



2026:CHC-AS:1352

IN THE HIGH COURT AT CALCUTTA
Constitutional Writ Jurisdiction
APPELLATE SIDE

Present:

The Hon'ble Justice Shampa Dutt (Paul)

WPA 24197 of 2012

Messrs Gloster Jute Mills Limited
Vs
Learned First Labour Court & Ors.

For the Petitioner : Mr. Ranjay De, Id. Sr. Adv.
Mr. S.K. Singh,
Mr. Sujit Sharma.

For the Respondent No. 3 : Mr. Balaram Patra,
Mr. Suvadip Bhattacharjee.

Judgment reserved on : 23.07.2026

Judgment delivered on : 24.08.2026

Shampa Dutt (Paul), J.:

1. The writ application has been preferred challenging an award dated 15.05.2012, passed by the First Labour Court, Kolkata.
2. Vide the impugned award the learned First Labour Court directed as follows:-

“The applicant joined the Opposite Party in the year 1990 and since then he had worked for the Opposite Party and admittedly he was a registered badly. He lost his job and remained unemployed for the entire period. It is not pleaded that he did not get job on all the days of a year.



So considering the entire facts and circumstances of this proceeding in my view the applicant is entitled to get of his back wages with consequential benefits from the date of termination of his service till the date of actual reinstatement.

Under such circumstances the applicant is entitled to be reinstated in service under the Opposite Party and is to get full back wages and consequential benefits from the date of termination of his service till the date of actual reinstatement.

The Opposite Party is directed to reinstate the applicant immediately and to pay him full back wages with consequential benefits immediately.”

- 3.** The petitioner’s case herein is that the respondent no. 3 herein was engaged by the petitioner as a Registered Badli for work against temporary requirements of labour arising sometimes at its said Jute Mills.
- 4.** Petitioner states that the respondent no. 3 enrolled his name in the list of 'Registered Badlis' of its said Jute Mills and in the year 1990 he was engaged for work in that capacity for the first time. Thereafter, he was deployed for work as 'Registered Badli' from time to time as an when required. Since he was a badli there was no scope for him to work continuously for years together in the said Jute Mills of the Company and, as a matter of fact, he never worked



for 240 days in any year in any of the years of his attachment with the company.

5. As per records, the respondent no. 3 was last engaged as a badli in the year 2004, wherein his engagement as badli was for a period of 134 days only. The respondent no. 3 as a 'Registered Badli', was covered under the E.S.I. Act, 1948 and as well as under the provisions of Employees Provident Fund and Miscellaneous Provisions Act, 1952.
6. Petitioner states that the respondent no. 3 did not report to the Labour Office of the petitioner company from January, 2005 till October, 2005 and accordingly an intimation was issued to him in terms of the Certified Standing Orders applicable to the petitioner company's industrial establishment on 21.10.2005.
7. Though the communication was correctly addressed, no response was received from the end of the respondent no. 3. Under these circumstances, the petitioner Company had no other alternative but to take the decision to remove the said respondent's name from the list of Registered Badlis of its said Jute Mills under clause 5 (b)(iii) of the said standing orders and by a letter dated 12.11.2005, the name of the respondent no. 3 had been removed from the said badli list of the company.
8. Although for a prolonged period from January, 2005 to 11/11/2005, the date prior to delisting the name of the respondent no.3 from the badli list, no intimation was received by the company from him, by a letter dated 23.05.2006 the respondent no. 3



however made a representation to the Petitioner Company to reconsider his case. The petitioner company by a letter dated 20.06.2006 in reply to the said letter dated 23.05.2006 of the respondent no. 3 considered his representation in the following manner:-

"On perusal it appeared that you did not submit Sick Certificate, ESIC-Med. II for the period from 14.10.2005 and a Memorandum No. 1 dt. 21.10.2005 issued reminding you to either report for duty or to submit satisfactory cause of absence. But you failed to do so and after waiting till 11.11.2005 your name was removed from the list of Registered Badlis as per Clause 5(b)(iii), Rules of Service of the Company's Certified Standing Orders vide Memorandum No. 2 dated 12.11.2005 delivered to you by Registered post treating the period as unauthorized absence."

