



Neutral Citation Number: 2023:DHC:5017-DB

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

Judgment reserved on: 13.07.2023
Judgment delivered on: 20.07.2023

+ **LPA 548/2023 & CM APPL. 35148/2023**

SANTOSH DEVI

..... Appellant

Through: Mr. Chirayu Jain, Advocate.

versus

GURU TEG BAHADUR HOSPITAL

SHAHDARA DELHI

..... Respondent

Through: Mrs. Avnish Ahlawat, Standing Counsel, GNCTD with Ms. Tania Ahlawat, Mr. Nitesh Kumar Singh, Ms. Palak Rohmetra, Ms. Laavanya Kaushik and Ms. Aliza Alam, Advocates.

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE SANJEEV NARULA

J U D G M E N T

SATISH CHANDRA SHARMA, C.J.

1. The present Letters Patent Appeal (LPA) is arising out of the judgment dated 20.09.2022 passed by the Learned Single Judge in W.P.(C.) No.13869/2004 titled *Smt. Santosh Devi Vs. Guru Teg Bahadur Hospital Shahdara, Delhi*. Vide impugned judgment, the learned Single Judge has upheld the Award dated 08.07.2003 passed by the Labour Court-I, Karkardooma, Delhi in I.D. No.308/1998 titled as “*The Management of M/s Guru Teg Bahadur Hospital Vs. Its Workman Smt. Santosh Devi*”.

2. The undisputed facts of the case reveal that the appellant before this Court was engaged as a daily wager in the services of Guru Teg Bahadur



Hospital, Shahdara, Delhi (GTB Hospital) as a Safai Karamchari on muster roll w.e.f. 17.12.1988. As per the statement made by the appellant, her services were discontinued on 17.04.1993 without giving her any notice; without giving any compensation; without holding any inquiry; without publishing any seniority list; and without following the rule of “*last come first go*”. The appellant made efforts before the Department for reinstatement. However, as nothing was being done in respect of reinstatement, on 31.12.1997, the appellant served a legal notice to the authorities for claiming her reinstatement.

3. The facts further reveal that the appellant – as she was not reinstated in service, took shelter under the provisions of the Industrial Disputes Act, 1947 (ID Act). With the conciliation proceedings resulting in failure, on 30.08.1998, the Appropriate Government referred the industrial dispute to the Labour Court-I and the same was registered as ID No.308/1988. The appellant workman filed a statement of claim on 17.12.1998 stating that she has continuously worked from 01.04.1993, however, at times, she was not allowed to perform her duties by way of unfair labour practices though she was reporting for duty on each & every day and the employer did not prepare seniority list of persons working on daily wages and, therefore, as she has been retrenched without paying compensation, the statutory provisions as contained under Section 25 F, G & H of the ID Act, 1947 have been violated. A prayer was made for her reinstatement in service. The appellant workman filed an affidavit in lieu of examination-in-chief on 14.02.2000 and she was subjected to cross-examination on 02.05.2001.



4. It is also pertinent to note that the respondent employer did file a detailed written-statement on 25.08.1999 and did admit that the workman had worked in different spells as a muster roll worker w.e.f. 01.01.1990, however, she has not put in 240 days of service in a calendar year and, therefore, she was not entitled for reinstatement. It was also brought to the notice of the Labour Court that no seniority list for muster roll workmen was prepared in the establishment and a prayer was made for dismissing the claim of the workman. Witnesses were examined and cross-examined before the Labour Court and the Labour Court finally passed an Award on 08.07.2003 holding that the workman has not put in 240 days of service in a calendar year and, therefore, she is not entitled for any relief.

5. The workman being aggrieved by the Award dated 08.07.2003 preferred a writ petition before this Court, i.e. W.P.(C.) No. 13869/2004 and the Learned Single Judge has dismissed the said writ petition. The operative paragraphs of the judgment passed by the Learned Single Judge read as under:

“17. Heard the arguments advanced by both the parties and examined the Labour Court Record and the Judgments relied upon by the parties. The question to be examined in the present matter is whether the services of the Petitioner/Workman were terminated illegally or unjustifiably. It is the case of the Petitioner/ Workman that she was engaged as a muster roll employee by the Respondent/Management w.e.f 17.12.1988 and her services were terminated w.e.f 17.04.1993 without assigning any valid reason. There is no document placed on record to substantiate this fact. The only document placed on record by the Petitioner/Workman relating to her work with the Respondent/Management was a copy of the application made by the Petitioner/Workman to the Respondent/ Management for



payment of her earned wages for the period from 27.02.1991 to 28.3.1991 (Exh.WW-1/6).

18. The Petitioner/Workman in her evidence categorically deposed as follows:

“... It is correct that the management used to call as and when there was any work on day-to-day basis. I used to work only through employment Exchange. It is correct that if the Employment Exchange do not ask in to go to work with the management. I do not went of my own. It is also correct that I used to work as per the specific request and thereafter the management against used to call for work as and when there is any requirement. It is also correct that there is no letter or notice issued by the management for termination of the work. It is also correct that I am not a permanent employee the management I have not worked with the management as regular employee. It is also correct that I was paid the minimum wages on paid to the muster roll workers by the management.”

19. It is the case of the Respondent/Management that the Petitioner/Workman worked in 13 different spells on muster roll w.e.f 01.01.1990 without completing 240 days in a calendar year. The statement of the Petitioner/Workman is in consonance with the stand of the Respondent/Management. It is clear from the cross-examination of the Petitioner where she had herself admitted that she was working ‘only’ through Employment Exchange. There is no evidence on record, which has been brought by the Petitioner to establish that she has been continuously employed with the Respondent/ Management. She deposed that she used to report for work as and when being called by the Respondent/Management. She failed to bring any evidence to corroborate her claim that she has worked for 240 days. Exhibit WW1/6 also proves that she has worked only for a particular span of period from 27.02.1991 to 27.03.1991. No



proof of receipt of salary or wages or any record was produced; no co-worker was examined.

20. Hence, it is evident that the Petitioner/Workman was not working with the Respondent/Management continuously as claimed by her. As and when there is requirement of work, she used to perform her job as a muster roll employee on the basis of the specific request of the Management. From the evidence of the Petitioner/Workman, it is clear that she was engaged for specific work for short terms.

21. Further, there is an unexplained delay of four years in raising the legal demand notice dated 31.12.1997. If it is a case of illegal termination, there would have been legal action immediately thereafter. Hence, from the overall analysis of the facts and circumstances, it is clear that the service of the Petitioner/Workman was not terminated as alleged by her. The period for which she was engaged was over and hence there is no work for her thereafter.

22. The Petitioner/Workman also alleged violation of 25 F, G & H of the I.D. Act. In order to attract Section 25 F of the I.D. Act, the workman has to be in continuous employment with the management for period of not less than one year. The Hon'ble Supreme Court in Krishna Bhagya Jala Nigam Ltd. Vs Mohammed Rafi reported as (2009) 11 SCC 522 has elaborately explained the aspect of burden of proof in such cases and have cited R. M. Yellatti Vs Asstt. Executive Engineer reported as (2006) 1 SCC 106 which reads as:

“17. Analysing the above decisions of this Court, it is clear that the provisions of the Evidence Act in terms do not apply to the proceedings under Section 10 of the Industrial Disputes Act. 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 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 or termination. There will also be no receipt or 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 or termination, if any, the wage register, the attendance register, etc. Drawing of adverse inference ultimately would depend thereafter on the facts of each case. The above decisions however make it clear that mere affidavits or self-serving statements made by the claimant workman will not suffice in the matter of discharge of the burden placed by law on the workman to prove that he had worked for 240 days in a given year. The above judgments further lay down that mere non-production of muster rolls per se without any plea of suppression by the claimant workman will not be the ground for the Tribunal to draw an adverse inference against the management. Lastly, the above judgments lay down the basic principle, namely, that the High Court under Article 226 of the Constitution will not interfere with the concurrent findings of fact recorded by the Labour Court unless they are perverse. This exercise will depend upon the facts of each case.”

