .... Petitioner

-Versus-

Presiding Officer,  
Industrial Tribunal,  
Bhubaneswar and Anr.

..... Opp. Parties

For petitioner : M/s. P. Verma, B. Pasayat,  
P. Priyotosh, T. Verma & L Mishra,  
Advocates.

For opp. parties : Mr. P.K. Muduli,  
Addl. Government Advocate  
(O.P. 1)

Mr. D.K. Pani, Advocate  
(Amicus Curiae)

**W.P.(C) No. 3854 of 2012**

Nirmal Kumar Nayak

.....

Petitioner



-Versus-

M/s. Bata India Ltd.  
and others

.....

Opp. Parties

For petitioner : M/s. S.K.Mishra, J. Pradhan,  
P.S. Mohanty & P.K. Mishra,  
Advocates.

For opp. parties : M/s. P. Verma, B. Pasayat,  
P. Priyotosh, T. Verma & L Mishra,  
Advocates (O.Ps. 1 to 3)

Mr. P.K. Muduli,  
Addl. Government Advocate  
(O.P. 4)

Mr. D.K. Pani, Advocate  
(Amicus Curiae)

P R E S E N T:

**THE HONOURABLE DR. JUSTICE B.R.SARANGI  
AND  
THE HONOURABLE MR JUSTICE M.S. RAMAN**

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**Date of Hearing: 04.05.2023 :: Date of Judgment: 09.05.2023**

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**DR. B.R. SARANGI, J.** M/s. Bata India Limited, a company registered under the Companies Registration Act, 1956, has filed W.P.(C) No. 651 of 2012, W.P.(C) No. 652 of 2012, W.P.(C) No. 653 of 2012 and W.P.(C) No. 654 of 2012, in which challenge has been made respectively to the award dated 09.11.2011 passed in I.D. Case No. 10 of 2010, the award dated 19.11.2011 passed in I.D. Case No.5 of 2010, the award dated 14.11.2011 passed in I.D. Case No.11 of 2010 and the award dated 22.11.2011 passed in I.D. Case No.37 of 2010 by the Presiding Officer, Industrial Tribunal, Bhubaneswar for reinstatement of the workmen without any back wages and directed to pay the back wages w.e.f. the date of award till the reinstatement. The workman- Nirmal Kumar Nayak, who is opposite party no.2 in W.P.(C) No.652 of 2012, has filed W.P.(C) No. 3854 of 2012 challenging the award dated 19.11.2011 passed in I.D.

Case No. 5 of 2010 by the Presiding Officer, Industrial Tribunal, Bhubaneswar, so far as rejection of the claim of the petitioner for grant of back wages is concerned.

2. At the outset, this Court deems it proper to make a mention that opposite party no.2-workman in W.P.(C) No. 654 of 2012 expired during pendency of the said writ petition, but the petitioner-Management deliberately and willfully did not bring the said fact to the notice of the Court nor took steps for substitution of legal representatives of opposite party no.2. However, this Court directed the petitioner-Management to take steps in terms of Section 17-B of the Industrial Disputes Act, 1947 for disbursement of the dues in favour of the legal representatives of opposite party no.2. Even though opposite party no.2 in W.P.(C) No. 654 of 2012 has not been substituted, since this writ petition is connected to other batch of writ petitions, it is also taken up along with the connected writ petitions and is disposed of by this common judgment.

3. In addition to what has been stated above, it is further relevant to note that the facts and law involved in all these writ petitions are by and large similar. Not only that, in the awards, against which these writ petitions are directed, the Tribunal has issued a common direction, that the Management shall reinstate the workmen without any back wages and if there will be delay in the implementation of the award for any reason whatsoever the Management shall be liable to pay the back wages from the date the award becomes enforceable till the date of its implementation. Therefore, these writ petitions were heard together and are disposed of by this common judgment, which shall govern all the cases.

4. For the sake of convenience and proper adjudication of all these writ petitions, the facts of W.P.(C) No. 651 of 2012 are taken note of.

