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

Reserved on: 07th May, 2026
Date of Decision: 09th July, 2026
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+ W.P.(C) 877/2004 & CM APPL. 813/2004

SPORTS AUTHORITY OF INDIA Petitioner

Through: Ms. Ginny Jetley Rautray and Ms.
Yashika, Advs.

versus

SANTOSH KR.NAGINA(DECD.)THR.LR'S Respondent

Through: None

CORAM:
HON'BLE MS. JUSTICE SHAIL JAIN

JUDGMENT**SHAIL JAIN, J.**

1. The present Petition has been filed under Article 226 of the Constitution of India, *inter alia*, wherein the Petitioner has challenged the Award dated 08 January 2003 passed by the learned Labour Court No. X, Delhi, in Industrial Dispute No. 498 of 1995, wherein the learned Labour Court held that the Respondent was a “Workman” and had completed 240 days of continuous service with the Management and was, therefore, entitled to the protection of Section 25F of the Industrial Disputes Act, 1947 (hereinafter referred to as ‘*the Act*’).



FACTS OF THE CASE

2. The brief factual background leading to the filing of the present Petition is set out hereunder-

- a. The Petitioner herein is the Sports Authority of India (hereinafter, "the Petitioner"), a society registered under the Societies Registration Act, 1860, and wholly financed by the Central Government through the Ministry of Youth Affairs and Sports. The Petitioner is governed by its Rules and Memorandum of Association and comprises, *inter alia*, the Prime Minister of India as its President, the Union Minister in charge of Sports as its *ex officio* Vice-President, and various Union Ministers and other nominated members as part of its governing structure.
- b. The dispute pertains to Late Shri Santosh Kumar Nagina (hereinafter, "the Workman"), whose legal representative, Smt. Praveen Nagina has been impleaded in the present proceedings. According to the Petitioner, the Workman was appointed as a Supervisor on an *ad hoc* and contractual basis from time to time. The Petitioner asserts that the Workman accepted each such appointment without objection and with full knowledge of its temporary and contractual nature.
- c. The Petitioner herein has specifically relied upon various appointment letters and office orders issued from time to time in relation to the Workman. It is stated that the last appointment letter was issued on 22 December 1989, whereby the Workman was appointed for the period commencing from 11 December 1989 on a consolidated salary of Rs. 1,800/- (Rupees Eighteen Hundred only) per month. The Petitioner contends that all appointments of the Workman were



temporary, contractual and for specified periods, and that such appointments did not confer any right to regular appointment.

d. Consequently, the services of the Workman came to an end with effect from 24 January 1990. Aggrieved by the cessation of his employment, the Workman raised an industrial dispute before the labour authorities.

e. The dispute was thereafter referred by the Government of the National Capital Territory of Delhi for adjudication to the Labour Court No. X vide Order No. F.24(2105)/92-Lab. dated 15 July 1992, the reference question being-

“Whether the services of S. Santosh Kumar Nagina have been terminated illegally and or unjustifiably by the management and if so, to what relief is he entitled and what directions are necessary in this respect?”

f. Before the Labour Court, the Workman pleaded that he had been employed as a Supervisor with effect from 04 March 1987 and was drawing wages of Rs.1,800/- (Rupees Eighteen Hundred only) per month. He asserted that, despite the designation of Supervisor, the duties performed by him were clerical and manual in nature, including liaison work, maintenance of accounts, operation and maintenance of the electronic touch pad system and touch board. According to the Workman, the Management had been giving artificial breaks in service and, when he demanded regular pay scales and protested against such breaks, his services were terminated on 24 January 1990 without payment of wages for January 1990. He contended that the termination was illegal and violative of Section 25F of the Industrial Disputes Act, 1947 and sought reinstatement with full back wages.



