

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

+ **W.P.(C) No. 3710/2008**

% Judgment reserved on: 05.03.2010  
Judgment delivered on: 19.04.2010

Rakesh Singh ..... Petitioner.  
Through: Mr. Anuj Aggarwal,  
Advocate

versus

Delhi Transport Corporation. .... Respondent.  
Through: Mr. Nav Rath Chaudhry,  
Advocate.

**CORAM:**  
**HON'BLE MR. JUSTICE KAILASH GAMBHIR**

- |    |                                                                           |     |
|----|---------------------------------------------------------------------------|-----|
| 1. | Whether the Reporters of local papers may be allowed to see the judgment? | Yes |
| 2. | To be referred to Reporter or not?                                        | Yes |
| 3. | Whether the judgment should be reported in the Digest?                    | Yes |

**KAILASH GAMBHIR, J.**

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1. By this petition filed under Article 226 of the Constitution of India, the petitioner seeks quashing of the award dated 29.3.2007 passed in I.D. No. 437/2005 whereby the reference was answered against the petitioner workman.

2. Brief facts as set out by the petitioner and relevant for

deciding the present case are that the petitioner was in the employment of the respondent Corporation since 1.1.1999 on compassionate basis and that he fell ill on 27.5.2001 and after that reported for duty only on 16.1.2002 when he was not allowed to join back on his duties by the respondent. Thereafter the petitioner raised an industrial dispute bearing ID No. 437/05 whereby vide order dated 29.3.2007 the reference was answered against the workman and in favour of the respondent DTC. Feeling aggrieved with the same, the petitioner has preferred the present petition.

3. Mr. Anuj Aggarwal, counsel for the petitioner submitted that the termination of the petitioner is stigmatic and, therefore, without a prior chargesheet and setting up an enquiry his services could not have been terminated by the respondent DTC. The contention of the counsel for the petitioner was that even if the petitioner failed to establish his continuous employment with the respondent DTC for a period of 240 days preceding the date of his termination, still his services could not have been terminated or dispensed with by the respondent without following the due procedure of holding an enquiry against the petitioner. In the alternative, the counsel submitted that the petitioner has proved on

record that he had worked for 240 days preceding the date of his termination and the onus shifted on the respondent to rebut the same. Counsel further submitted that admittedly the respondent did not comply with the procedure prescribed under Section 25 F of the I.D. Act before taking action against the petitioner terminating his services. In support of his arguments, counsel for the petitioner placed reliance on the following judgments:-

1. Director, Fisheries Terminal Division vs Bhikubhai Meghajibhai Chavda 2009 (13) SCALE 636.
2. Mrs. Saritava S. Melwani vs Ms. Pallavi V. Talekar & Ors. (2009) I LLJ 116 Bom.
3. Delhi Cantonment Board vs Central Govt. Industrial Tribunal and Ors. (2006) III LLJ 752 Del.
4. R.M. Yellatti vs The Assistant Executive Engineer 2005 (9) SCALE 139.
5. Shri Jairaj N. Shetty vs The Union of India (UOI) 2005 (6) Bom CR 221.
6. M/s Scooters India Ltd. vs M. Mohammad Yaqub & anr. 2000 (7) SCALE 570.
7. M.C.D. vs Praveen Kumar Jain & Ors. (1998) 9 SCC 468

8. Chief Engineer, Irrigation vs Kamlesh & Ors. (1996) IILLJ 316 Raj.
9. Kukadi Irrigation Project vs Waman S/o Babanrao Bhujbal & Anr. 1994 (68) FLR 639 (Bom).
10. Gaurishankar Vishwakarma vs Eagle Spring Industries Pvt. Ltd. & Ors. (1994) III LLJ 689 Bom.
11. Hutchiah vs Karnataka State Road Transport Corporation (1983) 1 LLJ 30 (Kant)
12. Jai Shanker vs State of Rajasthan (1996) 1 SCR 825.
13. Employers in Relation to Digwadih Colliery vs Their Workmen AIR 1966 SC 75.