4.1 As is borne out from the records, opposite party no.2 in W.P.(C) No. 651 of 2012 was appointed as a Salesman by the Shop Manager of M/s. Bata Shoe Store

situated at Plot No.5, Khurda Road (Railway Market), Jatni, Bhubaneswar to work on daily wage basis. Accordingly, he joined in his duty on 10.12.2002 and continued as such till 21.04.2009. During the period from 10.12.2002 to 21.04.2009, he had worked in the shop continuously. On 21.04.2009, he was refused employment without any reason, which amounts to retrenchment from service. As a consequence thereof, he raised an industrial dispute. The conciliation having been failed, a reference was made under Section 10 of the Industrial Disputes Act, 1947 by the Government of Odisha in the Labour and Employment Department, vide order dated 17.03.2010. The schedule of reference reads as follows:-

*“Whether the action of the Management of M/s. Bata India Ltd., Kalpana Square, Bhubaneswar represented through M/s. Bata Shoe Store, Railway Market, Jatni, a Sales Unit in terminating the services of Sri Dhruba Ranjan Pattnaik, Salesman with effect from 21.4.2009 is legal and/or justified ? If not, to what relief Sri Pattnaik is entitled?”*

4.2 Accordingly, Industrial Dispute Case No.10 of 2010 was registered before the Industrial Tribunal, Bhubaneswar. Consequentially, opposite party no.2 filed

his statement of claim, basing upon which notice was issued to the Management. In response thereto, the Management filed its written statement on 17.01.2011 denying and disputing the stand taken by opposite party no.2. It was specifically contended that opposite party no.2-workman was not appointed by the Management, but by the Shop Manager as a temporary hand as per the daily requirement. The work assigned to opposite party no.2-workman by the Shop Manager was intermittent and sporadic and it was never regular or perennial in nature. The opposite party no.2-workman used to be engaged as per the requirement of the shop which arises mostly during the festival season. Since his job was temporary in nature, he was liable to be released from employment by the Shop Manager as and when work was not available for him. Since the work was temporary and seasonal and throughout the period of different engagements with the Management, the workman had never completed 240 days in a calendar year, therefore, he is not liable for regularization nor required to be terminated in terms of the provisions of Industrial



Disputes Act, 1947. As such, there is no requirement for compliance of the provisions of the Industrial Disputes Act, 1947 and disputed the fact that the workman had rendered continuous and uninterrupted service from 10.12.2002 to 21.04.2009.

4.3. In support of his claim, the workman examined himself as W.W. No.1 and a co-workman as W.W.No. 2. On behalf of the Management the District Manager was examined as M.W. No.1. Similarly, to establish the case, the workman exhibited the documents marked as Exts. 1 to 8, but on behalf of the Management, no document was exhibited.

4.4. Basing on the contentions raised by both the parties, the Tribunal framed three issues to the following effect:-

- 1) *Whether there is workman-employer relationship between the parties ?*
- 2) *Whether the action of the Management of M/s.-Bata India Ltd., Kalpana Square, Bhubaneswar represented through M/s. Bata Shoe Store, Railway Market Jatni, a sales unit in terminating the services of Sri Dhruba Ranjan Pattnaik, Salesman with effect from 21.4.2009 is legal and/or justified ?*

3) *If not, to what relief Sri Pattnaik is entitled?*

4.5. The Tribunal, in the impugned award, answered issue no.1 holding that there exists workman-employer relationship between the parties. So far as issue no.2 is concerned, the Tribunal held that the termination of the service of the workman on 21.04.2009 is neither legal nor justified. Therefore, while answering issue no.3 the Tribunal directed for reinstatement of the workman in service, without any back wages, but observed that if there will be delay in the implementation of the award for any reason whatsoever, the Management shall be liable to pay the back wages from the date the award becomes enforceable till the date of its implementation.

4.6 Hence, the Management has filed this writ petition [W.P.(C) No.651 of 2012] challenging the award dated 09.11.2011 passed in I.D. Case No.10 of 2010. Since similar awards were passed in respect of the workmen in the connected I.D. cases, the Management has filed the connected writ petitions, i.e., W.P.(C) Nos.652, 653 and 654

of 2012. But, so far as W.P.(C) No. 3854 of 2012 is concerned, as already stated, the said writ petition has been preferred by the workman challenging the refusal of back wages by the Tribunal.