23. *The Petitioner miserably failed to prove that she worked for 240 days in a calendar year. Hence there cannot be any violation of Section 25F of the I.D. Act.*

24. *In order to attract Section 25 G & H of the I.D. Act, there has to be retrenchment of the workman. The Petitioner/Workman was a muster roll employee engaged on the basis of the exigency of work. She had been paid her wages for the period of her engagement. Hence her disengagement after the completion of her allotted work cannot be termed as*



retrenchment under Section 2 (oo) of the I.D. Act. Hence Section 25H & G are also not attracted.

25. Qua the aspect of furnishing a seniority list, this court is bound by the observation of the Hon'ble Supreme Court in Surendranagar District Panchayat v. Dahyabhai Amarsinh reported as (2005) 8 SCC 750, the relevant portion of which has been reproduced herein below as:

“In the absence of regular employment of the workmen, the appellant was not expected to maintain seniority list of the employees engaged on daily wages and in the absence of any proof by the respondent regarding existence of the seniority list and his so-called seniority, no relief could be given to him for non-compliance with provisions of the Act. The courts could have drawn adverse inference against the appellant only when seniority list was proved to be in existence and then not produced before the court. In order to entitle the court to draw inference unfavourable to the party, the court must be satisfied that evidence is in existence and could have been proved.”

26. In view of the settled position of law, the plea taken by the Petitioner that there has been a violation of Section 25F, G & H of the I.D. Act does not hold any ground. This court is in consonance with the view of the learned Labour Court wherein it had observed that:

“12. But admitted during the cross examination that she used to go to work only through employment exchange as and when asked by them to the management. The claimant further admitted that she used to work as per the specific requirement and thereafter the management again used to call for work as and when there was any requirement. She also admitted that her no notice or letter was issued by the management for termination of work. She also admitted that she was not permanent employee of the management



and have not worked with the management as a regular employee. It is also so clear from the interview letter proved by the claimant herself as Ex. WW1/5 when she was called for interview on 17.4.93 for the post of Safai Karamchari in the pay scale of 750-910 with certain certificates. In facts, admission of the claimant get substantiated from Ex. WW1/6 showing that she has worked for a particular span of period from 27.2.91 to 27.3.91. No other documents on record have placed and proved by the claimant to show that the claimant worked with the management continuously from 17.12.88 to 17.4.93 except to the days she was not allowed duties. Although she reported for work every day. The onus to that the claimant worked continuously from period of 240 days during the 12 calendar month proceeding the date alleged termination was on the claimant. The claimant failed to discharge the onus. The witness of the management Dr. B.R. Chandra, however, stated that the claimant did work on muster roll daily wages w.e.f. 1.1.90 in different period of spells without completing 240 days in a calendar year. Further the claimant did not work continuously or w.e.f. 17.12.89. He was very specific the claimant did not work continuously or w.e.f. 17.12.89. He was very specific the claimant worked on daily wages as and when required that too for specific period an was admitted by the claimant during her cross examination as discussed above.

13. The claimant can't taken benefit without taking orders from the court to place and prove documents on record in possession of the management. On the basis of cross examination wherein the management witness admitted that he did not being muster roll from 1988 to 1993. In fact, there was no direction to witness ever sought to prove muster roll even during the cross



examination of the witness. In there given facts and circumstances of the case and the evidence as discussed, there is substances in the submission by Ld. AR for the management that the management was not under objection to with the requirement of Section 25F of the I.D. Act even if it is to assumed that service of the claimant were terminated on 17.11.93. There is further requirement to contain permission in u/s. 25U as admittedly the claimant was never retrenched by the management.”

27. The Petitioner/Workman failed to discharge the burden of proof that she was effectively employed as a muster roll employee. Additionally, she failed to demonstrate that any junior to her was retained in the Respondent/Management while her services were terminated. Thus, this court is of the view that the learned Labour Court was veracious in holding that the Petitioner failed to prove that her services were terminated illegally or the Respondent acted in violation of Section 25F, G & H of the I.D. Act read with Rules 76, 77 & 78.

28. In view of the detailed discussion herein above, this court is of the considered view that the impugned judgment of the learned Labour Court is well-reasoned and there is no perversity or illegality in deciding the terms of reference in favour of the Respondent/Management. Hence the present writ petition is dismissed. No order as to costs.”

6. Learned counsel for the appellant – being aggrieved by the Award passed by the Labour Court and the judgment passed by the Learned Single Judge upholding the Award, has vehemently argued before this Court that the impugned judgment fails to appreciate the facts & circumstances of the case as well as the peculiarities of the same. It has been stated that the impugned judgment is against the basic principle of law.



7. Learned counsel for the appellant has vehemently argued before this Court that the workman in question has certainly put in 240 days of service in a calendar year. It was a case of violation of Section 25F of the ID Act and it was the duty of the employer to produce all documents before the Labour Court and, therefore, as the employer has failed to produce necessary documents, the Award deserves to be set aside.

8. Learned counsel for the appellant has further argued before this Court that the Learned Single Judge failed to appreciate that the appellant had led cogent evidence regarding her claim that she had worked continuously w.e.f. 17.12.1998 to 17.04.1993 and supported her testimony with circumstantial evidence (Ex. WW-1/6).

9. It has been stated that the appellant had, in fact, joined the services of the respondent employer through Employment Exchange as a muster roll employee and she was in continuous service and, therefore, the Award passed by the Labour Court and the judgment passed by the Learned Single Judge deserve to be set aside.

10. Learned counsel has also placed reliance on Employment Exchange (Compulsory Notification of Vacancies) Act, 1959 and has argued before this Court that the Learned Single Judge has failed to appreciate the significance of recruitment through Employment Exchange and had seemed to misconstrue 'Employment Exchange' as a 'Labour Chowk' for hiring daily labour.

11. It has been argued that the Learned Single Judge failed to appreciate that it is only against a post of permanent nature, recruitment can be made through the Employment Exchange. It has been further argued that the



Learned Single Judge has failed to appreciate that the testimony of the appellant along with Ex.WW-1/9 proves that she was recruited by the respondent as a Safai Karamchhari through Employment Exchange against a post which was permanent in nature and not for temporary work and, therefore, as the appellant has worked continuously, the discontinuance of her services is violative of Section 25F of the ID Act.

12. Learned counsel for the appellant has also vehemently argued before this Court that the Learned Single Judge has failed to appreciate that as per law, only the initial onus to prove employer-employee relationship lies with the workman and the same was discharged successfully by the appellant. Thereafter, it was for the respondent to disprove the said relationship before the Labour Court. He has further contended that the respondent has miserably failed to disprove the relationship of employer-employee and as the workman had continuously worked, she is entitled for reinstatement along with back wages.

13. Learned counsel for the appellant has also stated before this Court that the management witness has not produced necessary documents and, therefore, in absence of production of necessary documents, the appellant was not able to conduct proper cross-examination and the respondents were under an obligation to produce muster roll for the relevant period. The Labour Court has not appreciated the evidence on record in its true perspective, hence, the Award passed by the Labour Court as well as the judgment passed by the Learned Single Judge deserve to be set aside.

14. Learned counsel for the appellant has further argued that the appellant was in continuous service; no seniority list was maintained by the employer;



and the persons appointed after the appellant were continued in service. Therefore, as the persons appointed after the appellant were continued in service, the respondents have violated Section 25D of the ID Act, and hence the appellant is entitled to reinstatement in service.

15. Learned counsel has also argued before this Court that the Learned Single Judge has failed to appreciate Rule 77 of the Industrial Disputes (Central) Rules and Sections 25G & H of the ID Act.

16. Learned counsel for the appellant has placed reliance upon a judgment delivered by the Hon'ble Supreme Court in *S.M. Nilajkar Vs. Telecom District Manager, Karnataka*, (2003) 4 SCC 27, and has prayed for reinstatement of the appellant in service.

17. Learned counsel for the appellant has vehemently argued before this Court that the Learned Single Judge failed to realize the position of law which guarantees protection to even a casual worker against illegal termination. In this regard, heavy reliance has been placed upon *Management of Horticulture Vs. Trilok Chand*, 82 (1999) DLT 747.

18. Learned counsel for the appellant has further argued that the Learned Single Judge has further erred in treating employment on 'muster roll' basis to mean employment which is temporary. He has placed reliance on the judgment in *Mahipal Singh Vs. Trade Fair Authority of India*, 48 (1992) DLT 357.