- g. According to the Petitioner, the Statement of Claim neither alleged that the Workman had completed 240 days of continuous service nor disputed the contractual nature of his appointment.
- h. In its Written Statement, the Petitioner also raised a preliminary objection that the Respondent, having been appointed as a Supervisor on a contractual basis, did not fall within the definition of a "workman" under Section 2(s) of the Industrial Disputes Act, 1947. The Petitioner also challenged the validity of the reference on the ground that the Sports Authority of India is a society established and controlled by the Government of India through the Department of Youth Affairs and Sports and relied upon its Memorandum of Association and the evidence of its management witness in support thereof.
- i. In turn, the Workman, in his affidavit, stated that he was engaged in liaison work, maintenance of accounts relating to admissions under regular and pay-and-play schemes, making arrangements for camps, and overseeing cleanliness and security arrangements at the stadium.
- j. Relying upon these assertions, as well as the testimony of its Management witness that approximately eleven to twelve workers were working under the Workman/ Respondent's supervision, the Petitioner maintained that the duties performed by him were supervisory in nature. It was further submitted that, although the Workman denied performing supervisory and liaison functions during cross-examination, the Labour Court failed to consider the admissions contained in his affidavit.
- k. Upon consideration of the material on record, the Labour Court passed the impugned Award dated 08 January 2003 in favour of the Workman. The Labour Court held that the Workman had completed 240



days of continuous service with the Management and was, therefore, entitled to the protection of Section 25F of the Industrial Disputes Act, 1947. The Labour Court further observed that the first appointment letter did not indicate appointment for a specific period and that the subsequent short breaks in service constituted an unfair labour practice on the part of the management.

1. Aggrieved by the said findings and the Award dated 08 January 2003, the Petitioner has preferred the present writ petition under Articles 226 and 227 of the Constitution of India seeking quashing and setting aside of the impugned Award.
3. In addition to the aforesaid, the grounds set out hereunder have been relied upon by the Petitioner in respect of the reliefs claimed by the Petitioner.
 - a. The Petitioner contends that the Labour Court erred in holding the Respondent to be a "workman" under Section 2(s) of the Industrial Disputes Act, 1947, despite the evidence on record indicating that he was discharging supervisory functions. Reliance is placed upon the Respondent's affidavit, wherein he stated that he was engaged in liaison work, camp arrangements, and supervision of security and cleanliness at the stadium. It is further contended that the Labour Court failed to appreciate the admissions contained in the Respondent's affidavit and the evidence led by the Management, including the testimony that approximately eleven to twelve workers were working under the Respondent's supervision.



- b. The Petitioner also assails the finding that the Respondent had completed 240 days of continuous service, submitting that neither such a plea was raised in the Statement of Claim, nor was any evidence adduced to establish the same. It is urged that the burden of proving completion of 240 days rested upon the Respondent and was not discharged.
- c. The Petitioner further submits that the Respondent's engagements were purely *ad hoc* and contractual in nature, accepted by him without objection, and were for specific and fixed periods. Consequently, the case was covered by the exception contained in Section 2(oo)(bb) of the Industrial Disputes Act, 1947.
- d. It is also contended that the Labour Court failed to appreciate that the Sports Authority of India is a society established and controlled by the Central Government and that the provisions of the Administrative Tribunals Act, 1985 had been made applicable to it with effect from 17 July 1995.
- e. Lastly, the Petitioner challenges the jurisdiction of the Labour Court to adjudicate the dispute and submits that the impugned Award, having been rendered without jurisdiction, is liable to be set aside.
4. On the other hand, it is the case of the Respondent before this Court that the present Writ Petition is not maintainable, contending that this Court, in exercise of its writ jurisdiction, does not sit as an appellate court to reappreciate evidence or interfere with plausible findings of fact recorded by the Labour Court. It is submitted that, upon due consideration of the pleadings and evidence on record, the Labour Court rightly



concluded that the deceased employee was a "workman" within the meaning of Section 2(s) of the Industrial Disputes Act, 1947 and had admittedly worked for more than 240 days; consequently, his termination with effect from 24 January 1990, having been effected in violation of Section 25F of the Industrial Disputes Act, 1947, was rightly held to be illegal. It is, therefore, contended that the impugned Award warrants no interference under Articles 226 and 227 of the Constitution and the present Writ Petition is liable to be dismissed.

ISSUES INVOLVED

5. In light of the facts and grounds noted hereinabove, the questions that arise for consideration before this Court are set out hereunder.