- 9.** As the respondent pleaded sickness and informed that he are suffering from MENTAL DISEASE (SCHIZOPHRENIA), but no where in the Sick Certificates, it was so mentioned by the attending Insurance Medical Practitioner, he was asked to produce:-

(1). Duplicate ESIC Medical Sick certificates for the period from 14.10.2005 to 11.11.2005.

(2). A Certificate from the attending Medical Officer of S.S.K.M. Hospital, Kolkata about the nature of his ailment and the period to declare him Fit at least for the Record of the company.



- 10.** The respondent no. 3 never informed the company denying the factum.
- 11.** All on a sudden after a period of about 2 years rendering alleged dispute nonest and dormant on 18.10.2007, he came to the Petitioner company's said Jute mills with a so-called Medical Certificate issued in his favour by the E.S.I. Corporation's Panel Doctor and made the request to provide him job as earlier.
- 12.** Since his name had been delisted from the badli list of the Jute Mills with effect from 12.11.2005, there was no scope for the management to provide the respondent no.3 with any job as earlier on the basis of the so-called medical certificate and/fit certificate produced by him on 18.10.2007.
- 13.** The respondent no. 3 then raised an industrial dispute with the Labour Department, Government of West Bengal, wherein, by a Letter dated 02.04.2008, the petitioner company submitted its comments to the Assistant Labour Commissioner, Uluberia explaining the entire situation of the matter.
- 14.** The petitioner company had made it abundantly clear that the respondent no. 3 by a letter dated 23.11.2007, was asked to call at the office of its Chief Personnel officer, so that necessary arrangement could be made for taking his attendance and provide him with the job as and when required as a registered badli. The respondent no. 3 inspite of receiving the said letter dated 23.11.2007 never reported to the office of the Chief Personnel Officer of the Petitioner for the reasons best known to him.



15. Although the petitioner company made it absolutely clear before the Conciliation Officer as well as to the respondent no. 3, he chose not to report for work and mark his attendance as instructed by the petitioner company and instead filed a case under Section 10(1B)(d) of the said Act, against the petitioner before the respondent no. 1. The said case was registered as Case No. 7 of 2008.

16. By an order no. 8 dated 04.02.2009 following issues were framed:-

"1. Was the applicant, Seraj Sk. a workman of the opposite party within the meaning of section 2(s) of the Industrial Disputes Act, 1947?

2) Whether the name of the concerned workman firstly struck off from the Master Roll of the company in the month of Sept, 2005 and has the O.P. illegally terminated the service of the applicant by refusing employment w.e.f. 18.10.2007?

3) Is the present case under section 10(1B)(d) of the Industrial Disputes Act, 1947 maintainable?

4) To what relief, is the applicant entitled?"

17. The parties filed their respective documents before the Labour Court and the impugned award was passed.

18. Both parties have filed their respective written notes in the present case along with the judgments relied upon.

19. The following judgments were relied upon by the petitioner in support of their case:-

i) *Budge Budge Jute Mills Company Limited vs.*

***Workmen* reported in 1970 (1) LLJ 222 (SC)**

wherein it has been held:-



"3. A badli or a special badli is a workman who is appointed in a vacant post or in the post of a permanent workman or a probationer who is temporarily absent."

- ii) **In *Lalappa Lingappa vs. Lazmi Vishnu Textile Mills Limited*** reported in **(1981) 2 SCC 238** has reiterated the concept of badly as a workman/workmen who gets work only in the absence, temporary or otherwise of regular employee (s). They do not have any right to the post. In fact, they are really casual employees without any right to be employed. Reference is also made to ***Prakash Cotton Mills Pvt. Ltd. vs. Rashtriya Mills Mazdoor Sangh*** reported in **(1986) 3 SCC 588**.
- iii) ***Karnataka State Road Transport Corporation & Anr. vs. S.G. Kotturappa and Anr.*** reported in **(2005) 3 SCC 409** while discussing the status of a badly, the Court held as follows:-

"25. We have noticed hereinbefore the relevant provisions of the Regulations. The status of a Badli cannot be better than a probationer. If the services of the probationer can be terminated for not being able to complete the period of probation satisfactorily, there is no reason as to why



the same standard cannot be held to be applicable in the case of Badli worker."