19. Learned counsel for the appellant – by placing reliance upon the judgment delivered in the case of *R.M. Yellati Vs. Asst. Executive Engineer*, (2006) 1 SCC 106, has further argued before this Court that the Learned Single Judge has failed to take note of the fact that the respondent



employer has deliberately suppressed production of muster roll and, therefore, adverse inference should have been drawn against the employer.

20. Learned counsel by placing reliance in the cases of *H.D. Singh Vs. Reserve Bank of India*, (1985) 4 SCC 201; *Directorate of Fisheries Vs. Bhihubhai Meghajibhai Chavda*, AIR 2010 SC 1236; *Management of Municipal Corporation of Delhi Vs. Presiding Officer, Industrial Tribunal*, W.P.(C.) No. 6024/1999 has argued before this Court that the employer was duty bound to maintain a seniority list and it was the duty of the employer to establish that the workman was a daily rated employee who was employed for less than 240 days.

21. Learned counsel has further argued before this Court that the respondent employer has committed several unfair labour practices by discontinuing the appellant from service and, therefore, the findings arrived by the Labour Court and by the Learned Single Judge are erroneous and contrary to the statutory provisions as well as the law laid down by the Apex Court. He has prayed for quashment of the Award as well as for setting aside of the impugned judgment dated 20.09.2022 passed by the Learned Single Judge.

22. This Court has carefully gone through the entire record and heard learned counsel for the parties at length.

23. The facts of the case reveal that the workman raised an industrial dispute alleging that she was engaged as a daily wager on 17.12.1988 and was discontinued on 17.04.1993 without any notice, without any compensation, without holding any enquiry, without publishing any seniority list and without following the rule of last come first go.



24. The record of the case reveals that the workman though alleged her termination with effect from 17.04.1993, served a demand notice only on 31.12.1997 (Ex. WW1/1). The workman, thereafter, took shelter of the statutory provisions as contained under the ID Act and the dispute was referred to the Labour Court-I, New Delhi by the appropriate Government for its adjudication under Section 10(1)(c) and 12(5) of the ID Act.

25. The Labour Court has carefully appreciated the evidence & the documents on record and the same reflects that the workman has produced an interview letter dated 08.04.1993 issued by the management, and an application submitted to the management for payment of earned wages for the period from 27.02.1991 to 28.08.1991 (Ex. WW1/6).

26. The claimant in cross examination has stated that she used to work only through employment exchange as and when asked by the management to work and she used to work as per specific requirement, and, thereafter, the management again used to call her for work keeping in view the requirement of the work.

27. The workman, at no point of time, submitted any application for production of document before the Labour Court and the findings arrived at by the Labour Court in respect to the reference are reproduced as under:

“12. No doubt the claimant substantiated the averments of her claim petition in toto in the affidavit filed on evidence which was duly sworn before the oath commissioner appointed by Hon'ble Delhi High Court, Delhi and also proved on record the demand notice dated 31.12.97 served upon the management as Ex. WWI/1 of which postal receipt is Ex. WWI/2 and AD card as Ex. WWI/3, · Statement of claim filed before the conciliation officer as Ex. WWI/4, copy of interview letter dated 8.4.93



issued to the deponent by the management as Ex. WWI/5, copy of Application made to the management by the deponent for payment of her earned wages for the period from 27.2.91 to 28.3.91 as Ex. WWI/6, copy of School Leaving Certificate of the deponent as Ex. WWI/7, copy of Caste Certificate of the deponent as Ex. WWI/8, and copy of Identity Card issued to the deponent from the Directorate of Employment, Delhi Admn. as Ex. WWI/9. But admitted during the cross examination that she used to go to work only through employment exchange as and when asked by them to the management The claimant further admitted that she used to work as per the specific requirement and thereafter the management again used to call for work as and when there was any requirement. She also admitted that her no notice or letter was issued by the management for termination of work. She also admitted that she was not permanent employee of the management and have not worked with the management as a regular employee. It is also so clear from the interview letter proved by the claimant herself as Ex. WWI/5 when she was called for interview on 17.4.93 for the post of Safai Karamchari in the pay scale of 750-910 with certain certificates. In facts, admissions of the claimant get substantiated from Ex. WWI/6 showing that she has worked for a particular span of period from 27.2.91 to 27.3.91. No other documents on record have placed and proved by the claimant to show that the claimant worked with the management continuously from 17.12.88 to 17.4.93 except to the days she was not allowed duties. Although she reported for work every day. The onus to that the claimant worked continuously from period of 240 days during the 12 calendar month proceeding the date alleged termination was on the claimant. The claimant failed to discharge the onus. The witness of the management Dr. B.R . Chandra, however,, stated that the claimant did work on muster roll daily wages w.e.f. 1.1.90 in different period of spells without completing 240 days in a calendar year. Further the claimant did not work continuously or w.e.f. 17.12.89. He was very specific that claimant worked on daily wages as and when required that too for specific period an was admitted by the claimant during her cross examination as discussed above.



13. *The claimant can't taken benefit without taking orders from the court to place and prove documents on record in possession of the management. On the basis of cross-examination wherein the management witness admitted that he did not being muster roll from 1988 to 1993. In fact, there was no direction to witness every sought to prove muster roll even during the cross-examination of the witness. In the given facts and circumstances of the case and evidence as discussed, there is substances in the submission by Ld. AR for the management that the management was not under objection to with the requirement of Section 25 F of the I.D. Act even if it is to assumed that service of the claimant were terminated on 17.04.93. There is further requirement to contain permission in u/s 25 U as admittedly the claimant was never retrenched by the management.*

14. *Reference in made to the case of Kamal Center Cooperative Bank Ltd. Vs L.C. Indl. Tribunal-cum-Labour Court Rohtak & others. 1994 II LLJ 1005, the Hon'ble Court opined that the worker who has not completed 240 days of services doesn't have any right under the Industrial Dispute Act. I quota the relevant observations:-*

"The Industrial workers who do not complete 240 days of service have no industrial rights under the Act and cannot, therefore, avail of the machinery provided under the Act for the settlement of their disputes. The policy of the Act a distinction between those with service of 240 days and more and other with less. It was not necessary for the management in the present case to comply with the provisions of Section 25(H) of the Act before dispensing with the service of the workman as be admitted less than,240 days of service".

In Ram Gopal Saini Vs. The Judge, Labour Court No. 2 Jaipur and others 2001 LLR 747 the petitioner had not completed 240 days of work in a calendar year. It was held:-

"The petitioner has not completed days of working in a calendar year, Therefore compliance of Section 25-F of the Act was not required in the instant case."



In Indian Silk Manufacturing Co, (P) Ltd. Vs. Garprasad R. Jaiswal & Ors; 1997 LLR 1126 it was held that workman has to prove that he was in employment for minimum of 240 days.

15. Reference H.D. Singh Vs. Pase Bank India & Ors reported in 29 (1986) Delhi Law Times, 77 Supreme Court of India Management of Horticulture Department of Delhi Admn. Vs. Trilok Chand & Another reported in 2000 LLR 190, made by the Id. AR for the claimant are of no help as not applicable in the facts and circumstances of the present case.

Accordingly, I held that the termination of service of the claimant is not in violation of provisions of section 25 F of the I.D. Act.

16. As discussed that a vague plea was taken by the claimant that juniors to the claimant have been retained in the service while she was ousted from the job. On the basis of vague plea Id. AR for the claimant submitted that admittedly the management had not prepared any seniority list of the Safai Karamchhari worker working from 17.12.88 to 17.4.93 and as such the claimant get benefit thereof. The management witness has voluntarily stated that Safai Karamchhari were muster roll employee and the management did not display any such seniority list on or before 17.4.1993. The management witness also stated that Safai Karamchhari employed after 1992 are not regular vacancies are still working while was no employee on muster roll in the year 1993. The management witness was not able to remember if there was such employee on the muster roll in the year 1994-95 as he had not seen record. It is not the case of the claimant also in the statement of claim that against vacancies even on muster roll any other worker or Safai Karamchhari was appointed after alleged termination of service of claimant on 17.4.93. In the absence of the pleadings, evidence was relied upon by the claimant can not be or any relevance and help to the claimant he mere because the management did not maintain seniority list or did not display seniority list it does not prove if so facts that the claimant was



senior and her juniors were retained in service when her services were terminated.