- a. Whether the Respondent was a "Workman" within the meaning of Section 2(s) of the Industrial Disputes Act, 1947, notwithstanding his designation as a Supervisor and the nature of duties allegedly discharged by him?
- b. Whether the Respondent's engagement was contractual and for specified periods and, if so, whether the cessation of his employment upon expiry of the contractual term was covered by the exception contained in Section 2(oo)(bb) of the Industrial Disputes Act, 1947?
- c. Whether the Labour Court erred in holding that the Respondent had completed 240 days of continuous service, particularly in the absence of any specific pleading or evidence to that effect, and whether, in the facts and circumstances of the case, the Respondent was entitled to the protection of Section 25F of the Industrial Disputes Act, 1947?



d. Whether the impugned Award suffers from perversity, non-application of mind or patent illegality warranting interference under Article 226 of the Constitution of India, and if so, to what relief the parties are entitled.

SUBMISSIONS OF THE PETITIONER

6. Besides the grounds of challenge set out in the Writ Petition, learned counsel for the Petitioner has further contended as under:

a. Learned counsel for the Petitioner submits that Section 25F of the Industrial Disputes Act, 1947 is inapplicable, as the Respondent was not retrenched from service and his engagement came to an end by efflux of time upon expiry of the contractual period. Reliance is placed on Section 2(oo)(bb) of the Act, which excludes termination resulting from non-renewal of a contract of employment from the definition of retrenchment.

b. Without prejudice to the aforesaid, it is further submitted by the learned Counsel that the Respondent was not a "Workman" within the meaning of Section 2(s) of the Act. Learned counsel contends that, during the relevant period, an employee engaged in a supervisory capacity and drawing wages exceeding Rs. 1,600/- (Rupees Sixteen Hundred only) per month stood excluded from the definition of a Workman. Since the Respondent was appointed as a Supervisor, was drawing wages of Rs. 1,800/- (Rupees Eighteen Hundred only) per month, and had himself described his employment as that of a Supervisor in the Statement of Claim, he did not fall within the ambit of Section 2(s) of the Act. Reliance is also placed on the Management



evidence to contend that the Respondent was working in a supervisory capacity.

c. Lastly, and without admitting the applicability of Section 25F of the Act, it is submitted that the compensation of Rs. 30,000/- (Rupees Thirty Thousand only) awarded by the Labour Court is excessive and disproportionate. Learned counsel contends that the Respondent worked only for approximately two years and six months and that the compensation payable under Section 25F of the Act would work out to approximately Rs. 2,250/- (Rupees Two Thousand Two Hundred and Fifty only).

d. Learned counsel for the Petitioner has further placed reliance upon the decision of the Supreme Court in ***State of Rajasthan v. Rameshwar Lal Gahlot, (1996) 1 SCC 595***, to contend that where an employee is appointed for a fixed term and the engagement comes to an end upon expiry of the contractual period, such cessation of service does not amount to "retrenchment" within the meaning of the Industrial Disputes Act, 1947. In this case, the Supreme Court, while interpreting Section 2(oo)(bb) of the Act, held that termination in terms of a fixed-term appointment is excluded from the definition of retrenchment and, consequently, the requirements of Section 25F of the Act would not be attracted. The Supreme Court further observed that, unless the fixed-term appointment is shown to be *mala fide*, a misuse of power, or a colourable exercise adopted to defeat statutory protections, as well the termination in accordance with the terms of appointment cannot be held to be illegal.



ANALYSIS AND DISCUSSION

7. At the outset, it is pertinent to note that no oral submissions were addressed by either side. The Petitioner has rested its case on the Written Submissions filed on record. It is further observed that none has entered an appearance on behalf of the Respondent for nearly a decade. In the circumstances, the matter has proceeded *ex parte* against the Respondent and is being considered on the basis of the record and the written submissions advanced on behalf of the Petitioner.

8. Before advertng to the issues framed in the present Petition, it is apposite to observe that the jurisdiction of this Court under Articles 226 and 227 of the Constitution of India, while examining an Award passed by the Labour Court, is supervisory in nature and circumscribed in scope. It is well settled that the High Court does not act as an appellate authority over the findings returned by the Labour Court. Interference is warranted only where the Award suffers from patent illegality, perversity, jurisdictional error, or where material evidence has been ignored.

9. The Supreme Court in ***Syed Yakoob v. K.S. Radhakrishnan***, AIR 1964 SC 477, held that interference under certiorari jurisdiction is only justified where a tribunal acts in excess of jurisdiction or where its findings are based on no evidence.