- iv) In the case of ***Bangalore Metropolitan Transport Corporation vs. T.V. Anandappa*** reported in (2009) 17 SCC 473 at paras 7, 8 and 9, the Hon'ble Apex Court has held that a badli does not have any protection under the Act.
- v) That an Award passed in favour of a badli workman by the learned First Industrial Tribunal, West Bengal directing the company to reinstate him with 75% back wages from the date of termination till the actual reinstatement in service came up for consideration before the Hon'ble High Court, Calcutta in the case of ***Gloster Limited & Anr. Vs. State of West Bengal & Ors.*** reported in 2013 SCC OnLine Cal 22994. The Hon'ble Court set aside the Award placing reliance on the judgment as aforesaid.
- vi) The Hon'ble Supreme Court in the case of ***Dr. Jagmittar Sain Bhagat & Ors. vs. Health Services, Haryana & Ors.*** reported in (2013) 10 SCC 136 has been pleased to hold that the findings of a Court or Tribunal becomes



irrelevant and unenforceable/in-executable once the Forum is found to have no jurisdiction. If the Court passes a decree without having jurisdiction over the matter, such issue can be raised at any stage of the proceedings.

- vii) *Rajasthan State Road Transport Corporation, Jaipur vs. Phool Chand (Dead) through legal representatives* reported in (2018) 18 SCC 299.**
- viii) *Man Mohan Kmar Shahu vs. Union of India & Ors.* reported in 2024 SCC OnLine Cal 10962 para 24.**
- ix) *General Manager, Electrical Rengali Hydro Electric Project, Orissa & Ors. vs. Giridhari Sahu & Ors.* reported in (2019) 10 SCC 695 para 45.**
- x) *M/s. Shree Gouri Shankar Jute Mills Limited vs. The State of West Bengal & Ors.* in WPA 30769 of 2024, this Hon'ble Court placing reliance on the decision of the Hon'ble Apex Court in the case of *Bangalore Metropolitan Transport Corporation (Supra)* has been pleased to remand the matter with following directions:-**



"..... Learned counsel for the petitioner has filed a report stating that they are not necessary party in this case.

Learned counsel for the petitioner has submitted that in view of the judgment relied upon the respondent no. 2 **admittedly being a 'Badli' worker has no right under the Industrial Disputes Act (Bangalore Metropolitan Transport Corporation (supra).**

It appears that at the time of deciding the prayer of the worker for interim relief, the Court did not consider the point of maintainability which was not seriously agitated by the petitioner herein before the Tribunal, but as issue of maintainability goes to the root of every case, the said issue is to be decided in accordance with law prior to disposing of the case on merit.....”

xi) K.K. Parmar & Ors. vs. H.C. of Gujarat
reported in **(2006) 5 SCC 789.**

xii) Hooghly Mills Company Limited & Anr. vs. Regional Provident Fund Commissioner & Anr. reported in **2006 SCC OnLine Cal 204.**

xiii) Ariane Orgachem Private Limited vs. Wyeth Employees Union & Ors. reported in **(2015) 7 SCC 561.**

20. The petitioner has challenged the impugned award on the ground that while granting the relief of reinstatement with back wages to



the private respondent, it has committed serious error in law since in spite of taking note of the fact that the Private Respondent was a badli/registered badli **never took any venture to decide about its jurisdiction to exercise its authority and/or jurisdiction to look into the matter**, specially when the Law of the Land as has been propounded by the Hon'ble Supreme Court as well as this Hon'ble Court has been pleased to hold that Badli does not have any right which can be enforced under the said Act of 1947. Nothing could be shown from the evidence that the private respondent has able to prove that he had got "**continuous service**" as defined under Section 25B of the said Act of 1947. The ratio of the decision of this Hon'ble Court in the case of **Gloster Limited & Anr. (supra)** is fully applicable in the instant case and as such the direction of reinstatement with back wages of the Private Respondent being a badli is also non-est in the eye of law committed serious error in law by not considering that the entitlement to back wages is subject to discharging of burden which lies on the person concerned to plead and prove about his absence of gainful employment and/or earning. Admittedly, the private respondent in his statement of claim never pleaded about absence of gainful earning employment.