17. *The references made by Id. AR for the claimant to the case of Shri Gaffar and others Vs. Union of India and Ors. reported in 1984 LLR I.C. 645 is of no help to the claimant in the absence of specific plea and also not relevant as such to the case of the claimant. Similarly, reliance placed on the case of Government of NCT Delhi through its medical Superintendent T.B. Hospital employees union reported in 1997 LLR 628 is of no help to the claimant in these absence of plea that there was subsequent appointment after termination of the claimant while the claimant was ignored in the cadre of muster roll employees.*

18. *In view of my discussions as above. I hold that claimant failed to prove that her services were terminated illegally or unjustifiably or the management acted in violation of Section 254 F, G & H of the I.D. Act, 1997 read with rules 76, 77 & 78 of the I.D. Act, 1957 and Section 30 of the Delhi Shops & Establishment Act, 1954.*

In view of my findings as above the claimant is not entitled to get any relief or any direction in the matter under references.”

28. Learned counsel for the appellant has vehemently argued before this Court that the workman has put in 240 days of service in a calendar year. However, except for making a bald statement before the Labour Court, no document was produced by the workman to establish the claim.

29. This Court fails to understand as to why the workman – in case she was engaged in the year 1988 till the year 1993, took no steps till the year 1997 against her discontinuance. Therefore, as it was not established before the Labour Court that the workman has put in 240 days of service in one calendar year, the award passed by the Labour Court and the judgment passed by the learned Single Judge does not warrant any interference.



30. Learned counsel for the appellant has vehemently argued before this Court that the workman was working as a muster roll employee.

31. The witness of the management in its statement has categorically stated that workman has worked in 13 different spells on muster roll with effect from 01.01.1990 without completing 240 days in a calendar year, and the workman in evidence has admitted that she has not worked continuously, and she used to work as per the specific request of the management as and when there was a requirement. The statement of the workman, thus, establishes that the workman was not in continuous employment with the respondent management. Therefore, the Tribunal has rightly held that the workman has not completed 240 days of service in a calendar year.

32. The Ex. WW1/6 also proves that the workman had only worked for a particular span of period from 27.02.1991 to 27.03.1991. Therefore, the ground raised by the appellant stating that the workman has put in 240 days of service in a calendar year, and was illegally retrenched, does not help the workman in any manner.

33. Learned counsel for the appellant has vehemently argued before this Court that the management did not produce relevant material before the Labour Court and adverse inference should be drawn against the management.

34. In the considered opinion of this Court, there was no application, at any point of time, on behalf of the workman to produce any specific record. The management has produced witnesses and the relevant record before the Labour Court and the record reflects that the workman had worked in 13



different spells on muster roll with effect from 01.01.1990, and has not completed 240 days.

35. Ex.WW1/6 also proves that she has worked only from 27.01.1991 to 27.03.1991 and, therefore, as workman has not put in 240 days of service in a calendar year, it is certainly not a case of violation of Section 25 F of the ID Act as argued before this Court.

36. Learned counsel for the appellant before this Court has argued that the seniority list was not prepared by the management and the principle of last come first go has not been followed by the management.

37. The pleadings before the Labour Court as well as before the learned Single Judge do not include even a single name of any employee who was appointed as daily wager after the engagement of the appellant. By making a bald statement that persons who have been kept on muster roll after the appellant are continuing also does not help the workman in any manner.

38. The workman in absence of material on record and in absence of pleadings, cannot take advantage of a bald statement without proving the same. Therefore, merely, because seniority list was not maintained, the workman is not entitled for any relief as prayed for.

39. The present case is a case where a workman by making a bald statement, and that too, after four years of her alleged discontinuance, is making efforts before this Court to show that there is a violation of Section 25G and 25H of the ID Act. The workman has miserably failed to discharge the burden of proof that she was engaged from 17.12.1988 to 17.04.1993 on muster roll and she has completed 240 days of service in a calendar year.



The Labour Court and the Learned Single Judge was justified in declining the grant of relief to the workman.

40. Learned counsel for the appellant has vehemently argued before this Court that it is the right of the opposite party to pursue documents under Section 161 of the Indian Evidence Act, 1972. To bolster his submissions, he has placed reliance upon ***Republic of India Vs. G.A.N. Rajan & Others***, 1966 SCC OnLine Ori 16. Paragraph 10 of the aforesaid judgment reads as under:

“10. Having heard the counsel of both sides and having perused the records, I am of the opinion that the prosecution should be given a reasonable time before it is called upon to cross-examine the defence witnesses. With regard to the objection that the defence witnesses should not be permitted to refer to a private note book, the position of law is clear. It is open to a witness to refresh his memory by reference to a document as provided under Sections 159 and 160 of the Evidence Act and within the limitations prescribed therein. If the witness has refreshed his memory with reference to any such document as alleged by the prosecution, they have a right to inspect and use the same for purpose of cross-examination as provided under Section 161 of the Evidence Act. Whether the alleged exercise-book said to have been used by D.W. 1 was used for refreshing memory or it is a record of his evidence which was produced verbatim from the same could be tested by the verification of the same by the prosecution and the prosecution can very well insist upon the production of that document for use in cross-examination.”

41. This Court has carefully gone through the aforesaid judgment delivered by a learned Single Judge of Orissa High Court. It was a case wherein an application preferred under Section 526 of the Cr.P.C. to transfer a case from a Court of a particular judge to some other Court competent to



try, and in that backdrop, the learned Single Judge – while referring to Section 161, has transferred the matter to some other Court.

42. The present case is distinguishable on facts. The appellant workman except from making a bald statement that she was appointed from 17.12.1988 and was discontinued on 17.04.1993 did not produce any evidence to establish the aforesaid fact nor any application was preferred for summoning any record before the Trial Court, and therefore, in the considered opinion of this Court, the aforesaid judgment does not help the appellant in any manner.

43. On similar issue, learned counsel has placed reliance upon a judgment delivered in the case of ***In Re: Petition of Jhubboo Mahton & Others Vs. Jhubboo Mahton & Others***, (1882) ILR 8 Cal 739. Paragraph 13 of the aforesaid judgment reads as under:

“13. The grounds upon which the opposite party is permitted to inspect a writing and to refresh the memory of a witness are three-fold: (i) to secure the full benefit of the witness's recollection as to the whole of the facts; (ii) to check the use of improper documents; and (iii) to compare his oral testimony with his written statement. The opposite party may look at the writing to see what kind of writing it is in order to check the use of improper documents; but I doubt whether he is entitled, except for this particular purpose, to question the witness as to other and independent matters contained in the same series of writings. I think, therefore, that, at the particular stage at which the prisoners' counsel asked to see what he called the diary, by which I presume he meant the whole series of writings containing the statements of all the persons examined by the police-officer, he was not entitled to exercise the right claimed in the particular way claimed by him. I further think that the Sessions Judge was not bound to compel the witness to look at the so-called diary in order to refresh his memory; and that it



was wholly within his discretion whether he should do so or not. ”

44. It was again a criminal case, wherein parameters have been laid down in respect of grounds upon which the opposite party is permitted to inspect the writing and to refresh the memory afresh.

45. In the considered opinion of this Court, the aforesaid judgment is again distinguishable on facts. At no point of time, any or proper application was made for production of documents, and therefore, the Tribunal – based upon the evidence adduced by the parties, has rightly arrived at a conclusion that the appellant has not put in 240 days of service in a calendar year.

46. Learned counsel has also placed reliance upon a judgment delivered in the case of *S.M. Nilajkar* (supra). Paragraph 13 of the aforesaid judgment reads as under:

“13. The termination of service of a workman engaged in a scheme or project may not amount to retrenchment within the meaning of sub-clause (bb) subject to the following conditions being satisfied:

(i) that the workman was employed in a project or scheme of temporary duration;

(ii) the employment was on a contract, and not as a daily-wager simpliciter, which provided inter alia that the employment shall come to an end on the expiry of the scheme or project;

(iii) the employment came to an end simultaneously with the termination of the scheme or project and consistently with the terms of the contract; and

(iv) the workman ought to have been apprised or made aware of the abovesaid terms by the employer at the commencement of employment. ”



47. The Hon'ble Supreme Court in the aforesaid case was dealing with the issue of a workman engaged in a scheme or a project, whereas, in the present case, the workman was called for short spells of period as and when there was a need in the hospital and the workman – as the record reflects, has not put in 240 days of service in a calendar year, and therefore, the judgment relied upon by the learned counsel is of no help to the present appellant.