10. Therefore, the High Court, in writ proceedings, does not re-examine or re-appreciate the evidence recorded by the Tribunal below, nor does it substitute its own view for that of the adjudicatory body. The award of the Labour Court can be set aside only if there is an error apparent on the face of the record.



11. So, while this Court remains conscious of the limitations inherent in writ jurisdiction, it is equally mindful that findings rendered in disregard of the settled legal principles, or the admitted evidence, cannot be permitted to sustain merely on considerations of judicial restraint.

12. To begin with, the impugned Award proceeds on the premise that the Respondent was a "Workman" within the meaning of the Industrial Disputes Act, 1947, and had completed 240 days of continuous service, thereby entitling him to the protection of Section 25F of the Act. The validity of these findings lies at the heart of the present controversy.

13. The Petitioner has foremostly questioned the finding of the Labour Court that the Respondent was a "Workman" within the meaning of Section 2(s) of the Industrial Disputes Act, 1947. It has been contended on behalf of the Petitioner that the Respondent was appointed as a Supervisor and was drawing wages of Rs. 1,800/- (Rupees Eighteen Hundred only) per month, and was discharging supervisory functions. Reliance has also been placed on the Respondent's own Statement of Claim, wherein he described himself as a Supervisor, as well as the testimony of the Management witness who deposed that the Respondent was performing supervisory duties and that several workers were working under his supervision.

14. Before examining the merits of the said contention, it is necessary to note that the law relating to the determination of whether an employee falls within the definition of a "workman" under Section 2(s) of the Act is well settled.

15. The Supreme Court, in **Arkal Govind Raj Rao v. Ciba Geigy of India Ltd., 1985 Supp SCC 175**, held that the designation or nomenclature assigned to an employee is not determinative of his status. Rather, the



Court must examine the dominant and substantive nature of the duties actually discharged by the employee. It is, therefore, well settled that the true test for determining whether an employee falls within the ambit of a "workman" is the primary and predominant nature of the duties performed, and not the title or designation attached to the post held.

16. The Labour Court, in the present case, examined the evidence led by the parties in the light of the aforesaid principles. The impugned Award records that, although the Respondent was designated as a Supervisor, he deposed that he was engaged in liaison work, maintenance of accounts relating to admissions under regular and pay-and-play schemes, operation and maintenance of the electronic touch pad system, sale of swimming pool tickets, and allied duties. The Labour Court also took note of the fact that the Management was unable to produce any material demonstrating that the Respondent possessed powers ordinarily associated with supervisory or managerial control, such as the authority to sanction leave, initiate disciplinary proceedings, appoint employees, or exercise administrative control over subordinate staff.

17. The Labour Court further noticed that the appointment documents relied upon by the Management did not specify the precise duties to be discharged by the Respondent. While the Management witness asserted that the Respondent was functioning in a supervisory capacity, no documentary evidence was produced to substantiate the existence of supervisory powers or responsibilities. The Labour Court was, therefore, justified in examining the substance of the duties performed rather than proceeding solely on the basis of the designation assigned to the Respondent.



18. This Court is mindful that the determination of whether an employee is a workman is essentially a question of fact to be decided on the basis of the evidence available on record.

19. The Labour Court, being the final fact-finding authority, undertook such an exercise and arrived at a conclusion upon appreciation of the oral and documentary evidence placed before it. Merely because another view may also be possible would not justify interference with such a finding in the exercise of writ jurisdiction.

20. Having considered the reasoning contained in the impugned Award and the evidence referred to therein, this Court is of the opinion that the Labour Court correctly applied the settled principle that designation alone is not determinative and that the dominant nature of duties must govern the inquiry.

21. **Accordingly, this Court is in agreement with the finding returned by the learned Labour Court that the Respondent is a "Workman" within the meaning of Section 2(s) of the Industrial Disputes Act, 1947.**

22. Moving on, the Petitioner has consistently maintained that the Respondent was engaged on contractual appointments for specified periods and that his engagement was extended from time to time through separate appointment orders. It has further been contended that the last appointment order dated 22 December 1989 specifically stipulated that the Respondent's engagement would remain effective from 11 December 1989 to 10 January 1990 and that no further extension was granted thereafter. According to the Petitioner, the Respondent's services came to an end upon expiry of the contractual period and not by way of retrenchment.