5. Mr. Pradipta Varma, learned counsel appearing for the Management contended that the Tribunal has committed grave error, which is apparent on the face of the record, by holding that the workman being appointed on temporary basis, there was no need to keep any detail or proof thereof, rather, the burden of proof lies on the workman to prove whether he was employed on regular basis and had completed stipulated period of time for being considered for reinstatement as a temporary hand. He further contended that since the workman had not completed 240 days in a year, on the basis of absence of clear averment made by the workman and on the basis of non-filing of any supporting documents regarding the same, the direction given by the Tribunal, for the workman's reinstatement in service, cannot be sustained in the eye of law. His further contention is that since the workman was

engaged on temporary basis, as per the rules and regulations he could not have been directed to be reinstated. He emphatically submitted that since the workman was engaged on temporary basis, there is no requirement for compliance of any provision of Industrial Disputes Act, 1947 by the Management. Therefore, he seeks for quashing of the impugned awards passed by the Tribunal.

6. Mr. D.K. Pani, learned counsel, who has been engaged as *Amicus Curiae* to assist the Court on behalf of the workman in all the writ petitions filed by the Management, while justifying the order passed by the Industrial Tribunal, emphatically contended that the workmen had established their case and as their termination was made without following the procedure envisaged under Section 25F of the Industrial Disputes Act, 1947, the same was *void ab initio* and, therefore, the Tribunal is well justified in passing the impugned awards, which does not require interference by this Court at this stage. To substantiate his contention, he placed reliance on

**Gammon India Limited v. Niranjan Dass**, AIR 1984 SC 500 and **R.M. Yellatti v. Assistant Executive Engineer**, AIR 2006 SC 355

7. Mr. S.K. Mishra, learned counsel appearing for the workman-petitioner in W.P.(C) No. 3854 of 2012 has heavily relied upon the additional affidavit filed by the petitioner enclosing therewith the Standing Orders & Rules for Shop Employees formulated by Bata India Limited, Clause-5 whereof prescribes the conditions of service and Sub-clause-A thereof deals with the recruitment & appointment and Sub-clause-B thereof deals with classification of service. As per the said Standing Orders, on completion of the probationary period, the probationer will be made permanent employee and a letter to that effect will be issued to him. The Company may also at its discretion extend the period of probation of an employee who fails to attain the required standard during the said term, by any period as may be determined by the Company. If no letter is issued to this effect, probationary period will be deemed to have been automatically extended for a further period of six

months. In such view of matter, it is contended that since the workmen were engaged and allowed to continue for years together, termination of their services without complying the provisions contained under Section 25F cannot be sustained. Accordingly, the Tribunal is well justified in issuing direction for their reinstatement in service, but committed an error by not granting back wages to the workmen, as no fault can be attributable to such workmen for not discharging their duties. Thereby, he claims for grant of back wages to the workmen.

8. This Court heard Mr. Pradipta Varma, learned counsel appearing for the petitioner-Management in W.P.(C) Nos. 651, 652, 653 and 654 of 2012, Mr. S.K. Mishra, learned counsel appearing for the petitioner-workman in W.P.(C) No. 3854 of 2012 and Mr. D.K. Pani, learned Amicus Curiae appearing for the workmen-opposite parties in hybrid mode and perused the records. Pleadings have been exchanged between the parties and with the consent of learned counsel for the parties, the writ petitions are being disposed of finally at the stage of admission.