48. Reliance has also been placed upon the judgment delivered in the case of **H.D. Singh** (supra). Paragraphs 10 to 13 of the aforesaid judgment read as under:

“10. That takes us to the question whether the appellant had qualified himself to sustain his claim to the benefits of Section 25-F. The appellant, as we will presently see, has given the number of days on which he worked, in his claim statement. The first respondent Bank arranged posting Tikka Mazdoors, like the appellant, in such a manner that they were denied the benefits of the Industrial Disputes Act. Since the first respondent Bank disputed the fact that the appellant had worked for sufficient number of days to entitle him to claim remedies under the Act, we think it necessary to refer to the facts as disclosed in the records. The advocate who appeared for the appellant before the Tribunal, Shri R.N. Srivastava, has filed an affidavit in this Court stating that he had filed written arguments before the Tribunal explaining the mistake committed by the bank in the computation made by it of the number of working days of the appellant. From this affidavit, it is seen that the first respondent Bank put forward a case that the attendance register for the month of July 1976 had been destroyed and that Sundays and other holidays were not taken into account in computing the number of days that the appellant worked. We have also a supplementary affidavit filed by the appellant himself which throws further light about the number of days that he worked. In this affidavit, it is seen that he



worked for 4 days in 1974, 154 days from January 1975 to December 1975 and 105 days from January 1976 to July 1976. The appellant was denied work from July 1976. His affidavit shows that he had worked for 202 days from July 1975 to July 1976. According to him, if we add 52 Sundays and 17 holidays, the total number of days on which he worked comes to 271 days. The appellant charged the Bank with having tampered with the records. To contradict the appellant's case, the first respondent Bank did not produce its records. The appellant wanted the relevant records to be filed but they were not produced. Grounds 18 to 20 of the special leave petition make mention of this plea of the appellant. These grounds are met by the first respondent Bank in their counter-affidavit filed in this Court by stating that "when the matter was before the Industrial Tribunal, the registers in question were filed in another case before the Industrial Tribunal-cum-Labour Court and produced in that Court. However, I submit that now the attendance register has been destroyed but the payment registers are available with the respondent Bank as proof of the number of days on which the appellant worked". In the absence of any evidence to the contrary, we have necessarily to draw the inference that the appellant's case that he had worked for more than 240 days from July 1975 to July 1976, is true.

11. Striking off the name of the appellant under these circumstances is clearly termination of his service and the dispute in this case therefore squarely comes within Section 2-A of the Industrial Disputes Act. The Tribunal grossly erred in upholding the preliminary objection raised by the bank that the dispute did not come within Section 2-A.

12. Not being satisfied with the pleas noted above the respondent bank had also a case that the appellant was only a badli workman who could be deemed to have worked only on days when the permanent workman or probationer was not employed. The bank did not make available before the Tribunal any documentary evidence to show as to how the appellant could be treated as a badli worker and as to whose place he occupied during the days he worked.



13. The confidential circular directing the officers that workmen like the appellant should not be engaged continuously but should as far as possible, be offered work on rotation basis and the case that the appellant is a badli worker, have to be characterised as unfair labour practice. The Fifth Schedule to the Industrial Disputes Act contains a list of unfair labour practices as defined in Section 2(ra). Item 10 reads as follows:

“To employ workmen as ‘badlis’, casuals or temporaries and to continue them as such for years, with the object of depriving them of the status and privileges of permanent workmen.”

We have no option but to observe that the bank, in this case, has indulged in methods amounting to unfair labour practice. The plea that the appellant was a badli worker also has to fail.”

49. This Court has carefully gone through the aforesaid judgment. The aforesaid judgment was in respect of a workman who was treated as a *Badli* worker for years together, and in the present case, the appellant has not been continued for years together and could not have been granted the privileges of a permanent workman especially when at no point of time, in any year, the workman has completed 240 days of service in a calendar year.

50. Learned counsel has also placed reliance upon a judgment delivered in *R.M. Yellati* (supra) and paragraphs 17 to 19 of the said judgment read as under:

“17. Analysing the above decisions of this Court, it is clear that the provisions of the Evidence Act in terms do not apply to the proceedings under Section 10 of the Industrial Disputes Act. However, applying general principles and on reading the aforestated 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 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 or termination. There will also be no receipt or 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 or termination, if any, the wage register, the attendance register, etc. Drawing of adverse inference ultimately would depend thereafter on the facts of each case. The above decisions however make it clear that mere affidavits or self-serving statements made by the claimant workman will not suffice in the matter of discharge of the burden placed by law on the workman to prove that he had worked for 240 days in a given year. The above judgments further lay down that mere non-production of muster rolls per se without any plea of suppression by the claimant workman will not be the ground for the Tribunal to draw an adverse inference against the management. Lastly, the above judgments lay down the basic principle, namely, that the High Court under Article 226 of the Constitution will not interfere with the concurrent findings of fact recorded by the Labour Court unless they are perverse. This exercise will depend upon the facts of each case.

18. Now applying the above decision to the facts of the present case, we find that the workman herein had stepped into the witness box. He had called upon the management to produce the nominal muster rolls for the period commencing from 22-11-1988 to 20-6-1994. This period is the period borne out by the certificate (Ext. W-1) issued by the former Assistant Executive Engineer. The evidence in rebuttal from the side of the management needs to be noticed. The management produced five nominal muster rolls (NMRs), out of which 3 NMRs, Exts. M-1, M-2 and M-3, did not even relate to the period concerned. The relevant NMRs produced by the management were Exts. M-4 and M-5, which indicated that the workmen had worked for 43 days during the period 21-1-1994 to 20-2-1994 and 21-3-1994 to 20-4-1994 respectively. There is no explanation from the side of the management as to why for



the remaining period the nominal muster rolls were not produced. The Labour Court has rightly held that there is nothing to disbelieve the certificate (Ext. W-1). The High Court in its impugned judgment has not given reasons for discarding the said certificate. In the circumstances, we are of the view that the Division Bench of the High Court ought not to have interfered with the concurrent findings of fact recorded by the Labour Court and confirmed by the learned Single Judge vide order dated 7-6-2000 in Writ Petition No. 17636 of 2000. This is not, therefore, a case where the allegations of the workman are founded merely on an affidavit. He has produced cogent evidence in support of his case. The workman was working in SD-1, Athani and Ext. W-1 was issued by the former Assistant Executive Engineer, Hipparagi Dam Construction Division No. 1, Athani 591 304. In the present case, the defence of the management was that although Ext. W-1 refers to the period 22-11-1988 to 20-6-1994, the workman had not worked as a daily-wager on all days during that period. If so, the management was duty-bound to produce before the Labour Court the nominal muster rolls for the relevant period, particularly when it was summoned to do so. We are not placing this judgment on the shifting of the burden. We are not placing this case on drawing of adverse inference. In the present case, we are of the view that the workman had stepped in the witness box and his case that he had worked for 240 days in a given year was supported by the certificate (Ext. W-1). In the circumstances, the Division Bench of the High Court had erred in interfering with the concurrent findings of fact.

19. Before concluding, we would like to make an observation with regard to cases concerning retrenchment/termination of services of daily-waged earners, particularly those who are appointed to work in government departments. Daily-waged earners are not regular employees. They are not given letters of appointments. They are not given letters of termination. They are not given any written document which they could produce as proof of receipt of wages. Their muster rolls are maintained in loose sheets. Even in cases, where registers are maintained by the government departments, the officers/clerks making



entries do not put their signatures. Even where signatures of clerks appear, the entries are not countersigned or certified by the appointing authorities. In such cases, we are of the view that the State Governments should take steps to maintain proper records of the services rendered by the daily-wagers; that these records should be signed by the competent designated officers and that at the time of termination, the designated officers concerned should give certificates of the number of days which the labourer/daily-wager has worked. This system will obviate litigations and pecuniary liability for the Government.”