4. Refuting the said submissions of counsel for the petitioner, counsel for the respondent contended that the present writ petition is not maintainable as the petitioner has no cause of action to file the same. He further submitted that the petitioner was a daily wager and his services were dispensed with in accordance with the terms and conditions of the agreement executed between the petitioner and the respondent. While supporting the award passed by the labour court, the counsel submitted that the jurisdiction of this court under Article

226/227 of the Constitution of India to interfere with the award would arise only when the impugned award is grossly illegal and perverse which in the present case is not the situation and this court would be acting beyond its powers in interfering with the findings of facts arrived at by the court below.

5. I have heard learned counsel for the parties at considerable length and gone through the records.

6. The case set up by the petitioner workman in his statement of claim was that he had joined the employment of the respondent management w.e.f. 1.1.1999 as a Retainer Crew Conductor and during the course of his services he fell ill on 27.5.2001 and, therefore, proceeded on leave from 28.5.2001. As per the petitioner workman, he recovered from his illness on 16.1.2002 and submitted his medical certificate issued by the primary health centre of MCD, but was not allowed to join his duties and in this way he was illegally terminated from his service after having put in more than 240 days of continuous service preceding the date of his termination. The case of the respondent management on the other hand was that the petitioner was a daily wager and he remained unauthorisedly absent from his duties for a period of 184 days from June 2000 to May, 2001

and then from 28<sup>th</sup> May, 2001 to 6<sup>th</sup> June, 2001 without seeking any permission or sanction of his leave. The respondent management further took a stand that since the petitioner became irregular during his probation period, so his services were dispensed with in accordance with para 4 (XIV) of the Executive Instructions governing the appointment of Retainer Crew Conductor. In order to prove his case, the petitioner workman examined himself as WW1 while the respondent management examined one Shri Mohd. Yusuf as MW1. The learned Labour Court, based on the testimony of the management witness MW 1, reached the conclusion that the petitioner workman remained unauthorisedly absent from his duties in the year 2000 – 2001 for a period of more than 184 days. On the other hand, the petitioner workman failed to prove on record that he remained on medical leave from 28.5.2001 till 15.1.2002, which period was otherwise of no relevance as the petitioner remained absent from his duties w.e.f. June 2000 till May 2001 and from 28.5.2001 till 6.6.2001.

7. It is a settled legal position that to claim the benefit of Section 25-F of the ID Act, the workman is required to first establish the fact that he had worked for 240 days in continuous service in a year preceding the date of his termination. Section 25B of the ID Act

defines continuous service and as per the said section, the service, which may be interrupted on account of sickness or authorized leave or due to an accident or a strike, which is not illegal or a lock out or a cessation of work, which is not due to any fault on the part of the workman will also be taken as a continuous service unaffected by the interruptions created due to the aforesaid reasons. It would be useful to reproduce the said section here:

**25B. DEFINITION OF CONTINUOUS SERVICE.** - For the purposes of this Chapter, - (1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;

(2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer - (a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than - (i) one hundred and ninety days in the case of a workman employed below ground in a mine; and

(ii) two hundred and forty days, in any other case;

(b) for a period of six months, if the workman, during a period of six calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than - (i) ninety-five days, in the case of a workman employed below ground in a mine; and

(ii) one hundred and twenty days, in any other case.

Explanation : For the purpose of clause (2), the number of days on which a workman has actually worked under an employer shall include the days on which - (i) he has been laid-off under an

agreement or as permitted by standing orders made under the Industrial Employment (Standing Orders) Act, 1946 (20 of 1946), or under this Act or under any other law applicable to the industrial establishment;

(ii) he has been on leave with full wages, earned in the previous year;

(iii) he has been absent due to temporary disablement caused by accident arising out of and in the course of his employment; and

(iv) in the case of a female, she has been on maternity leave; so, however, that the total period of such maternity leave does not exceed twelve weeks.