9. The undisputed facts, as narrated above, clearly indicate that the workman-opposite party in W.P.(C) No. 651 of 2012 though was engaged on temporary basis, but there was no such document like appointment order showing the terms and conditions of employment. As such, there is no dispute from the side of the Management that the workman had worked during the period from 10.12.2002 to 21.04.2009. Even during cross-examination of the workman, it was elucidated that the shop in question was running by franchise. But that plea is not made available in the written statement filed by the Management. The District Manager, during his cross-examination, has admitted that the Shop Manager of Bata Shoe Shop is a permanent employee of M/s. Bata India Ltd. He has also stated in his evidence that in case of any need, the Shop Manager appoints temporary Salesman for a limited period and pays remuneration to the temporary hand from out of the sale proceeds of the shop. Therefore, the Tribunal, taking into consideration such statement of the District Manager (M.W.1), came to a definite conclusion that the

workman was employed by the Shop Manager as a temporary hand but such employment was made on behalf of M/s. Bata India Ltd. The workman had relied on the documents exhibited by him as Exts.1 to 5 to prove that he was an employee of M/s. Bata India Ltd. But, those documents did not reflect that the workman was employed by the District Manager of Bata India Ltd, as averred in the claim statement. Therefore, he was employed as a temporary hand, which has also been admitted by the workman that he was employed on daily wage basis. As he was engaged on behalf of M/s. Bata India Ltd., therefore, there exists a relationship of workman-employer between them. Consequentially, if at all the employer wants to retrench the service of the workman, he has to follow the procedure as envisaged under the Industrial Disputes Act, 1947.

10. The materials on record, including Ext.1, i.e., copy of the pay slip for the period from 09.01.2006 to 29.01.2006, clearly reveal that the workman was initially engaged on 10.12.2002 and it was admitted by the



workman that on and from 21.04.2009 he was denied employment. Therefore, the workman was under continuous employment in the Bata Shoe Shop from 10.12.2002 to 21.04.2009. But, the same was refuted by the Management contending that he had not rendered continuous and uninterrupted service starting from 10.12.2002 till 21.04.2009. Nothing has been placed on record, either by written or oral evidence, to substantiate the same. More so, the Management had never taken a specific plea that the workman had not completed 240 days of work in each calendar year during his employment. On the prayer of the workman to produce documents, such as, salary sheets and provident fund card, the Management in their objection took the stand that such documents are not available with them. If the documents pertaining to the salary sheets and provident fund card are available with the Management, merely by showing ignorance that such documents are not available, the Management cannot absolve their liability to reinstate the workman in service. Therefore, the explanation, which had been given by the

Management, being not convincing, the Tribunal is well justified in drawing an adverse inference against the Management.

11. The plea of the Management that the workman was not working continuously or uninterruptedly, that was not established by producing any material before the Tribunal. As such, the Management failed to produce any material to substantiate such contention. The workman having been engaged in each of the calendar months covered by the period from 10.12.2002 to 21.04.2009, the presumption was drawn that the workman was engaged for more than 240 days in each of the calendar year as mentioned above. Therefore, termination of service of such employee was in gross violation of the provisions contained under Section 25F of the Industrial Disputes Act, 1947 and, as such, the same is illegal. More so, the Management has failed to show the reason for termination of the service of the workman. Thereby, the Tribunal is well justified in coming to a conclusion that retrenchment/ termination of service of the workman from 21.04.2009 is neither legal nor

justified, as the provisions of Section 25F of the Industrial Disputes Act, 1947 have not been complied with.

12. In **Gammon India Limited** (supra), the apex Court observed that the pre-requisite for a valid retrenchment as laid down in Section 25F has not been complied with and, therefore, the retrenchment bringing about termination of service is *void ab initio*. Therefore, held that the award of the Industrial Tribunal is correct and unassailable and, thereby, the learned Single Judge fell into error in interfering with the same and the Division Bench of the High Court has rightly set aside the order of the learned Single Judge and restored the award for reasons of its own. It was further held that if the workman has been unlawfully kept out of service, therefore, it is but just that the Management shall pay all the arrears as calculated according to the directions given with 12% interest from the date the amount became due and payable till realization.

