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

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Date of Decision : 12.08.2026# **CNR No. DLHC010370482026**+ **LPA 627/2026****SURESH KUMAR**

.....Appellant

Through: Mr. Krishna Chandra Dubey, Ms.
Uma Tarafdar and Ms. Lenyin Taggu,
Advocates.

versus

UNION BANK OF INDIA

.....Respondent

Through: Mr. Rajat Arora, Mr. Niraj Kumar
and Sourabh Mahla, Advocates.

CORAM:**HON'BLE THE CHIEF JUSTICE****HON'BLE MR. JUSTICE TEJAS KARIA****TEJAS KARIA, J. (ORAL)****CM APPL. 53283/2026 & 53284/2026 (Condonations of Delay)**

1. These Applications have been filed seeking condonation of delay of 306 days in filing and 17 days in re-filing the present Appeal, respectively.
2. Having heard the learned Counsel for the Parties and perused the averments made in the Applications, the same are allowed. The delay of 306 days in filing and 17 days in re-filing the present Appeal are hereby condoned.
3. The Applications, accordingly, stand disposed of.

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4. This *intra court* Appeal has been preferred by the Appellant assailing the order dated 08.08.2025 (“**Impugned Judgment**”) passed by the learned Single Judge in W.P.(C) 14988/2022 (“**Writ Petition**”), as well as the award dated 10.01.2022 (“**Award**”) passed by the learned Presiding Officer, CGIT-cum-Labour Court-II, New Delhi (“**Labour Court**”) in I.D. No. 118/2012.

5. The brief facts germane to the present Appeal are that the Respondent engaged the Appellant as a Peon at its Pitampura Branch, Delhi on 01.08.2001. On 05.03.2010, the Respondent terminated the services of the Appellant. Aggrieved thereby, the Appellant issued a protest and demand notice dated 26.07.2010 to the Respondent and thereafter raised an industrial dispute being I.D. No. 118/2012. The learned Labour Court, by the Award, held that no employer-employee relationship existed between the Parties and that the Appellant was not terminated illegally.

6. The Appellant challenged the Award in the Writ Petition. By the Impugned Judgment, the learned Single Judge dismissed the Writ Petition, holding that no cogent documentary evidence had been placed on record and upheld the Award. Being aggrieved, the Appellant has preferred the present Appeal.

7. Learned Counsel for the Appellant submitted that the Appellant performed work of a perennial nature from 01.08.2001 to 05.03.2010 with an unblemished record, discharging duties ordinarily performed by a regular employee. The Respondent deliberately withheld statutory benefits throughout this period to defeat any future claim, thereby denying the Appellant a legitimate expectation of regularisation. In *Royal Western India*



Turf Club Ltd. v. E.S.I. Corpn. & Ors., 2016 (4) SCC 521, the Supreme Court held that “employee” under the Employees State Insurance Act, 1948 (“ESI Act”) is wide enough to cover casual employees engaged for part of a wage period, on work of a perennial nature.

8. Learned Counsel for the Appellant further submitted that the learned Labour Court, in the Award, noted an attendance register on record but failed to examine whether it pertained to the Respondent’s casual staff. The Respondent did not deny engaging casual employees, yet produced no wage or attendance register specific to them.

9. It was also submitted by learned Counsel for the Appellant that the decision in *Ram Singh & Ors. v. Union Territory of Chandigarh & Ors.*, (2004) 1 SCC 126, as relied upon by the learned Labour Court, is distinguishable on facts, as it concerned contractual employees claiming a relationship with a principal employer. In the present case, no contractor was involved as the Respondent engaged the Appellant directly. The employer-employee relationship itself is not in dispute; only the Appellant’s status is in question. This was clarified by the Respondent’s own witness, who deposed that the Appellant worked as a casual worker both before and after the witness’s tenure, demonstrating that the Appellant was performing perennial work.

10. Learned Counsel for the Appellant submitted that learned Single Judge held that the Respondent, being a nationalised Bank, falls within “State” under Article 12 of the Constitution of India, 1950 (“Constitution”) and cannot resort to arbitrary ‘hire and fire’. Reliance was placed upon the decision in *Bank of India & Ors. v. O.P. Swarnakar*, AIR 2003 SC 858 and *Dharam Singh v. State of U.P.*, Neutral Citation: 2025 INSC 998, wherein



the Supreme Court observed that long term extraction of regular labour under temporary labels corrodes confidence in public administration and offends the promise of equal protection.

11. Learned Counsel for the Appellant placed reliance upon the decision in ***Director, Fisheries Terminal Department v. Bhikubhai Meghajibhai Chavda***, (2010) 1 SCC 47, to submit that, the Appellant being a daily wager, he did not have access to all official documents, muster rolls, and other records pertaining to his service. It was further submitted that, in such circumstances, the burden of proof shifted to the Respondent to establish that the Appellant had not completed 240 days of service in the requisite period to constitute continuous service. Since the Respondent failed to discharge the said burden, it was contended by the Appellant that the learned Single Judge erred in holding that the Appellant had failed to prove continuous service.