Dealing with the expression "*continuous uninterrupted service*" and also the interpretation of the word "*year*" in Section 25B(1) of the ID Act the Division Bench of this Court in ***Suraj Pal Singh vs The Presiding Officer and Anr. 124(2005) DLT 248*** held as under:-

21. In view of the above judgments, the expression "continuous" or "uninterrupted service" means and refers to the days during which the workman was employed and continued to be in service of the employer. It may be stated that absence on account of sickness, authorised leave, accident or strike, which is not illegal or lock-out is to be regarded as a period during which a workman has continued in uninterrupted service of the employer. It may also be noted here that any artificial breaks given malafidely by an employer should not be recognised and a workman should be treated to be in continuous service. (Refer Yogendra Singh Rawat v. [Hemwati Nandan Bahuguna Garhwal University and Ors.](#) : [1998]1SCR685 and Bhagwati Prasad v. [Delhi State Mineral Development Corporation](#) : (1990)ILLJ320SC . Courts and Tribunals will thereforee always have power, while applying Section [25B\(1\)](#) to examine whether the cessation of work was due to any fault on the part of the workman. They can ignore any artificial breaks malafidely given by an employer.

*Interpretation of the word "year":*

22. The words used in Section [25B\(1\)](#) is "one year" but the said term has not been defined in the Act. The word "year" has been defined in the General Clauses Act, 1897. Section [3\(66\)](#) of the aforesaid Act defines the term 'year' to mean a period reckoned according to the British Calendar i.e. a period of 12 months from January to December. For the sake of convenience, Section [3\(66\)](#) of the General Clauses Act, 1897 is reproduced below:-

"Year" shall mean an order reckoned according to the British calendar."

23. However, we do not think that the aforesaid definition as given in the General Clauses Act, 1897 is applicable and should be applied, while interpreting Section [25B\(1\)](#) of the Act. If definition given in Section [3\(66\)](#) of the General Clauses Act, 1897 is accepted, any workman who joins employment after 1st January, will be denied benefit of Section [25B\(1\)](#) in the first year of employment. This will be extremely unjust and unfair and such interpretation should not be accepted as we are dealing with a social welfare and a beneficial legislation.

24. The Supreme Court in the case of *Aspinwall and Company v. Lalitha Padugady and Ors.* : AIR1996SC580 had examined the provisions of Payment of Gratuity Act, 1972 and Sections [2](#) and [4](#) thereof. The expression "continuous service for not less than 5 years" came up for consideration before the Supreme Court in the said case. After examining the said Sections the Supreme Court came to the conclusion that complete or continuous service has to be calculated with reference to the date on which an employee gets employment. It was held that this is the stage, which is starting point and thereafter the period has to be calculated. Thus, the period of continuous service is to be reckoned from the date of joining of the employment. The Supreme Court rejected the contention that this period of continuous service has to be reckoned with reference to a calendar year as defined in the General Clauses Act, 1897.

25. We feel that in view of the fact that the present legislation is social, beneficial and a welfare legislation, workman should be given benefit under Section [25B\(1\)](#), if he has worked for a continuously or uninterruptedly for a period of 12 consecutive months anytime during the course of his employment. It is not necessary that a worker should have continuously or uninterruptedly worked from January to December in a particular calendar year. Thus, continuous or un-interrupted employment for period of 12 consecutive months will satisfy requirement of Section [25B\(1\)](#) of the Act.

Whether 240 days is equal to "one year" under Section [25B\(1\)](#)?

26. Section [25B\(1\)](#) uses the word "one year", which in common parlance means period of 12 months or 365 days. Can we while interpreting Section [25B\(1\)](#) reduce this period to 240 days?