23. In order to appreciate the aforesaid contention, it becomes necessary to advert to Section 2(oo)(bb) of the Industrial Disputes Act, 1947, which reads as under:

"2(oo) 'retrenchment' means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include—

...

(bb) termination of the service of the workman as a result of the non-renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein."

24. A plain reading of the aforesaid provision demonstrates that where the cessation of employment takes place either upon the expiry of a contractual term or in accordance with a stipulation contained in the contract itself, such termination is specifically excluded from the ambit of "retrenchment". Consequently, where a case falls within the exception carved out under Section 2(oo)(bb) of the Act, the requirements of Section 25F of the Act would not be attracted.

25. The scope and effect of Section 2(oo)(bb) of the Act have been considered by the Supreme Court in a catena of decisions. In **M. Venugopal v. Divisional Manager, LIC, (1994) 2 SCC 323**, the Supreme Court held that where the cessation of service occurs strictly in terms of the contractual appointment, such termination would not amount to retrenchment within the meaning of the Industrial Disputes Act, 1947.

26. The aforesaid principle was subsequently reiterated in **State of Rajasthan v. Rameshwar Lal Gahlot (supra)**, a decision strongly relied



upon by the Petitioner in the present case. To reiterate, in the said decision, the employee had been appointed for a fixed period, and his services came to an end upon the expiry of the stipulated term. The Supreme Court held that where an appointment is for a fixed period, termination upon the expiry of such period falls within the exception contained in Section 2(oo)(bb) of the Act, with the consequence that Section 25F of the Act has no application. The Court further clarified that such termination cannot be held to be illegal unless the contractual arrangement is shown to be *mala fide*, a misuse of power, or a colourable exercise adopted to defeat the statutory protections available to workmen. It was further observed that where the termination is protected by Section 2(oo)(bb) of the Act, neither reinstatement nor fresh appointment could ordinarily be granted.

27. Examined in the light of the aforesaid statutory framework and judicial precedents, this Court is of the considered opinion that the Labour Court failed to undertake the necessary inquiry regarding the applicability of Section 2(oo)(bb) of the Act. The award proceeds directly to the question of compliance with Section 25F of the Act without first determining whether the Respondent's cessation of service amounted to "retrenchment" at all.

28. Although the Labour Court observed that the Respondent had been granted successive appointments and that artificial breaks had been introduced by the Management, no finding has been returned that the contractual appointments were a sham, *mala fide*, or a colourable exercise of power intended to circumvent labour welfare legislation. Similarly, there is no finding that the stipulations contained in the appointment orders



were illusory or that the power under Section 2(o)(bb) of the Act had been abused by the Petitioner.

29. Accordingly, the submission advanced by the Petitioner, founded upon the aforesaid decision, deserves to be accepted.

30. Therefore, in light of the foregoing discussion, it is the considered opinion of this Court that in the absence of any such finding, the Labour Court could not have disregarded the statutory exception expressly engrafted under Section 2(o)(bb) of the Act. The question whether the Respondent's engagement came to an end upon expiry of the contractual term constituted a foundational issue which required determination before proceeding to examine compliance with Section 25F of the Act.

31. It is pertinent to reiterate that the Respondent's engagement came to an end solely on account of the expiry of the contractual term stipulated in the appointment letter, i.e., by efflux of time. The appointment letter unequivocally fixed the tenure of the Respondent from 11 December 1989 to 10 January 1990, and there is nothing on record to indicate that the said tenure was either extended or that the Respondent was required to continue in service thereafter. The cessation of the Respondent's engagement was, therefore, the natural consequence of the expiry of the contractual term, and not the result of any order of termination passed by the Petitioner.

32. Hence, in the facts and circumstances of the present case, this Court is of the considered view that the cessation of the Respondent's services falls within the exception carved out under Section 2(o)(bb) of the Act.