21. Absence of gainful employment vis-à-vis pleading and proving the same initial burden is on the person concerned in **Rajasthan State Road Transport Corporation, Jaipur (supra)**.
22. Back wages is not an automatic relief in **Man Mohan Kumar Shahu (supra)**.



23. Learned counsel for the respondent no. 3/workman on filing

written notes has stated that the respondent no.3, workman was employed by the company and started working from 18.01.1990 being L.B. No.3361 as weaving sadar, and rendered his service continuously up to April, 2004 with full satisfaction.

24. Thereafter the respondent after recovery from the injury went to resume his duty on 18.10.2007, at the time of resuming his duty he had produced the fit certificate which was issued by the concerned ESIC Authority on 15.10.2007.

25. It is further stated that **the learned labour Court on the point of 240 days observed “there is no pleading that since 1990 the applicant never worked for 240 days in a year”.** There is no pleading by the writ petitioner that the respondent no. 3 did not work for 240 days in twelve months immediately preceding the date of termination of service.

26. The respondent no. 3 has relied upon the following judgments:-

- i) Syed Yakoob vs. K.S. Radhakrishnan & Ors.*
1963 SCC OnLine SC 24;
- ii) Delhi Cloth and General Mills Ltd. vs.*
Shambhu Nath Mukherji & Ors. (1977) 4 SCC
415;
- iii) L. Robert D’Souza vs. Executive Engineer,*
Southern Railway & Anr. (1982) 1 SCC 645;



- iv) Naresh Chandra Das vs. Seventh I.T., West Bengal in Civil Rule No. 4562 (N) of 1977 dated 23rd September, 1981;**
- v) Deepali Gundu Surwase vs. Kranti Junior Adhyapak Mahavidyalaya (D.ED) & Ors. (2013) 10 SCC 324;**

27. On hearing the learned counsels for the parties and on perusal of the materials on record more so the impugned award, it appears that the learned First Labour Court considering the case of the parties and the evidence of the parties adduced before the said Labour Court observed as follows:-

“.....From the reported decision it appears that the aggrieved party i.e. the WBSEB approached the Hon'ble Court for quashing certificate in Form-S as per Rule 12A(3) of the West Bengal Industrial Disputes Rules 1958 and the Hon'ble Court also observed in paragraph No. 48 of the said decision that aggrieved party may invoke the Constitutional Writ Jurisdiction to ensure compliance of such statutory duty. But in the present proceeding the Opposite Party has not approached before the Hon'ble Court for quashing the said certificate issued in favour of the applicant by the Conciliation Officer regarding pendency of an industrial dispute. This Court has no power to direct the Conciliation Officer regarding performance of his duties or to quash the certificate and for this reason. The Opposite Party has to knock the doors of Hon'ble Court which has not been done by the Opposite Party.....



.....Considering all these decisions and the facts of the present proceeding it appears that the applicant deserves his right to defend himself for his absence. It has already been discussed that the applicant continuously tried to inform the management about his illness and as he was unable to go to the office of the Opposite Party he tried to inform the management about his absence and illness by sending his certificate through his representative which were not accepted sometimes by the Opposite Party. It also appears from the written statement of the Opposite party that in paragraph Nos. 19 wherein the Opposite Party admitted that even after removal of name of the applicant he furnished necessary papers substantiating the fact that from the period 8.1.2005 to 17.10.2007 he was unfit for work due to certified sickness (page No.16 para No.19). The company also admitted that due to this reason the Chief Personnel Officer through his letter dated 23.11.2007 advised him to report immediately to the said officer. So considering the entire facts and evidences it appears that the service of the applicant was terminated arbitrarily and unjustifiedly and so he is to get back his service and it also appears from the conduct and Letters of Opposite Party that it admitted that the applicant is entitled to be reinstated in his same position.....”

- 28.** Finally, the First Labour Court relying upon several decisions held as follows:-

“.....The applicant joined the Opposite Party in the year 1990 and since then he had worked for the Opposite Party and admittedly he was a registered



*badli. He lost his job and remained unemployed for in the entire period. **It is not pleaded that he did not get job on all the days of a year.** So considering the entire facts and circumstances of this proceeding in my view the applicant is entitled to get of his back wages with consequential benefits from the date of termination of his service till the date of actual reinstatement.*

Under such circumstances the applicant is entitled to be reinstated in service under the Opposite Party and is to get full back wages and consequential benefits from the date of termination of his service till the date of actual reinstatement.