27. Sections [25B\(1\)](#) of the Act being beneficial and welfare provision has to be liberally and broadly interpreted, yet at the same time we cannot amend and modify a statutory provision by incorporating and adding words. Our role is to interpret the law as it exists and not to add and subtract words already used by the legislature or usurp the role of the legislature. The legislature in Section [25B\(2\)](#) has referred to period of "240 days in the preceding year" following the date of termination as the criteria to determine and decide whether a workman has been in continuous service for a period of one year. The legislature, however, has deliberately not mentioned the period of 240 days during the period of one year as the criteria in Section [25B\(1\)](#) of the Act. Section [25B\(1\)](#) nowhere specifies that if a workman has worked for a period of 240 days in a period of "one year", he is deemed to be in uninterrupted service for "one year". The period of 240 days specified in Section [25B\(2\)](#), cannot be legislated and read into sub-section (1). We cannot, therefore, legislate and incorporate the words "240 days" into Section [25B](#) of the Act. Our judicial pen cannot write these words into the aforesaid sub-section and read them in Section [25B\(1\)](#), when the legislature has consciously and deliberately not used these words. The requirement of legislature, as far as Section [25B\(1\)](#) of the Act is concerned, is clear and unambiguous. It refers to "continuous" or "uninterrupted" service for a period of one year i.e., 12 consecutive months. We cannot by judicial interpretation decrease this period of 365 days to 240 days. Of course the period of one year should be interpreted liberally as has been done in the present judgment. The two judgments, in the case of Moti Ceramic Industries (supra) and Metal Powder Co. Ltd. (supra) support and have similarly interpreted Section [25B\(1\)](#) and (2) of the Act. Bombay High Court in the case of New Great Eastern Spinning and Weaving Co. Ltd. v. Vasant Mahadeo Bidia reported in 2005 (1) CLR 50 has also taken a similar view.

28. We wish to further clarify that the above interpretation is not against workmen. The legislature has been careful and cautious to include certain periods like authorised leave, legal strikes, lock outs, periods during which the employer illegally refuses to permit the workman to do work, etc., as a period during which the workman is deemed to be in continuous or uninterrupted service. therefore in a given case, a workman may have worked for in fact less than 240 days, but after including the specified periods mentioned in section [25B\(1\)](#), his continuous or uninterrupted service might be for a period of 12 consecutive months. Accordingly, we hold that period of 240 days is not relevant as far as Section [25B\(1\)](#) is concerned as the figure "240 days" is not mentioned in the said sub-section and is

*mentioned only in sub-section (2). It is not possible for this Court to legislate and add the words 240 days in Section [25B\(1\)](#) of the Act.*

*Section [25B\(2\)](#) of the Act:*

*29. Sub-section (2) of Section [25B](#) also incorporates a deeming fiction. As per sub-section (2) to Section [25B](#), if a workman has worked for 240 days or 190 days (in case he is employed below ground in a mine) during the period of 12 calendar months preceding the date with reference to which calculation is to be made, he shall be deemed to be in continuous service for a period of one year. In case of a retrenchment, the reference date will be the date on which the retrenchment order is passed. thereforee, if a workman has worked for 240 days (190 days in case he has worked below ground in a mine) during the period of 12 calendar months preceding the date of his retrenchment, the said workman is deemed to have rendered continuous service for a period of one year. Section [25B\(2\)](#) refers to a period of 12 months immediately preceding and counting backwards from the relevant date and not to any other period of employment. If a workman has worked for more than 240 days during this period of 12 months prior to his retrenchment, he is deemed to be in continuous service for a year. The words "preceding the date with reference to which calculation is to be made" are not redundant or otiose. The period of 12 months mentioned in Section [25B\(2\)](#) is not thereforee any period of 12 months but the immediately preceding 12 months with reference to which calculation is to be made.*

*The two Clauses 25B (1) and 25B (2) in operation:*

*30. Section [25B\(2\)](#) as per the clause itself, comes into operation when a workman has not been in continuous service within the meaning of sub-section (1) for a period of one year. However, in practice and for all practical purposes, a workman will be entitled to protection under section [25F](#) of the Act, if conditions mentioned in either of the two clauses are satisfied. The sub-sections are thereforee in alternative. Requirement of Section [25B\(1\)](#) is uninterrupted service for a period of one year and under sub-section (2) requirement is service for a period of 240 days (or 190 days in case worker is employed below ground in a mine) during the preceding 12 calendar months prior to the date of termination/retrenchment. By the deeming fiction in Section [25B\(2\)](#), a workman who has worked for aforesaid period in the preceding 12 calendar months prior to the date of termination/retrenchment is deemed to have been in continuous service for not less than one year. The two provisions, namely, of Section [25B\(1\)](#) and [25B\(2\)](#) are separate and distinct. The requirements and conditions to be satisfied to some extent are also different.*