51. The Hon’ble Supreme Court in the aforesaid judgment has held that the burden of proof is on the claimant to show that he had worked for 240 days in a calendar year. This burden is discharged only upon the workman stepping in witness box. The burden is discharged upon the workman adducing cogent evidence both oral and documentary. In the same judgment, the Hon’ble Supreme Court has held that mere non production of muster rolls per se without any plea of suppression by the claimant workman will not be a ground for the Tribunal to draw an adverse inference against the management. However, the Hon’ble Supreme Court, at the same time, has held that the State Government should take steps to maintain proper records of the services rendered by daily-wagers. This Court is again of the considered view that the question of setting aside of the award and the judgment passed by the learned Single Judge in the light of the aforesaid judgment does not arise.

52. In the case of ***Krishna Bhagya Jala Nigam Ltd. v. Mohd. Rafi***, (2009) 11 SCC 522, the Hon’ble Supreme Court in paragraphs 8 to 10 has held as under:



“8. In Rajasthan State Ganganagar S. Mills Ltd. v. State of Rajasthan [(2004) 8 SCC 161] the position was again reiterated in para 6 as follows : (SCC p. 163)

‘6. It was the case of the workman that he had worked for more than 240 days in the year concerned. This claim was denied by the appellant. It was for the claimant to lead evidence to show that he had in fact worked up to 240 days in the year preceding his termination. He has filed an affidavit. It is only his own statement which is in his favour and that cannot be regarded as sufficient evidence for any court or tribunal to come to the conclusion that in fact the claimant had worked for 240 days in a year. These aspects were highlighted in Range Forest Officer v. S.T. Hadimani [(2002) 3 SCC 25]. No proof of receipt of salary or wages for 240 days or order or record in that regard was produced. Mere non-production of the muster roll for a particular period was not sufficient for the Labour Court to hold that the workman had worked for 240 days as claimed.’

9. In Municipal Corpn., Faridabad v. Siri Niwas [(2004) 8 SCC 195] it was held that the burden was on the workman to show that he was working for more than 240 days in the preceding one year prior to his alleged retrenchment. In M.P. Electricity Board v. Hariram [(2004) 8 SCC 246] the position was again reiterated in para 11 as follows : (SCC p. 250)

‘11. The above burden having not been discharged and the Labour Court having held so, in our opinion, the Industrial Court and the High Court erred in basing an order of reinstatement solely on an adverse inference drawn erroneously. At this stage it may be useful to refer to a judgment of this Court in Municipal Corpn., Faridabad v. Siri Niwas [(2004) 8 SCC 195] wherein this Court disagreed with the High Court's view of drawing an adverse inference in regard to the non-



production of certain relevant documents. This is what this Court had to say in that regard : (SCC p. 198, para 15)

“15. A court of law even in a case where provisions of the 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 his contentions. The matter, however, would be different where despite direction by a court the evidence is withheld. Presumption as to adverse inference for non-production of evidence is always optional and one of the factors which is required to be taken into consideration is the background of facts involved in the lis. The presumption, thus, is not obligatory because notwithstanding the intentional non-production, other circumstances may exist upon which such intentional non-production may be found to be justifiable on some reasonable grounds. In the instant case, the Industrial Tribunal did not draw any adverse inference against the appellant. It was within its jurisdiction to do so particularly having regard to the nature of the evidence adduced by the respondent.”

10. In RBI v. S. Mani [(2005) 5 SCC 100] a three-Judge Bench of this Court again considered the matter and held that the initial burden of proof was on the workman to show that he had completed 240 days of service. The Tribunal's view that the burden was on the employer was held to be erroneous. In



Batala Coop. Sugar Mills Ltd. v. Sowaran Singh [(2005) 8 SCC 481] it was held as follows : (SCC pp. 484-85, para 13)

‘13. So far as the question of onus regarding working for more than 240 days is concerned, as observed by this Court in Range Forest Officer v. S.T. Hadimani [(2002) 3 SCC 25] the onus is on the workman.’

The position was examined in detail in Surendranagar Distt. Panchayat v. Dahyabhai Amarsinh [(2005) 8 SCC 750] and the view expressed in Range Forest Officer [(2002) 3 SCC 25] , Siri Niwas [(2004) 8 SCC 195] and M.P. Electricity Board [(2004) 8 SCC 246] cases was reiterated.”

53. In light of the aforesaid judgment delivered by Hon’ble Supreme Court as the workman in question was not able to establish that she had worked for 240 days in a calendar year; no application was preferred for production of documents, the question of drawing adverse inference against the management in the peculiar facts & circumstances of the case does not arise.

54. Learned counsel has also placed reliance upon a judgment delivered in the case of **Director, Fisheries Terminal Department Vs. Bhikubhai Meghajibhai Chavda**, (2010) 1 SCC 47. Paragraph 17 of the said judgment reads as under:

“17. Applying the principles laid down in the above case by this Court, the evidence produced by the appellant has not been consistent. The appellant claims 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 appellant employer to



prove that he did not complete 240 days of service in the requisite period to constitute continuous service.”

55. In the aforesaid case, the Hon’ble Supreme Court has held that once the worker has deposed that he has put in 240 days of service in a calendar year, the burden of proof shifts to the employer to prove that he did not complete 240 days of service in the requisite period to constitute continuous service.

56. This Court has carefully gone through the evidence on record and the employer has proved by oral evidence that the workman has not put in 240 days of service in a calendar year. Not only this, at no point of time, the workman submitted any application for production of any particular record and simply made a bald statement that she has completed 240 days of service in a calendar year, and therefore, keeping in view the aforesaid judgment, the question of interference by this Court in the award passed by the Labour Court and the judgment passed by the learned Single Judge does not arise.

57. Reliance was also placed by the learned counsel on the judgment in ***Management of Horticulture Department of Delhi Administration Vs. Trilok Chand and Another***, 2000 (1) L.L.N. 229. Paragraphs 19 & 20 of the said judgment read as under:

“19. First, there is no material placed by the petitioner before the Labour Court in support of its contention that the workmen were appointed as seasonal workers for some specified period. On the other hand, workmen have given the evidence to the effect that they were appointed for indefinite period and were performing regular nature of job. It is also stated that they worked for more than 240 days in a calendar year and the total period of service was two years or more. In the case of the



workman in C.W. No. 2691 of 1999 the averment of the workman Sri Trilok Chand was that he as taken into employment as mali/beldar with effect from. 1 November 1986 and he worked continuously when his services were terminated with effect from 29 March 1989 without assigning any valid reason. Similar statements are made by other workmen in other writ petitions. This version of workmen remained unrebutted. They having worked for more than 240 days continuously, their termination, would clearly be violative of S. 25F of the Act. Further such person would clearly come within the definition of workman under S. 2(s) of the Act. Similar view has been taken before this Court in the case of Municipal Corporation of Delhi v. Sukhvir Singh reported in 1994 (2) L.L.N. 720, on similar facts.

20. My aforesaid conclusion is further fortified by the judgment of Supreme Court in the case of L. Robert D'Souza v. Executive Engineer, Southern Railway, reported in 1982 (1) L.L.N. 257. In that case Apex Court held that even the casual or seasonal workman who rendered continuous service for one year or more could not be retrenched on such ground without complying with the requisition of S. 25F of the Act. In another case entitled Rattan Singh v. Union of India reported in 1998 (5) L.L.N. (Supp.), it was held by the Apex Court that provisions of S. 25F were applicable to termination of even a daily-rated workman who had continuously served for requisite statutory minimum period for a year and termination of services of such a workman without complying with provisions of S. 25F was illegal. To the same effect is the judgment of Supreme Court in the case of Samishta Dubey v. City Board, Etawah reported in 1989 L.L.R. 2160 and Municipal Corporation of Delhi v. Praveen Kumar Jain reported in 1998 (5) L.L.N. (Supp.)”

58. This Court has carefully gone through the aforesaid judgment and the fact remains that the Tribunal has arrived at a conclusion based upon evidence that the workman has not put in 240 days of service in a calendar year, and therefore, the question of violation of Section 25F does not arise.