The Opposite Party is directed to reinstate the applicant immediately and to pay him full back wages with consequential benefits immediately.....”

29. The learned tribunal in the impugned award, also held that the worker was employed as ‘Badli’ from January, 1990 till April 2004. He was under medical treatment from January, 2001 till October 2007.

30. Admittedly the worker did not produce any documents of employment. He only produced the medical papers and some communication.

31. Section 25D of the Industrial Disputes Act, lays down:-

“25D. Duty of an employer to maintain muster-rolls of workmen.- Notwithstanding that workmen in any industrial establishment have been laid-off, it shall be the duty of every employer to maintain for the purposes of this Chapter a muster-roll, and to provide for the making of entries therein by workmen who may present themselves for work at the establishment at the appointed time during normal working hours.”



32. In *Ranbir Singh vs S.K. Roy, Chairman, Life Insurance, in Misc.*

Application No. 1150 of 2019, decided on 27 April, 2022, the

Supreme Court held:-

“.....25. It is settled principle of law that while considering the order/judgment of Constitutional Court, this Tribunal is required to keep in mind entire spectrum of the orders as well as background of the case. It is not proper to cull out a single para or a sentence from the order/judgment so as to defeat the very purpose of the order so passed by Hon’ble Supreme Court. If the orders dated 11/5/2018, 7/9/2018 and 10/9/2018 are taken into consideration, it is crystal clear that claims of all such workmen and Union/s who worked as Badli workers during the period from 20/5/1985 to 4/3/1991 are required to be considered by this Tribunal. Although I am in full agreement with the submission made on behalf of the PART B Management/LIC that **initial onus is always upon the workmen concerned to prove that they were in the employment of the Management at the relevant time, however this Tribunal cannot ignore the fact that UC has not filed on record any document/record relating to employment of various workmen rather has simply taken a plea that same being old record is not traceable.**” 22 The Dogra Report noted that LIC had admitted that 321 workers were found to be eligible for absorption in terms of the Srivastav Award. The report found fault with LIC for making contradictory claims that 321 workers were eligible for absorption when the records of workers were allegedly old and not traceable. **The Dogra Report drew an adverse inference against LIC for having failed to maintain the records in pursuance of the burden cast upon it by Section 25-D of the ID Act, particularly when the reference**



was pending since 1991. Paragraph 29 of the report is extracted below:

“29) During the course of arguments as well as in the reply filed on behalf of the Management/LIC, it is clear that Management has admitted that till date 321 Nos. of employees were found to be eligible in terms of the Award and they were considered eligible for absorption. It is not understandable to this Tribunal as to what were the basis for the Management/LIC for coming to the conclusion that only 321 Nos. of workmen/employees were found to be eligible and covered by the Award of CGIT in ID case No.27/1991, when the Management has come up with a plea that record relating to the workmen being old record is not traceable. **It is worthwhile to mention here that Section 25-D of the ID Act specifically provides that it is the duty of every Employer to maintain a muster roll and to provide for the making of entries therein by the workmen who may present themselves for work at the establishment.** This Tribunal has to keep in mind a vital fact that since the reference bearing ID No.27/1991 is pending before various Courts since 1991, **the Management/LIC was/is required to keep the record in safe custody when the case of such a huge magnitude was PART B pending before the Courts. In such circumstances, this Tribunal is constrained to draw adverse inference against the management.**” 23 Based on the above hypothesis, the report proceeded to decide “prima facie” the claims of the Unions and individual workers. While taking up the claims made by the All India Life Insurance Employees Association and its affiliate, Life Insurance Employees Association, Delhi, the report notes that 6998 claims had been filed (as contained in Annexure A). Upon scrutiny, LIC drew the attention of the CGIT to the fact that 3592



duplicate entries were found in the claims which were submitted (as contained in Annexure A-1). Noting that the “Unions have not seriously disputed the same”, the Dogra Report concludes that “such claimants are to be given benefit of absorption only once”. The Dogra Report also notes that workers who had started working beyond the cut-off date of 4 March 1991 would not be covered in the enquiry. This observation in the Dogra Report was in view of the order of this Court in the contempt proceedings arising out of the review of TN Terminated Employees Association (supra) on 7 September 2018, which had specifically observed that whether the benefit of the Srivastav Award should be given to those who had been engaged as badli workers after 4 March 1991 was a matter for interpretation by this Court. Hence, for the time being, CGIT had been directed to limit its enquiry only to the claims for the period between 20 May 1985 and 4 March 1991 (as contained in Annexure A-2). In this context, the Dogra Report held that those workers who had commenced work after 4 March 1991 would not be covered by its enquiry.....”