33. In view of the aforesaid discussion, this Court is further of the view that the learned Labour Court erred in law in proceeding on the premise that the cessation of the Respondent's services amounted to "retrenchment"



without first determining the applicability of the exception contained in Section 2(oo)(bb) of the Industrial Disputes Act, 1947. **This Court further finds that, in the absence of any finding that the successive contractual appointments were sham, *mala fide*, or a colourable exercise adopted to defeat the provisions of the Act, the Respondent's cessation of service upon the expiry of the contractual term squarely falls within the ambit of Section 2(oo)(bb) of the Act. and, consequently, does not amount to "retrenchment" within the meaning of the Act.**

34. Even assuming, for the sake of argument, that the Respondent's cessation of service amounted to retrenchment, the Respondent would still be required to establish that he satisfied the statutory conditions necessary to claim the protection of Section 25F of the Act. Mere proof that his services were continuously utilised by the Management, or even that the Management had acted unfairly or *mala fide*, would not, by itself, entitle the Respondent to the protection of Section 25F of the Act.

35. Therefore, the question whether the statutory preconditions for availing the protection under Section 25F of the Act stood satisfied is a distinct and independent issue requiring separate consideration. The correctness of the finding returned by the learned Labour Court in the impugned Award on this aspect is, therefore, central to the adjudication of the present writ petition

36. Section 25F of the Industrial Disputes Act, 1947, lays down mandatory conditions that an employer must fulfil before retrenching a workman who has completed continuous service of not less than one year in an industrial establishment. In essence, it is established that non-



compliance with the mandatory conditions prescribed under Section 25F of the Act renders the termination illegal. The provision reads as follows-

“25F. Conditions precedent to retrenchment of workmen.

No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

(a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice:

(b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay for every completed year of service or any part thereof in excess of six months; and

(c) notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette.”

37. Therefore, it is safe to say that to avail the protection under Section 25F of the Industrial Disputes Act, a workman is required to establish that he has completed 240 days of continuous service in the preceding twelve months, which constitutes a mandatory evidentiary requirement. In matters of this nature, the burden of proof initially lies upon the workman.

38. At this point, the judgment of the Hon'ble Supreme Court in the case of **Mohd. Ali vs. State of H.P. & Ors., (2018) 15 SCC 641**, appears to be material, and the relevant part of the judgment is extracted hereunder.

“It is a well-known fact that the Industrial Disputes Act is a welfare legislation. The intention behind the enactment of this Act was to protect the employees from arbitrary retrenchments. For this reason only, in a case of retrenchment of an employee who has worked for a year or more, Section 25F provides a safeguard in the form of giving



one month's prior notice, indicating the reasons for retrenchment to the employee and also provides for wages for the period of notice. Section 25B of the Act provides that when a person can be said to have worked for one year, and the very reading of the said provisions makes it clear that if a person has worked for a period of 240 days in the last preceding year, he is deemed to have worked for a year. The theory of 240 days for continuous service is that a workman is deemed to be in continuous service for a period of one year, if he, during the period of twelve calendar months preceding the date of retrenchment, has actually worked under the employer for not less than 240 days."

39. That being the case, it is safe to say that the determination of whether the provisions of Section 25F of the Act are attracted in the present case depends on whether the Respondent herein had completed the requisite period of service of 240 days in the year preceding the termination.

40. In light of the above, the requirement of pleading and proving completion of 240 days is not a mere technical formality. The entire statutory protection contained in Section 25F of the Act becomes available only when the workman establishes the factual foundation necessary to invoke the provision.

41. Once again, it must be noted that the initial burden of proving the completion of 240 days in service in the year preceding the termination lies on the Workman, itself.

42. Support in the aforesaid regard may be taken from the judgment of the Hon'ble Supreme Court in the case of "***R.M. Yellatti vs. The Assistant Executive Engineer, 2006 (1) SCC 106***", wherein the Hon'ble Supreme Court, while taking note of ***Manager, Reserve Bank of India, Bangalore***



vs. S. Mani, (2005) 5 SCC 100, and clarified the aforesaid position. The relevant part of the judgment is extracted hereunder.