In the recent decision of the Apex Court in ***Director, Fisheries Terminal Division vs Bhikubhai Meghajibhai Chavda 2009(13) SCALE 636*** the Apex Court dealing with the similar question as to how the period of 240 days in a period of 12 calendar months should be reckoned, held as under:-

14. Section [25B](#) of the Act defines "continuous service". In terms of Sub-section (2) of Section [25B](#) that if a workman during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer 240 days within a period of one year, he will be deemed to be in continuous service. The respondent claims he was employed in the year 1985 as a watchman and his services were retrenched in the year 1991 and during the period between 1985 to 1991, he had worked for a period of more than 240 days. The burden of proof is on the respondent to show that he had worked for 240 days in preceding twelve months prior to his alleged retrenchment. The law on this issue appears to be now well settled. This Court in the case of *R.M. Yellatty v. Assistant Executive Engineer: (2006) 1 SCC 106* has observed:

However, applying general principles and on reading the aforesaid judgments, we find that this Court, has repeatedly taken the view that the burden of proof is on the claimant to show that he had worked for 240 days in a given year. This burden is discharged only upon the workman stepping up in the witness box. This burden is discharged upon the workman adducing cogent evidence, both oral and documentary. In cases of termination of services of daily-waged earners, there will be no letter of appointment of termination. There will also be no receipt of proof of payment. Thus in most cases, the workman (the claimant) can only call upon the employer to produce before the Court the nominal muster roll for the given period, the letter of appointment of termination, if any, the wage register, the attendance register, etc. Drawing of adverse inference ultimately would depend thereafter on the facts of each case.

15. Applying the principles laid down in the above case by this Court, the evidence produced by the appellants has not been consistent. The appellants claim that the respondent did not work for 240 days.

*The respondent was a workman hired on a daily wage basis. So it is obvious, as this Court pointed out in the above case that he would have difficulty in having access to all the official documents, muster rolls etc. in connection with his service. He has come forward and deposed, so in our opinion the burden of proof shifts to the employer/appellants to prove that he did not complete 240 days of service in the requisite period to constitute continuous service. It is the contention of the appellant that the services of the respondent were terminated in 1988. The witness produced by the appellant stated that the respondent stopped coming to work from February, 1988. The documentary evidence produced by the appellant is contradictory to this fact as it shows that the respondent was working during February, 1989 also. It has also been observed by the High Court that the muster roll for 1986-87 was not completely produced. The appellants have inexplicably failed to produce the complete records and muster rolls from 1985 to 1991, inspite of the direction issued by the labour court to produce the same. In fact there has been practically no challenge to the deposition of the respondent during cross-examination. In this regard, it would be pertinent to mention the observation of three judge bench of this Court in the case of Municipal Corporation, Faridabad v. Siri Niwas: (2004) 8 SCC 195 where it is observed:*

*A Court of Law even in a case where provisions of the Indian Evidence Act apply, may presume or may not presume that if a party despite possession of the best evidence had not produced the same, it would have gone against this contentions. The matter, however, would be different where despite direction by a court the evidence is withheld.*

8. Counsel for the petitioner laid much stress on the fact that the petitioner workman remained on medical leave and, therefore, the period spent by him on medical leave should be reckoned as a period of continuous service to give the petitioner workman benefit of counting the said period towards the period of 240 days spent by him in uninterrupted service preceding the date of his termination. The interruption in service due to sickness or leave as referred to in

Section 25B(1), which would be treated as a period of uninterrupted service put in by the workman would be that leave, which is authorized leave and not an unauthorised leave or for which no sanction was obtained by the workman. It was proved on record that the petitioner remained on leave for a period of more than 184 days w.e.f. June, 2000 to May, 2001 and from 28.5.2001 to 6.6.2001 and therefore had the said leave been authorized, then certainly the petitioner could have been given the advantage of the said period of leave to reckon the period of his service to count 240 days preceding the date of his termination, but clearly the petitioner failed to prove on record that he remained on medical leave or that any such leave was sanctioned by the respondent. It would be thus quite manifest that the petitioner failed to prove on record that he was in continuous service for a period of one year as envisaged under Section 25B(1) of the ID Act or he had worked for a period of 240 days during a period of 12 calendar months preceding the date of his termination. Consequently, in my considered view the respondent committed no illegality in not following the mandate of Section 25F of the ID Act before terminating the services of the petitioner. Section 25F of the ID Act would have come to the rescue of the petitioner only when the