59. Reliance was also placed upon a judgment delivered in ***Jeetubha Khansangji Jadeja Vs. Kutchh District Panchayat***, 2022 SCC OnLine SC 1284. Paragraph 9 of the said judgment reads as under:

“9. The record indicates that both the Labour Court and the learned Single Judge elaborately considered the depositions of the parties as well as the evidence on the record. In fact, the appellant workman had applied under the RTI Act, eliciting relevant documents to substantiate his claim that employees junior to him, were retained in the service. The management was unable to refute the material on record. On the other hand, it claimed the inability to produce the relevant documents, i.e., the muster roll for the later period of the appellant's service. Concededly, the appellant had worked for over 10 years. In the absence of precise details as to the so-called periods when the appellant had not been employed - as alleged by the management, both the Labour Court and the learned Single Judge concluded that his claim for having continuously worked within the meaning of Section 25B of the Industrial Disputes Act stood proved. Furthermore, the workman had deposed that employees junior to him were retained in the service, contrary to Section 25G of the Industrial Disputes Act.”

60. This Court has carefully gone through the aforesaid judgment. The workman therein had applied under the RTI Act demanding certain documents. The workman made a claim that he had put in 240 days of service in a calendar year. The documents were not supplied to him and the management claimed inability to prove the relevant documents. However, in the present case, the workman neither applied under the RTI Act nor submitted any application before the Labour Court. Therefore, the question of interference by this Court in the peculiar facts and circumstances of the case does not arise.



61. Reliance has also been placed upon a judgment delivered in the case of *State of Bihar Vs. Upendra Narayan Singh & Others*, (2009) 5 SCC 65. This Court has carefully gone through the aforesaid judgment. The said judgment which relates to Employment Exchange (Compulsory Notification of Vacancies) Act, 1959 is not at all attracted in the present case as the workman in question was called for duty by way of stop-gap arrangement as a daily wager only when the regular employees were not available in the hospital. She has never worked for 240 days in a calendar year, and therefore, the question of interference in the peculiar facts & circumstances of the case does not arise.

62. Reliance was placed upon the judgment delivered in *Mohan Lal Vs. Management of M/s Bharat Electronics Ltd.*, (1981) 3 SCC 225. It is reiterated that the workman in the present case was not able to establish that he has worked for 240 days in a calendar year, and therefore, the question of interference by this Court in the peculiar facts & circumstances of the case does not arise.

63. Learned counsel – alleging violation of Sections 25G & H of the ID Act, has placed reliance upon the following judgments:

- (a) *The Management of Municipal Corporation of Delhi Vs. Presiding Officer, Industrial Tribunal & Another*, W.P.(C.) No.6024/1999 decided on 25.08.2011;
- (b) *Central Bank of India Vs. S. Satyam & Others*, (1996) 5 SCC 419;
- (c) *Samishta Dube Vs. City Board, Etawah & Another*, (1999) 3 SCC 14;



- (d) *Harjinder Singh Vs. Punjab State Warehousing Corporation*, (2010) 3 SCC 192;
 - (e) *Govt. of NCT of Delhi through Medical Superintendent, GTB Hospital Vs. Shri Balbir Singh & Others*, 1997 LLR 628; and
 - (f) *Raj Rani Vs. G.T.B. Hospital & Another*, 2004 VI AD (Delhi) 245.
64. Sections 25F, G & H of the ID Act read as under:

“25-F. 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 continuous 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.

25-G. Procedure for retrenchment.—*Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and he belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman.*

25-H. Re-employment of retrenched workmen.—*Where any workmen are retrenched and the employer proposes to take into*



his employ any persons, he shall, in such manner as may be prescribed, give an opportunity to the retrenched workmen who are citizens of India to offer themselves for re-employment, and such retrenched workmen who offer themselves for re-employment shall have preference over other persons.”

65. In the considered opinion of this Court, as the worker has miserably failed to prove that she had worked for 240 days in a calendar year, the question of violation of Section 25F of the ID Act does not arise.

66. Similarly, there is no violation of Sections 25G & H of the ID Act as it was not a case of retrenchment of a worker. The workman in question was a muster roll employee. She was paid wages for the period she was engaged as she was appointed on stop-gap arrangement as a daily wager keeping in view the administrative exigencies as the regular employees were not available on particular days. Therefore, Sections 25G & H are not at all attracted entitling the workman for reinstatement. The present case is open & shut case, wherein a workman who had not put in 240 days of service in a calendar year and who woke up from slumber after four years of discontinuance, is trying to challenge the Award passed by the Labour Court as well as the judgment passed by the learned Single Judge.

67. It is not for the High Court to constitute itself into an Appellate Court over Tribunals constituted under special legislations to resolve disputes of a kind, qualitatively different from ordinary civil disputes and to re-adjudicate upon questions of fact decided by those Tribunals. High Courts cannot interfere with the findings of jurisdictional facts which the Tribunal is competent to decide. (See ***Sadhu Ram Vs. Delhi Transport Corporation***, (1983) 4 SCC 156.



68. The Hon'ble Supreme Court in paragraph 17 of the judgment in ***Indian Overseas Bank Vs. I.O.B. Staff Canteen Workers' Union***, (2000) 4 SCC 245, has held as under:

“17. The learned Single Judge seems to have undertaken an exercise, impermissible for him in exercising writ jurisdiction, by liberally reappreciating the evidence and drawing conclusions of his own on pure questions of fact, unmindful, though aware fully, that he is not exercising any appellate jurisdiction over the awards passed by a tribunal, presided over by a judicial officer. The findings of fact recorded by a fact-finding authority duly constituted for the purpose and which ordinarily should be considered to have become final, cannot be disturbed for the mere reason of having been based on materials or evidence not sufficient or credible in the opinion of the writ court to warrant those findings, at any rate, as long as they are based upon some material which are relevant for the purpose or even on the ground that there is yet another view which can reasonably and possibly be taken... .. The only course, therefore, open to the writ Judge was to find out the satisfaction or otherwise of the relevant criteria laid down by this Court, before sustaining the claim of the canteen workmen, on the facts found and recorded by the fact-finding authority and not embark upon an exercise of reassessing the evidence and arriving at findings of one's own, altogether giving a complete go-by even to the facts specifically found by the Tribunal below.”

69. The Hon'ble Supreme Court in the aforesaid case has held that the findings of fact recorded by a fact finding authority (Tribunal) duly constituted for the purpose becomes final unless the findings are perverse or based upon no evidence. The jurisdiction of the High Court in such matters is quite limited.



70. The Hon'ble Supreme Court has taken a similar view in ***Hari Vishnu Kamath v. Ahmed Ishaque & Ors.***, AIR 1955 SC 233, *inter alia* held as under:

“21. ... On these authorities, the following propositions may be taken as established: (1) Certiorari will be issued for correcting errors of jurisdiction, as when an inferior Court or Tribunal acts without jurisdiction or in excess of it, or fails to exercise it. (2) Certiorari will also be issued when the court or Tribunal acts illegally in the exercise of its undoubted jurisdiction, as when it decides without giving an opportunity to the parties to be heard or violates the principles of natural justice. (3) The court issuing a writ of certiorari acts in exercise of a supervisory and not appellate jurisdiction. One consequence of this is that the court will not review findings of fact reached by the inferior court or tribunal, even if they be erroneous. This is on the principle that a court which has jurisdiction over a subject-matter has jurisdiction to decide wrong as well as right, and when the legislature does not choose to confer a right of appeal against that decision, it would be defeating its purpose and policy if a superior court were to rehear the case on the evidence and substitute its own findings in certiorari. These propositions are well-settled and are not in dispute.

23. It may therefore be taken as settled that a writ of certiorari could be issued to correct an error of law. But it is essential that it should be something more than a mere error; it must be one which must be manifest on the face of the record. ... The fact is that what is an error apparent on the face of the record cannot be defined precisely or exhaustively, there being an element of indefiniteness inherent in its very nature, and it must be left to be determined judicially on the facts of each case.”

71. In ***Dharangadhara Chemical Works Ltd. v. State of Saurashtra***, (1957) SCR 152, the Supreme Court, once again observed that where the Tribunal having jurisdiction to decide a question comes to a finding of fact,



such a finding is not open to question under Article 226, unless it could be shown to be wholly unsupported by evidence.

