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PROBATIONARY TERMINATION AND WORKMAN STATUS

The Delhi High Court (**HC**), in January 2026 in the *Deccan Charters* case,¹ has reinforced statutory protections for probationary employees under the Industrial Disputes Act, 1947 (**Act**). It clarified that the definition of a ‘workman’ under Section 2(s) of the Act, includes probationers and apprentices, irrespective of their non-permanent status. It also established that wages paid at the rate of last-drawn pay during the pendency of litigation are non-recoverable by the employer, even if the underlying termination is eventually upheld as legal.

Brief Facts

Sarita Tiwai (**Sarita**) was appointed as a Trainee Aircraft Maintenance Engineer (AME) on probation by Deccan Charters (**DC**) on August 1, 2006.

Her employment faced to a sequence of disciplinary communications. These included a warning letter dated October 13, 2006, regarding a lack of punctuality and perceived disinterest, followed by a request for a written explanation on August 7, 2007, regarding alleged misbehaviour with a senior officer. On August 9, 2007, DC terminated Sarita’s services, citing ‘misbehaviour and insubordination’.

She challenged the termination, leading to the following:

- Industrial Tribunal (**IT**): It issued an award for reinstatement with full backwages and continuity of service, finding the termination illegal.
- Single Judge Bench of HC (**SJ**): Upon filing a writ petition by DC, the SJ reversed the IT’S award. It held that Sarita was not a ‘workman’ due to her probationary status and that the termination was a valid ‘termination simpliciter’.

Aggrieved by the above, Sarita filed a Letters Patent Appeal challenging the SJ’s findings before the Division Bench of the HC (**DB**).

DB’s Judgement & Reasoning

It analysed the case across three distinct legal areas:

- The ‘Stigma vs. *Simpliciter*’ Test²

¹ *Sarita Tiwari v. M/S Deccan Charters Pvt Ltd*, 2026 LiveLaw (Del) 116.

² Paragraphs 9 and 22 of the Judgement.

It applied the precedent of *Pavanendra Narayan Verma* case³ to determine if the termination was punitive or a simple release of a probationer. It distinguished between ‘motive’ and ‘foundation.’ It clarified that motive represents the employer’s internal reason for the decision (which is permissible for probationers), whereas foundation is the actual legal basis of the termination order (which if punitive, requires a formal inquiry).

It held that for a termination to be punitive, three factors must be present: (i) a full-scale formal inquiry; (ii) allegations involving moral turpitude or misconduct; and (iii) a culminating finding of guilt. It refined the ‘Implicit Stigma’ nuance. It held that while every termination of a probationer carries an implicit stigma of unsuitability, an order only becomes legally stigmatic if the language imputes something over and above mere unsuitability for the job. The termination was ruled *simpliciter* because no formal inquiry was conducted.

- Definition of Workman⁴

The DB corrected the SJ’s finding, affirming that Section 2(s) of the Act makes no distinction between permanent, temporary, or probationary employees. It highlighted that the statutory definition of a workman explicitly includes apprentices. Since Sarita was a ‘Trainee AME,’ her status fell squarely within this ambit. It reaffirmed that as long as the work performed is manual, technical, or operational, the individual is a workman entitled to the protections of the Act.

- Protection of Section 17-B Wages⁵

It addressed also DC’s recovery Rs. 15,000 per month paid to Sarita under Section 17-B of the Act as subsistence payments during the pendency of the writ petition. It held that Section 17-B is a statutory right designed to mitigate the hardship faced by a workman during employer-led challenges to a reinstatement award. Citing the *Dilip Mani Dubey* case,⁶ the DB clarified that even if a termination is eventually upheld as legal, the employer has no right to recover these subsistence payments.

This *Counselence Connect* contains information in a nutshell on a recent change in law.

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³ *Pavanendra Narayan Verma v. Sanjay Gandhi PGI of Medical Sciences and Anr*, (2002) 1 SCC 520.

⁴ Paragraphs 28 to 38 of the Judgement.

⁵ Paragraphs 30 to 33 of the Judgement.

⁶ *Dilip Mani Dubey v. Siel Ltd.*, (2019) 4 SCC 534.