petitioner could have established his continuous service with the respondent for a period of 12 consecutive months preceding the date of his termination as envisaged under Section 25B(1) of the ID Act or render service for a period of 240 days within the period of 12 calendar months preceding the date of his termination, but since the petitioner failed to satisfy either of the said requirements of Section 25B of the ID Act, therefore, he cannot claim to be entitled to the protection under Section 25F of the ID Act. The protection of Section 25 F of the Act would be available only if the conditions mentioned either in Section 25B (1) or Section 25B(2) are satisfied.

9. However, in the facts of the present case, the petitioner claimed his appointment with the respondent from 1.1.1999 and remained in continuous service till 26/27.5.2001. He remained absent from his duty w.e.f. 28.5.2001 due to his illness and was disallowed to join back his duties when he recuperated from his illness on 16.1.2002. Thus, the date of the termination of the petitioner in the present case is 16.1.2002 and if the period of 12 calendar months is reckoned under Section 25B of the ID Act or 240 days of service in a calendar month preceding the said date as per the requirement under Section 25B(2) of the ID Act then clearly the petitioner does not satisfy either

of the said requirements, therefore, he is rightly held not to be entitled to the protection under Section 25F of the ID Act by the learned Labour Court.

10. As already stated above, the position would have been different had the petitioner remained on authorized leave, which fact the petitioner miserably failed to prove on record with the help of any medical evidence or through any other cogent evidence. A perusal of the impugned award rather shows that the medical record produced by the petitioner pertains to the period of 28.5.2001 to 15.1.2002 while he remained unauthorisedly absent for 184 days from June, 2000 to May, 2001. In such circumstances the learned Labour Court rightly held that the medical record produced by the petitioner would be of no help to him. So far the ratio of the plethora of judgments cited by the petitioner is concerned, on a careful analysis it is found that the same would not be applicable to the facts of the case at hand.

11. It is also a settled legal position that the Tribunals/labour Courts are final fact finding Courts and the re-appreciation of such findings by the High Court in exercise of its jurisdiction under Article 226/227 of the Constitution of India, would arise only when such findings of

facts are based on no evidence or the same are illegal or perverse and so far as the facts of the present case are concerned, counsel for the petitioner has not been able to show any such perversity or illegality in the findings arrived at by the learned Labour Court. It would be useful to refer to the judgment of the Apex Court in **Management of Madurantakam, Co-operative Sugar Mills Ltd. Vs. S.Vishwanathan (2005)3 SCC 193** wherein it was held that:

*"12. Normally, the Labour Court or the Industrial Tribunal, as the case may be, is the final court of facts in these type of disputes, but if a finding of fact is perverse or if the same is not based on legal evidence the High Court exercising a power either under Article [226](#) or under Article [227](#) of the Constitution of India can go into the question of fact decided by the Labour Court or the Tribunal. But before going into such an exercise it is necessary that the writ court must record reasons why it intends reconsidering a finding of fact. In the absence of any such defect in the order of the Labour Court the writ court will not enter into the realm of factual disputes and finding given thereon. A consideration of the impugned order of the learned Single Judge shows that nowhere he has come to the conclusion that the finding of the Labour Court is either perverse or based on no evidence or based on evidence which is not legally acceptable. Learned Single Judge proceeded as if he was sitting in a court of appeal on facts and item after item of evidence recorded in the domestic enquiry as well as before the Labour Court was reconsidered and findings given by the Labour Court were reversed. We find no justification for such an approach by the learned Single Judge which only amounts to substitution of his subjective satisfaction in the place of such satisfaction of the Labour Court."*

12. Hence, In the light of the above discussion, I do not find any illegality, irrationality or perversity in the impugned Award passed by the labour Court.

13. There is no merit in the present petition, the same is hereby dismissed.

**April 19, 2010**

**KAILASH GAMBHIR,J**