- 33. The petitioner has placed copies of documents including the workman’s service records, before this Court but it appears that they were not placed before the labour Court, which passed the impugned order.**
- 34. The argument of the petitioner that a ‘badli’ is not a ‘workman’ and cannot sustain proceeding under the I.D. Act has no substance in view of the inclusive definition of ‘workman’ under 2(s) of the Industrial Disputes Act. The case before the tribunal is thus maintainable.**
- 35. Regarding the prayer for reinstatement and back wages.**



36. The learned tribunal observed as to continuous service of the 'worker' as follows:-

"..... there is no pleading that the applicant never worked for 240 days immediately preceding termination and no document has been placed to show the same and neither there is any cross examination nor any suggestion given to P.W.-1....."

..... It appears also from the evidence of Opposite Party that they have never denied the continuous service of the applicant since 1990 and admitted that though he was appointed as a Weaver later on he was posted as their Line Sardar and there is no allegations against him about his remaining absent from the duties....."

37. In **Gloster Limited & Anr. vs State of West Bengal & Ors., in W.P. No. 17363(W) of 2013, decided on 24 July, 2013**, the Calcutta High Court held:-

*".....It would be noticed that Section 25C of the Act excludes the Badli or Casual Workman for claiming a right of compensation in case of lay off. The explanation appended thereto defines the Badli Workman as a Workman who is employed in an Industrial Establishment in the place of another workman whose name is included on the master role of the establishment but shall cease to be regarded as such, for the purpose of the said Section if he has completed one year continuous service in the establishment. **The Badli Workman has not been excluded under Section 25F of the Act, which requires certain conditions to be adhered and/or followed for retrenchment of the workman.** The conjoint reading of the aforesaid provisions would lead to inevitably conclusion that in the event, the Badli Worker has completed one year of continuous service in the establishment, he would cease to be so and cannot be retrenched unless the conditions embodied under Section 25F of the said Act is adhere to. The continuous service should be considered in the light of Section 25B which provides that the workman should render service of 240 days preceding the date with reference to which the calculation is to be made....."*



.....In view of the law as enunciated in the above noted cases, what could be culled out is that the Badli Workers are working in absence of a regular employees and are really a casual workman or a probationer without any right to be employed unless, they come within the purview of the continuous service as defined under Section 25B of the ID Act.

It leads to another point whether the respondent no. 4 has been able to establish that he has rendered continuous service for 240 days in a year preceding to the date with reference to which the calculation is to be made. It also imbibes within itself the ancillary point relating to the discharge of the onus.....”

- 38.** Considering the said facts on record, this Court finds that the ‘continuous’ service of the worker herein as badli was neither denied nor was any document produced before the First Labour Court, Kolkata to show that the worker herein has not put in 240 days in a year for period employed.
- 39.** Thus the badli worker herein being employed in ‘continuous service’ falls within the definition of ‘worker’ and as such can take recourse to the industrial dispute Act, the case being maintainable before the labour Court.
- 40.** As the worker herein had put in continuous service, the petitioner should have followed the rules of the Act of 1947 being Section 25(F) when discontinuing with the service of the worker.
- 41.** The termination was thus bad and the labour Court rightly decided the issues, vide the impugned order dated 15.05.2012 passed by the First Labour Court, Kolkata, which thus does not calls for any interference.
- 42. Writ application is dismissed.**



43. Applications, if any, connected thereto stand disposed of consequently.

44. Interim order, if any, stands vacated.

45. Photostat certified copy of this Judgment, if applied for, be given to the parties on priority basis upon compliance of all formalities.

(Shampa Dutt (Paul), J.)