



2024:DHC:1751



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

% **Date of order : 12th February, 2024**

+ **W.P.(C) 2121/2012**

RUDAL PRAJAPATI

..... Petitioner

Through: **Mr.Abinash Kumar Mishra, Advocate**

versus

JAIN SAMNOPASAK SR. SEC. SCHOOL AND ANR

..... Respondents

Through: **Mr.Kanwar S. N. and Mr.Hitesh
Advocates for R-1**

Mrs.Avnish Ahlawat, SC for R-2

CORAM:

HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER

CHANDRA DHARI SINGH, J (Oral)

1. The petitioner vide the present petition under Article 226/227 of the Constitution of India, seeks the following reliefs:

“ 1. Setting aside the ex-parte award dated 27.1.2012 passed by the Court of Sh. Bhupesh Kumar, POLC No. XVI, Karkardooma Courts, Delhi I.D. No. 179 of 2009 and also for directing the Respondents to enforce and implement the decisions dated 31.8.2005, 13.10.2005 and 10.9.2004 issued by the Respondent No.2-Director of Education,

2. Pass such other and further orders as this Hon'ble Court may deem fit and proper in the facts and circumstances of this case.”

2. The relevant facts necessary for the adjudication of the instant petition are reproduced herein below:

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By: DAMINI YADAV
Signing Date: 06.03.2024
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- a) The respondent no.1 (“respondent school” hereinafter) is a Government aided Minority School which is governed by the provisions of Delhi School Education Act, 1973 and Delhi School Education Rules, 1973 (‘DSEAR’ hereinafter).
- b) The respondent no.2 i.e., Director of Education (Government of NCT of Delhi) (“respondent director” hereinafter) is the government body entrusted with the duty of supervision and to exercise control over the functioning of the respondent school.
- c) The petitioner workman submitted an application seeking appointment to the post of ‘part-time waterman’ in the respondent school *via* the employment exchange. Subsequently, a selection committee of the respondent school conducted an interview and consequently a letter of appointment dated 9th March, 1993, bearing no. J.S.P./per 92-93/1467 was issued to the workman.
- d) The petitioner (“petitioner workman” hereinafter) worked as a ‘part-time waterman’ under the respondent school since 15th March, 1993, at a last drawn salary of Rs. 1400/- per month.
- e) Pursuant to receiving the appointment letter, the petitioner workman joined the respondent school at the said post with effect from 15th March, 1993, and thereafter, the respondent



director *vide* order dated 14th May, 1993, approved the said appointment.

- f) In the year 2004, the respondent director issued a letter dated 10th September, 2004, bearing no.De.22/11//12/PFC/Aided/2003-04/1699-1704, to the respondent school stating the fixation of post for the year 2003-04.
- g) Subsequently, on 18th October, 2004, a letter dated 8th October, 2004, bearing Ref No./per/04-05/908, was served thereby, informing him about the abolishment of the said post. Pursuant to the abovesaid letter, the services of the petitioner workman were terminated with effect from 1st November, 2004.
- h) The petitioner workman made representations dated 25th October, 2004, 20th December, 2004; 27th December, 2004 and 3rd January, 2005, to the respondent director to consider his case for the Group-D post of 'chowkidar' in the respondent school.
- i) Thereafter, the petitioner workman served a legal notice dated 1st March, 2005 to the respondent school seeking continuance of his services.
- j) Furthermore, the petitioner workman approached the Office of the Appellate Authority Public Grievances Commission preferring an Appeal under Section 7(1) of the Delhi Right



to Information Act, 2001 against the Education Department. The competent authority vide its letter dated 17th March 2005/22nd March, 2005, bearing No. Appeal (1188)/05/PGC/DRI/EDN/389-91, directed the Education Department to settle the case within the ambit of departmental instructions.

- k) In pursuance of the abovesaid representation, the respondent director issued a letter dated 6th June, 2005, bearing no. Zone-VIII/DN/49/05/684 to the respondent school seeking certain details of the petitioner workman and the same were provided by the respondent School vide its letter dated 17th June, 2005. Furthermore, the respondent director vide letter dated 31st August, 2005 and reminder dated 13th October, 2005, directed the respondent school to regularise the services of the petitioner workman against the full time vacant post of chowkidar.
- l) Thereafter, the respondent school addressed a letter dated 19th September, 2005 bearing Ref. No.1247 to the respondent director, expressing their inability to comply with the said orders.
- m) In furtherance to the abovesaid, the respondent director issued two show cause notices dated 3rd January, 2006, bearing No.F.DE/15/Act/2005/Insp./21-22 and dated 15th



April, 2006 bearing No.PA/DDE/N/2006 to the respondent school.