12. *Per contra*, learned Counsel for the Respondent submitted that it is well settled that the burden of proving an employer-employee relationship lies on the workman asserting it, and the Appellant has failed to discharge this burden. No appointment letter, wage record, identity card, or PF / ESI record has been placed on record at any stage to establish direct employment with the Respondent. The attendance register relied upon by the Appellant does not, by itself, prove such a relationship, and is equally consistent with engagement through a contractor.

13. Learned Counsel for the Respondent further submitted that the decisions relied upon by the Appellant do not advance his case. The decisions cited either arise in a different statutory context or, on a proper reading, support the Respondent's position that continuity of work alone,



without documentary proof, cannot establish an employer-employee relationship. The finding regarding the Respondent's status as "*State*" under Article 12 of the Constitution is also of no assistance, as it presupposes an employer-employee relationship that remains unproved on the record.

14. We have heard learned Counsel appearing for the Parties and have perused the material placed on record.

15. The main question that arises for adjudication is whether the Appellant has adduced sufficient evidence to establish a direct employer-employee relationship with the Respondent, and in the absence of such proof, whether the concurrent findings recorded by the learned Labour Court and affirmed by the learned Single Judge warrant interference in this *intra court* Appeal.

16. The settled legal position is that a workman claiming relief under the Industrial Disputes Act, 1947 ("**ID Act**") must first prove the existence of an employer-employee relationship through cogent documentary evidence, such as appointment letters, wage records, identity cards, or statutory registers. This burden rests on the person asserting the relationship, and oral testimony or self-serving affidavits, without any contemporaneous documentary support, are insufficient to discharge this onus. Only upon establishing this primary fact does the question of proving 240 days of continuous service or invoking constitutional protections under Article 12 of the Constitution would arise.

17. In the present case, the record is completely devoid of any documentary evidence to substantiate the Appellant's claim of direct employment with the Respondent. The record remains bereft of any appointment letter, wage slips, identity card, PF or ESI documentation, or



contemporaneous service records, as none have been submitted by the Appellant at any point in the proceedings. The attendance register relied upon by the Appellant is vague and does not bear any indication that it pertained to regular or direct employees of the Respondent, as opposed to casual workers or those engaged through a contractor. In the absence of any credible documentary proof, the Appellant's assertion of employment cannot be accepted.

18. The Appellant has also failed to prove that he had completed 240 days of continuous service in the twelve months preceding his alleged illegal termination. The burden of proving continuous service of 240 days rests upon the workman, and this burden is not discharged by mere oral statements or self-serving affidavits. The Appellant has not produced any muster roll, wage register, or other contemporaneous record to demonstrate that he actually worked for the requisite period. In the absence of such proof, the Appellant cannot claim the protection of Section 25F of the ID Act or any other statutory provision.

19. The decisions relied upon by the Appellant do not advance his case. The judgment in *Royal Western India Turf Club Ltd. (supra)* pertains to the definition of "employee" under the ESI Act, a beneficial legislation with a wider amplitude, and cannot be mechanically transposed to determine the existence of an employer-employee relationship under the ID Act without foundational proof. Similarly, the reliance on *O.P. Swarnakar (supra)* regarding the Respondent being a "State" under Article 12 of the Constitution is of no avail, as the constitutional protection against arbitrary action presupposes the existence of a proven employment relationship, which remains unestablished here. The decision in *Dharam Singh (supra)*



also cannot assist the Appellant, as it addresses the extraction of regular labour under temporary labels, which cannot be inferred in the absence of any evidence of employment. Further, **Director, Fisheries Terminal Department** (*supra*) is also of no assistance to the Appellant, as the said decision holds that the burden of proof would shift to the employer only once the workman has deposed that he had completed 240 days of service in the requisite period to establish continuous service. In the present case, the Appellant has made no such averment in his affidavit of evidence. Consequently, the burden did not shift to the Respondent.

20. The learned Labour Court, after appreciating the evidence, returned a clear finding that no employer-employee relationship existed between the Parties and that the Appellant had failed to prove his employment or continuous service. This finding has been reaffirmed by the learned Single Judge in the Impugned Judgment, which expressly holds that no cogent documentary evidence had been placed on record by the Appellant.

21. There is no quarrel with the Appellant's contention that the Respondent, being a nationalised Bank, cannot resort to a 'hire and fire' policy is correct in law, however, this protection is available only to a person who is proven to be an employee. The constitutional and statutory safeguards cannot be invoked by a person who has failed to prove the very foundation of his claim of his engagement as an employee of the Respondent and his completion of 240 days of continuous service.

22. In light of the above discussion, we find that the Appellant has failed to discharge the initial burden of proving his employment with the Respondent, as there is no evidence on record to establish an employer-employee relationship. Furthermore, the Appellant has also failed to prove



that he had completed 240 days of continuous service in the twelve months preceding his termination. Consequently, the findings of the learned Labour Court and the learned Single Judge that no employer-employee relationship existed and that the Appellant was not entitled to relief are factually sound and legally sustainable.

23. Accordingly, we find that the Appellant has failed to make out any ground warranting interference with the Impugned Judgment dated 08.08.2025 or the Award dated 10.01.2022. The Appeal is, therefore, dismissed. There shall be no order as to costs.

TEJAS KARIA, J

DEVENDRA KUMAR UPADHYAYA, CJ

AUGUST 12, 2026/N