“Now coming to the question of burden of proof as to the completion of 240 days of continuous work in a year, the law is well settled. In the case of Manager, Reserve Bank of India, Bangalore v. S. Mani reported in (2005) 5 SCC 100, the workmen raised a contention of rendering continuous service between April, 1980 to December, 1982 in their pleadings and in their representations. They merely contended in their affidavits that they had worked for 240 days. The tribunal based its decision on the management not producing attendance register. In view of the affidavits filed by the workmen, the tribunal held that the burden on the workmen to prove 240 days service stood discharged. In that matter, a three-judge bench of this court held that pleadings did not constitute a substitute for proof and that the affidavits contained self-serving statements; that no workman took an oath to state that they had worked for 240 days; that no document in support of the said plea was ever produced and, therefore, this court took the view that the workmen had failed to discharge the burden on them of proving that they had worked for 240 days. According to the said judgment, only by reason of non-response to the complaints filed by the workmen, it cannot be said that the workmen had proved that they had worked for 240 days. In that case, the workmen had not called upon the management to produce relevant documents. The court observed that the initial burden of establishing the factum of continuous work for 240 days in a year was on the workmen. In the circumstances, this court set aside the award of the industrial tribunal ordering reinstatement.”

(emphasis supplied)

43. Furthermore, in the case of **“R.M. Yellatti vs. The Assistant Executive Engineer (supra)”** itself, the Hon’ble Apex Court has also considered the decision in **“Municipal Corporation, Faridabad vs Siri Niwas, (2004) 8 SCC 195”**, wherein the concrete principles in respect to



the concept of 240 days by the workman are laid out. The relevant paragraph is extracted hereunder.

“.....Overruling the decision of the High Court, this court found on facts of that case that the employee had not adduced any evidence before the court in support of his contention of having complied with the requirement of section 25-B of Industrial Disputes Act.”

(emphasis supplied)

44. Therefore, it is well settled that for a workman to successfully assail termination under the Industrial Disputes Act, 1947, the workman must demonstrate that he had completed continuous service within the meaning of Section 25B of the Industrial Disputes Act, 1947, i.e., that he had worked for at least 240 days in the twelve calendar months preceding the termination. Only upon satisfaction of these conditions does the protection under Section 25F of the Industrial Disputes Act, 1947, become applicable. In the absence of compliance with these statutory requirements, a plea of illegal retrenchment cannot be sustained.

45. The judgment of the Hon'ble Apex Court in ***Mohal Lal vs. Management of M/s Bharat Electronics Ltd., (1981) 3 SCC 225***, reaffirms the aforestated position.

“Before a workman can complain of retrenchment being not in consonance with section 25F, he has to show that he has been in continuous service for not less than one year under that employer who has retrenched him from service. Section 25B is the dictionary clause for the expression ‘continuous’.”

46. In the present case, the position regarding the completion of 240 days of continuous service of the Workman in the year preceding the termination remains unclear. The Respondent has asserted that he worked



with the Petitioner-Management for approximately three years; however, neither in the Statement of Claim before the learned Labour Court nor in the pleadings before this Court has the Respondent specifically averred that he had completed 240 days of continuous service during the twelve months immediately preceding the termination, which is the statutory precondition for attracting the protection against retrenchment under the Industrial Disputes Act, 1947. The pleadings are conspicuously silent on this essential statutory requirement.

47. In furtherance, the Labour Court has recorded a finding that the Respondent had completed 240 days of service. However, neither the impugned Award nor the material referred to therein demonstrates the evidentiary basis for arriving at such a conclusion. Significantly, the Labour Court itself records that the Respondent was engaged through a series of appointments and extensions. Yet, there is no discussion regarding the exact period constituting continuous service, the manner in which the statutory threshold stood satisfied, or the evidence relied upon to establish the same.

48. Even upon examination of the record available, no material is forthcoming to indicate that the Respondent had completed 240 days of service in the preceding year before the termination. Moreover, there is no categorical assertion or proof on the part of Respondent/Workman herein relating to the completion of 240 days in any relevant twelve-month period.

49. It is true that in cases involving daily-rated workers, strict documentary proof may not always be available. However, even in such cases, a foundational pleading or oral assertion regarding completion of



240 days is required, upon which the burden may shift to the employer. In the present case, the Respondent has not even laid such foundational facts. In the absence of any pleading or evidence to this effect, this Court cannot presume completion of 240 days of service.