13. In **R.M. Yellatti** (supra), the apex Court held that mere affidavits or self-serving statements made by the

claimant/workman will not suffice in the matter of discharge of the burden placed by law on the workman to prove that he had worked 240 days in a given year. The judgments which have been referred to further lay down that mere non-production of muster rolls per se without any plea of suppression by the workman will not be a ground for the Tribunal to draw an adverse inference against the Management. However, the judgments lay down the basic principle, namely, that the High Court under Article 226 of Constitution will not interfere with the concurrent findings of the fact recorded by the Labour Court unless they are perverse and that this exercise will depend upon facts of each case. It has also been held that the Management was duty bound to produce before the Labour Court the nominal muster rolls for the relevant period, particularly when it was summoned to do so. But the workman had stepped in the witness box and his case that he had worked for 240 days in a given year was supported by certificate. Thereby the Division Bench of the High Court had erred in interfering with the concurrent findings of fact.

14. Applying the above principle to the present case, it is made clear that the Management has not filed any document or adduced any evidence, either written or oral, to substantiate the fact that the workman had not worked for 240 days. On the contrary, the workman had examined himself as a witness and produced the material to establish that he had rendered service for more than 240 days in a calendar year. In view of such position, if the petitioner was continuing in service for more than 240 days, then for any termination or retrenchment, the Management had to follow the provisions contained under Section 25F of the Industrial Disputes Act, 1947. For non-compliance thereof, the termination/ retrenchment cannot be sustained in the eye of law. Thereby, this Court does not find any error apparent on the face of the award impugned passed by the Industrial Tribunal so as to cause any interference at this Stage.

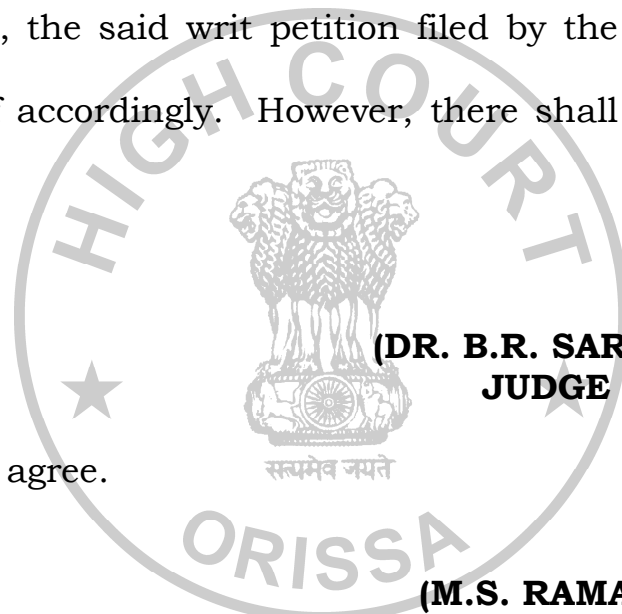
15. In view of the analysis made above, this Court is of the considered view that the Tribunal is well justified in

directing reinstatement of the workman in service. So far as grant of back wages is concerned, for the period the workman has not rendered the work, he is not entitled to get the back wages. But the Tribunal has directed that the workman is to be reinstated in service without any back wages, but, however, if there will be delay in the implementation of the award for any reason whatsoever, the Management shall be liable to pay the back wages from the date the award becomes enforceable till the date of its implementation. Therefore, it is well justified that the workman is only entitled to get back wages because of the laches on the part of the Management, if the reinstatement is not done in compliance to the direction of the Tribunal.

16. In view of such position, this Court does not find any illegality or irregularity in the impugned awards passed by the Tribunal so as to cause interference by this Court. Accordingly, the same are confirmed and the Management is directed to comply with the awards passed by the Tribunal forthwith and extend the benefit of back wages

from the dates of the awards till reinstatement of the workmen in their service.

17. In the result, the writ petitions filed by the Management cannot be sustained and accordingly the same are hereby dismissed. So far as W.P.(C) No. 3584 of 2012 is concerned, in view of the discussion made in the foregoing paragraphs, the said writ petition filed by the workman is disposed of accordingly. However, there shall be no order as to costs.



**(DR. B.R. SARANGI)**  
**JUDGE**

**M.S. RAMAN, J.** I agree.

**(M.S. RAMAN)**  
**JUDGE**

**Orissa High Court, Cuttack**  
**The 9<sup>th</sup> May, 2023, Arun**