

25.03.2026

Piya

ct no. 30

sl. 2

**WPA 5079 of 2026**

**Bata India Limited**

**Vs.**

**The State of West Bengal & Ors.**

Mr. Ranjay De, Id. Sr. Adv.

Mr. B. Banerjee

Mr. A.A.Bose

**.....for the Petitioner**

Ms. Debanwita Pramanik

Mr. Shibasish Banerjee

**.....for the Respondent no. 3**

**1.** The writ application has been preferred against an award dated 30.09.2024, passed by the said Learned Tribunal received along with the said Notice dated 10.12.2025 from the Learned Second Labour Court, Kolkata, West Bengal being the In-Charge of the Learned First Labour Court, Kolkata, Government of Bengal West in connection with Comp Case No. 42/2025/u/s 33(C)(2) of the Industrial Disputes Act, 1947, passed by the Learned Tribunal including Comp. Case No. 42/2025/33C(2) pending before the Learned First Labour Court, Government of West Bengal.

**2. The petitioner company's case is that:-**

The petitioner company earlier used to engage "Temporary Hands" in its retail shops for temporary period to cater the festival seasons sales or other such temporary occasions and exigencies of work but such

Temporary hands never worked 240 days continuously. Basically, they were taken on a purely casual and temporary basis and that too on no work no pay basis by the shop manager of the respective retail shop, purely on exigencies of work and temporary business requirement. It is stated that as a matter of fact, the "Temporary Hands" were engaged for a stipulated period and the same used to come to an end after expiry of such temporary requirement and/or the period and as a result whereof, there was no requirement for giving any notice because such temporary hands are engaged based on the temporary requirement of work and when such work is over, such temporary work is over such temporary worker is automatically disengaged.

**3.** It is further stated that the system of engaging "Temporary Hands" has already been discontinued with effect from 2008.

**4. It is thus stated by the petitioner that:-**

The Private Respondents being Respondent No. 3 were connected with the petitioner company as "Temporary Hands". They never worked 240 days in any year. Undisputedly, being "Temporary Hands", their requirements were purely need based as per the temporary requirement of the work and business.

**5. The order of reference dated 4.11.2010 contained the following issues:-**

**"ISSUE (S)**

- 1) Whether the termination of services of Shri Koushik Dey and thirty-six other workmen (list enclosed) with effect from 19-10-2008 by the management of M/s. Bata India Ltd. is justified?
  - 2) What relief, if any, are they entitled to?"
- 6.** On completion of evidence and on hearing the parties, the learned Tribunal passed the impugned award dated 30.09.2024, wherein the Tribunal held:-

**"ORDERED**

*That the case, no. VIII-48/2010 under Section 10 (2A) of The Industrial Disputes Act, 1947 is allowed on contest against the OP. company with a cost and compensation of Rs. 3,00,000/- to be paid to each of the 36(thirty six) petitioners within 30 days from this date of order.*

*This case is abated against the deceased petitioner Kajal Naha.*

*It is hereby declared that the order of termination dated 20.10.2008 in the form of refusal of employment made by the OP company against the petitioners is illegal, invalid, baseless and unjustified.*

*The OP company is directed to reinstate the 36(thirty six) petitioners namely Koushik Dey, Jayanta Paul, Bablu Chandra Das, Swarup Kumar Mondal, Dipak Chatterjee, Samir Kumar Saha, Sudip Chakraborty, Arup Kumar Roy,*

*Suranjan Paul, Uttam Talukdar, Subodh Das, Subhasish Pan, Koushik Kumar Ghosh, Asim Kumar Ghosh, Sailendra Banerjee, Swapan Debnath, Sanjay Dhar, Sukumar Biswas, Panchu Gopal Sen, Pradip Dasgupta, Amar Sadhukhan, Pranab Kumar Mitra, Ghosh, **illegible**, Uttam Saha, Ajit Bhanja, Goutam Mondal, **illegible**, Bera, Sudhamoy Roy, Tapas Das, Debasish Acharjee, Sandhya Paira, Tarak Nath Chakraborty, Dipak Kumar Roy, Prasanta Pal, Joydeb Sarkar & Pintu Dey as the temporary hands in their previous posts of temporary hands in the OP company immediately.*

*The OP company is directed to pay the full back wages alongwith consequential reliefs from 20.10.2008 till the date of payment with a compound interest of 10% per annum on the entire arrear amount of back wages and consequential reliefs to the said petitioners within 30 days from this date of order.*

*Let this judgement and order be treated as an Award.”*

- 7.** Learned senior counsel Mr. De for the petitioner submits that there was sufficient materials and evidence before the Tribunal to show that the workman did not put in 240 days of work in a year in the present case.
- 8.** Mr. De has placed the following observations of the tribunal in support of his case:-

*“In his cross-examination the PW1 has admitted that he has not produced any document to show*

*that the petitioners completed 240 days of work in 2008 and the Exhibit - 09 collectively, Exhibit -10 collectively and Exhibit- 13 series do not mention that any of the petitioners completed work of 240 days in any year and he has not produced any document in this case to show that he applied for work elsewhere but did not get any job.”*

- 9.** It appears from the materials on record and from the impugned award that the Opposite Party/Company also could prove that the workman had not put in 240 days of work.
- 10.** Admittedly, the workman in this case were engaged from 1980 to 2008 that is 28 years.
- 11.** Learned counsel for the respondent workman submits that considering the fact that the workman had put in so many years of continuous service, it prima facie can be presumed due to non-production of any documents by the petitioner company, that the workman had put in 240 days of work in a year.
- 12.** Learned counsel for the petitioner has relied upon a judgment of this Court passed in **WPA 22663 of 2024 passed on 20.05.2025** wherein a similar award was challenged and this Court had passed an order in favour of the workman by upholding the award under challenge in the said writ application.