50. It is trite that the statutory protection under Section 25F of the Industrial Disputes Act, 1947, is attracted only when the workman has completed one year of continuous service as defined under Section 25B of the Act. In the absence of proof regarding completion of 240 days of service in the preceding year, the Respondent cannot claim the benefit of Section 25F of the Act. Consequently, although the termination may appear harsh, it cannot be held illegal on the grounds of non-compliance with Section 25F of the Act.

51. In this context, it is settled that a Court exercising jurisdiction under Article 226 of the Constitution of India cannot assume facts which remain unproven. The Court cannot substitute proof with presumption nor grant relief on equitable considerations contrary to the scheme of the Industrial Disputes Act, 1947. The burden to establish completion of 240 days lies upon the workman.

52. Therefore, in the considered view of this Court, the finding regarding completion of 240 days has been recorded by the learned Labour Court without adequate pleading and without proper examination of the evidentiary burden cast upon the workman under law. Such a finding cannot, therefore, be sustained.

53. In view of the foregoing discussion, this Court is of the considered opinion that the Respondent failed to establish the foundational facts necessary to invoke the protection of Section 25F of the Industrial



Disputes Act, 1947. As noticed hereinabove, neither was there any specific pleading regarding completion of 240 days of continuous service in the twelve months preceding the cessation of employment, nor was any cogent evidence adduced to establish the same. The Labour Court, while recording a finding that the Respondent had completed 240 days of service, did not indicate the evidentiary basis for such a conclusion nor examine whether the burden cast upon the workman in law had been duly discharged.

54. In view of the aforesaid discussion, once again, this Court finds that the Respondent's cessation of service falls within the exception carved out under Section 2(oo)(bb) of the Industrial Disputes Act, 1947, and, therefore, does not constitute "retrenchment" within the meaning of the Act. Consequently, the provisions of Section 25F of the Act are, in any event, inapplicable to the facts of the present case.

55. This Court is further of the considered opinion that, even assuming the provisions of Section 25F of the Act were attracted, the Respondent has failed to establish the foundational facts necessary to claim the protection thereof. The Respondent neither pleaded nor proved that he had completed 240 days of continuous service in the twelve calendar months immediately preceding the cessation of his engagement, which constitutes the statutory precondition for invoking the protection under Section 25F of the Act. The finding recorded by the learned Labour Court to the contrary, having been rendered without any cogent evidentiary basis and in disregard of the settled legal principles governing Sections 25B and 25F of the Act, cannot be sustained in law.



56. Accordingly, the Respondent was not entitled to the protection of Section 25F of the Act, both because his case is squarely covered by the exception contained in Section 2(oo)(bb) of the Act and because he failed to satisfy the statutory conditions precedent for invoking such protection. The contrary findings recorded by the learned Labour Court are, therefore, unsustainable.

CONCLUSION

57. In view of the foregoing discussion, this Court finds no infirmity in the finding of the Labour Court that the Respondent was a "workman" within the meaning of Section 2(s) of the Industrial Disputes Act, 1947. The said finding is based on an appreciation of the evidence on record and does not warrant interference.

58. Further, this Court holds that the Labour Court failed to examine the applicability of the exception contained in Section 2(oo)(bb) of the Industrial Disputes Act, 1947, before proceeding to consider compliance with Section 25F of the Act. In the absence of any finding that the contractual appointments were *mala fide* or a colourable exercise of power, the statutory exception could not have been disregarded.

59. It is further held that the learned Labour Court erred in concluding that the Respondent had completed 240 days of continuous service and was, therefore, entitled to the protection of Section 25F of the Industrial Disputes Act, 1947. There was neither any specific pleading by the Respondent asserting completion of the requisite period of continuous service nor any cogent evidence on record to substantiate the same. Consequently, the findings recorded by the learned Labour Court



regarding the completion of 240 days of continuous service and the Respondent's consequent entitlement to the protection of Section 25F of the Act are unsustainable in law and are accordingly set aside.

60. Accordingly, the impugned Award dated 08 January 2003 cannot be sustained and is hereby set aside in the aforesaid terms.

61. The Writ Petition is allowed in the aforesaid terms. Pending applications, if any, also stand disposed of.

62. There shall be no order as to costs.

SHAIL JAIN
JUDGE

JULY 09, 2026

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