72. In *Management of Madurantakam Coop. Sugar Mills Limited v. S. Viswanathan*, (2005) 3 SCC 193, the Apex Court, held that the Labour Courts/ Industrial Tribunals as the case be is the final court of facts, unless the same is perverse or not based on legal evidence, which is when the High Courts can go into the question of fact decided by the Labour Court or the Tribunal. But before going into such an exercise it is imperative that the High Court must record reasons why it intends reconsidering a finding of fact. In the absence of any such defect, the writ court will not enter the realm of factual disputes and finding given thereon.

73. In a Constitution Bench judgement of the Supreme Court in *Syed Yakooob vs. K.S. Radhakrishnan & Ors.*, AIR 1964 SC 477, the Apex Court has inter alia held as under:

“7. The question about the limits of the jurisdiction of High Courts in issuing a writ of certiorari under Article 226 has been frequently considered by this Court and the true legal position in that behalf is no longer in doubt. A writ of certiorari can be issued for correcting errors of jurisdiction committed by inferior courts or tribunals: these are cases where orders are passed by inferior courts or tribunals without jurisdiction, or is in excess of it, or as a result of failure to exercise jurisdiction. A writ can similarly be issued where in exercise of jurisdiction conferred on it, the Court or Tribunal acts illegally or properly, as for instance, it decides a question without giving an opportunity, be heard to the party affected by the order, or where the procedure adopted in dealing with the dispute is opposed to principles of natural justice. There is, however, no doubt that the jurisdiction to issue a writ of certiorari is a supervisory jurisdiction and the Court exercising it is not



entitled to act as an appellate Court. This limitation necessarily means that findings of fact reached by the inferior Court or Tribunal as a result of the appreciation of evidence cannot be reopened or questioned in writ proceedings. An error of law which is apparent on the face of the record can be corrected by a writ, but not an error of fact, however grave it may appear to be. In regard to a finding of fact recorded by the Tribunal, a writ of certiorari can be issued if it is shown that in recording the said finding, the tribunal had erroneously refused to admit admissible and material evidence, or had erroneously admitted inadmissible evidence which has influenced the impugned finding. Similarly, if a finding of fact is based on no evidence, that would be regarded as an error of law which can be corrected by a writ of certiorari. In dealing with this category of cases, however, we must always bear in mind that a finding of fact recorded by the Tribunal cannot be challenged in proceedings for a writ of certiorari on the ground that the relevant and material evidence adduced before the Tribunal was insufficient or inadequate to sustain the impugned finding. The adequacy or sufficiency of evidence led on a point and the inference of fact to be drawn from the said finding are within the exclusive jurisdiction of the Tribunal, and the said points cannot be agitated before a writ court. It is within these limits that the jurisdiction conferred on the High Courts under Article 226 to issue a writ of certiorari can be legitimately exercised (vide Hari Vishnu Kamath v. Syed Ahmed Ishaque, Nagendra Nath Bora v. Commissioner of Hills Division and Appeals, Assam, and Kaushalya Devi v. Bachittar Singh.

8. *It is, of course, not easy to define or adequately describe what an error of law apparent on the face of the record means. What can be corrected by a writ has to be an error of law; but it must be such an error of law as can be regarded as one which is apparent on the face of the record. Where it is manifest or clear that the conclusion of law recorded by an inferior Court or Tribunal is based on an obvious misinterpretation of the relevant statutory provision, or sometimes in ignorance of it, or may be, even in disregard of it, or is expressly rounded on*



reasons which are wrong in law, the said conclusion can be corrected by a writ of certiorari. In all these cases, the impugned conclusion should be so plainly inconsistent with the relevant statutory provision that no difficulty is experienced by the High Court in holding that the said error of law is apparent on the face of the record. It may also be that in some cases, the impugned error of law may not be obvious or patent on the face of the record as such and the Court may need an argument to discover the said error; but there can be no doubt that what can be corrected by a writ of certiorari is an error of law and the said error must, on the whole, be of such a character as would satisfy the test that it is an error of law apparent on the face of the record. If a statutory provision is reasonably capable of two constructions and one construction has been adopted by the inferior Court or Tribunal, its conclusion may not necessarily or always be open to correction by a writ of certiorari. In our opinion, it is neither possible nor desirable to attempt either to define or to describe adequately all cases of errors which can be appropriately described as errors of law apparent on the face of the record. Whether or not an impugned error is an error of law and an error of law which is apparent on the face of the record, must always depend upon the facts and circumstances of each case and upon the nature and scope of the legal provision which is alleged to have been misconstrued or contravened."

74. The Hon'ble Supreme Court has in the aforesaid case again dealt with scope of interference by High Court in respect of finding of fact arrived at by Tribunals and in light of the aforesaid judgment, the question of interference by this Court does not arise.

75. The Hon'ble Supreme Court in ***State of Haryana vs. Devi Dutt & Ors.***, (2006) 13 SCC 32, has held that the writ Court can interfere with the factual findings of fact only if in case the Award is perverse; the Labour Court has applied wrong legal principles; the Labour Court has posed wrong questions; the Labour Court has not taken into consideration all the relevant



facts; or the Labour Court has arrived at findings based upon irrelevant facts or on extraneous considerations.

76. In the present case, the Labour Court has arrived at a conclusion based upon the evidence adduced by the parties and the learned Single Judge has affirmed the findings of fact again after minutely scanning the entire evidence, and therefore, the question of interference by this Court does not arise.

77. The supervisory jurisdiction of the High Courts under Article 227 of the Constitution of India, was discussed by the Supreme Court in **Mohd. Yunus v. Mohd. Mustaqim**, (1983) 4 SCC 566, whereby it was, *inter alia*, held as under:

“7. The supervisory jurisdiction conferred on the High Courts under Article 227 of the Constitution is limited “to seeing that an inferior court or tribunal functions within the limits of its authority”, and not to correct an error apparent on the face of the record, much less an error of law. In this case there was, in our opinion, no error of law much less an error apparent on the face of the record. There was no failure on the part of the learned Subordinate Judge to exercise jurisdiction nor did he act in disregard of principles of natural justice. Nor was the procedure adopted by him not in consonance with the procedure established by law. In exercising the supervisory power under Article 227, the High Court does not act as an appellate court or tribunal. It will not review or reweigh the evidence upon which the determination of the inferior court or tribunal purports to be based or to correct errors of law in the decision.”



78. Furthermore, in ***Khalil Ahmed Bashir Ahmed v. Tufelhussein Samasbhai Sarangpurwala***, (1988) 1 SCC 155, the Supreme Court held as under:

“13. The intention here is manifest. In any event this is a possible view that could be taken. This Court in Venkatlal G. Pittie v. Bright Bros. (P) Ltd. [(1987) 3 SCC 558] and Beopar Sahayak (P) Ltd. v. Vishwa Nath [(1987) 3 SCC 693] held that where it cannot be said that there was no error apparent on the face of the record, the error if any has to be discovered by long process of reasoning, and the High Court should not exercise jurisdiction under Article 227 of the Constitution. See in this connection the observations of this Court in Satyanarayan Laxminarayan Hegde v. Mallikarjun Bhavanappa Tirumale [AIR 1960 SC 137 : (1960) 62 Bom LR 146] . Where two views are possible and the trial court has taken one view which is a possible and plausible view merely because another view is attractive, the High Court should not interfere and would be in error in interfering with the finding of the trial court or interfering under Article 227 of the Constitution over such decision.”

79. In light of the aforesaid judgments, this Court is of the considered opinion that the appellant workman was not able to establish that she has completed 240 days of service in a calendar year; she was not able to establish that persons appointed after her have been retained in service; she took shelter of the provisions of the ID Act, 1947, after a lapse of four years and therefore, keeping in view the finding of fact arrived at by the Labour Court and as affirmed by the learned Single Judge after minutely scanning the entire record, this Court does not find any reason to interfere with the award passed by the Labour Court and the judgment passed by the learned Single Judge.



Neutral Citation Number: 2023:DHC:5017-DB

80. The appeal is, accordingly, dismissed.

(SATISH CHANDRA SHARMA)
CHIEF JUSTICE

(SANJEEV NARULA)
JUDGE

JULY 20, 2023
B.S. Rohella



LPA 548/2023

Signature Not Verified

Digitally Signed
By: BHUPINDER SINGH
ROHELLA
Signing Date: 20/07/2023
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