**13.** It is submitted by the learned counsel for the petitioner herein that the workman in WPA 22663 of 2024 and in the present case stand on similar footing, which is denied by the learned counsel for the respondent.

**14.** The learned counsel for the petitioner has placed an **order dated 29.01.2026 passed in appeal against the order dated 20.05.2025 passed in WPA 22663 of 2024 being FMA 1217 of 2025**, wherein the Hon'ble Division Bench passed the following order:-

*“13. Therefore, regularization of service of the respondent was **not an issue** for adjudication before the Tribunal, but his termination of service was. The Tribunal in its Award has however, held that in view of uninterrupted service of 18 years by the petitioner, he may be made permanent. Such findings indeed, travels **beyond the scope of the issues** with which the Tribunal has been entrusted to adjudicate the dispute.*

*14. Furthermore, the Tribunal has also erred in finding that termination of service of the workman, was “in the form of refusal of employment”, as that too happens to be beyond the scope of the issues, referred to before the Tribunal. Also that the fact of refusal of employment of the respondent/workman has never been either brought on record or proved before the Tribunal.*

*15. For the reasons as discussed above, this Court finds the impugned judgment of the Hon'ble Single Judge in WPA 22663 of 2024, dated May 20, 2025 thereby upholding the*

*Award dated June 07, 2024 of the 2nd Industrial Tribunal, Kolkata in case No. VIII-47/2010, to be based on erroneous factual as well as legal propositions. The same are not sustainable in the eye of law and are liable to be set aside.*

**16.** *Hence, the Award passed by the 2nd Industrial Tribunal, Kolkata in case number VIII-47/2010, dated June 07, 2024, as well as the order of the Hon"ble Single Judge in WPA 22663 of 2024, dated May 20, 2025, stand set aside in this appeal. The reference No. 1 vide order of reference dated November 04, 2010 as mentioned above is to be answered in negative.*

**17.** *At this juncture, however, **the Court is also mindful about the admitted position of the respondent having discharged duties with the appellant company as a temporary hand for quite some time. In such view of the fact, this Court is of considered opinion that an amount of Rs. 1,20,000/- as the one-time compensation is to be paid by the appellant company to the respondent/workman.***

**18.** *Hence, it is directed that let the respondent/workman be paid a sum of Rs. 1,20,000/- as a one-time compensation, within a period of 10 days from the date of this order."*

**15.** Learned counsel for the petitioner submits that the issue in the present case, is similar to the one as decided in the appeal by the Hon'ble Division Bench in FMA 1217 of 2025 and is thus applicable to the present writ application.

**16.** Considering that the judgment of the Division Bench is binding on this Court and the facts are similar to the one decided in appeal, the writ application is disposed of with the direction that admittedly regularization of service of the respondent was not an issue for adjudication before the Tribunal, but his termination of service was. The Tribunal in its Award has however, held that in view of uninterrupted service of 28 years by the petitioner, he may be made permanent. Such findings indeed, travels beyond the scope of the issues with which the Tribunal has been entrusted to adjudicate the dispute.

**17.** The Tribunal has also erred in finding that termination of service of the workman, was “in the form of refusal of employment”, as that too happens to be beyond the scope of the issues, referred to before the Tribunal. Also that the fact of refusal of employment of the respondent/workman has never been either brought on record or proved before the Tribunal.

**18.** Accordingly, the impugned award dated 30.09.2024, passed by the said Learned Tribunal received along with the said Notice dated 10.12.2025 from the Learned Second Labour Court, Kolkata, West Bengal being the In-Charge of the Learned First Labour Court, Kolkata, Government of Bengal West in connection with Comp Case No. 42 /2025/u/s 33(C)(2) of the

Industrial Disputes Act, 1947, passed by the Learned Tribunal including Comp. Case No. 42/2025/33C(2) pending before the Learned First Labour Court, Government of West Bengal, being erroneous and not in accordance with law are set aside.

**19.** Keeping in mind the relief granted by the Hon'ble Division Bench, this Court also directs that on one time compensation of 1.5 lakh be paid by the appellant company to each of the respondents workmen within 30 days from the date of this order.

**20. Writ application stands disposed of.**

**21.** Application, if any, connected thereto stands disposed of consequently.

**22.** Interim order, if any, stands disposed of.

**23.** Urgent Photostat certified copy of this order, if applied for, be given to the parties, upon usual undertakings.

**(Shampa Dutt (Paul), J.)**