- n) Pursuant to the issuance of said show cause notices, the respondent school constituted a Departmental Promotion Committee (“DPC” hereinafter) on 10th September, 2007, wherein the committee found the petitioner workman ‘not fit’ for the post of chowkidar.
- o) Thereafter, the office of Dy. Director of Education issued a memorandum dated 18th October, 2007, informing the petitioner workman that the DPC does not consider him fit for the post of chowkidar in the respondent school.
- p) Subsequently, the petitioner workman preferred an industrial dispute before the Secretary (Labour) National Capital Territory of Delhi and the same was referred for adjudication under Section 10 of the I.D Act, vide reference no. F-24(18)/741/North District/2006/Lab./505-07, dated 24th July, 2009, before the learned Labour Court.
- q) In terms of the above reference, the learned Labour Court passed the impugned award dated 27th January, 2012, against the petitioner workman on the grounds that he has not completed 240 days at any stretch in the previous year thereby, holding the termination of the petitioner workman to be legally valid.



r) Therefore, aggrieved by the aforementioned award the petitioner workman has preferred the instant writ petition under Article 226 of the Constitution seeking to set aside the impugned award.

3. Learned counsel appearing on behalf of the petitioner submitted that the learned Labour Court erred in passing the impugned award as the same has been passed without taking into consideration the entire facts and circumstances of the dispute.

4. It is submitted that the petitioner was initially recruited for the permanent position of waterman, as evidenced by the appointment letter dated 9th March, 1993, therefore, the petitioner should not have been considered as a part-time employee, and his case should have been treated under Section 25-B(1) read with Section 25-F of the Industrial Disputes Act, 1947, ("I.D Act" hereinafter) as he had worked continuously for more than 11 years from the period between 1993 to 2004.

5. It is submitted that the learned Labour Court has erred in concluding that the case of the petitioner falls within the ambit of Section 25-B(2) of the I.D Act which requires completion of 240 days in a year thereby, restraining the petitioner from seeking relief under Section 25-F of the I.D Act.

6. It is submitted that the services of the petitioner workman could not have been terminated as the respondent director *vide* letter dated 10th September, 2004, had instructed the respondent school to treat the employees working against the abolished post as surplus and the expenses pertaining to them shall continue to be borne by the respondent school.



Therefore, despite abolition of the post, the respondent school was obligated to retain the petitioner as a surplus employee and continue paying him salary.

7. It is submitted that it is an admitted fact that the appointment of the petitioner workman was duly approved by the respondent director *vide* letter dated 10th September, 2004 and therefore, his services could not have been termination especially in light of the said letter.

8. It is submitted that there was no justification for the respondents or the learned Labour Court to deprive the petitioner of his legal protections solely based on the petitioner's inability to establish 240 days of work in the preceding year, rather the learned Labour Court should have adjudicated upon the legality of respondent school's inactions to implement the directions issued by the respondent director *vide* letters dated 31st August, 2005 and 13th October, 2005.

9. It is submitted that the petitioner was appointed to a permanent post and the breaks granted by the respondent school should not have affected his entitlement to benefits and protections under Section 25F of the I.D Act.

10. It is submitted that the learned Labour Court should have adjudicated the matter by placing the petitioner's case under the provisions of Section 25-B(1) read with Section 25-F of the I.D Act, irrespective of whether the petitioner worked for 240 days in the preceding year.

11. It is submitted that the entire period of discontinuation should form part of the continuous service as the breaks in service should not be attributed to the petitioner and rather were on account of the academic



circular of the respondent school.

12. It is submitted that the provisions contained under Section 25-B(2) signify that the contents of Section 25-B(1) provide for what may constitute continuous service and provisions of Section 25-B(2) may be attracted only if the provisions of Section 25-B(1) is not attracted. Thus, the order of sequence under Section 25-B is that first the sub-section (1) is attracted and only when the same is not covered, the provisions of sub-section (2) may apply to a particular case.

13. It is submitted that the learned Labour Court erred by not examining the partial records, specifically the attendance register provided by the respondent school as a thorough review of the same would reveal that the respondent school consistently assigned work to the petitioner even beyond the period stated in the appointment letter.

14. It is submitted that the issue no.1 framed by the learned Labour Court was incorrect as the mandate under Section 25-F of the I.D Act, merely provides for a workman to have been employed in an industry for not less than one year of continuous service and the said section nowhere states the mandate of continuous service of 240 days.

15. It is submitted that while deciding the issue no.1, the learned Labour Court erred by only placing reliance upon the appointment letter and not considering other records such as attendance registers and pay slips. The failure to consider these additional records could have provided a more comprehensive understanding of the petitioner's continuous service and thus, entitlement to benefits under Section 25-F of the I.D Act.



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16. It is submitted that the learned Labour Court gravely erred by dismissing the petitioner's submissions and claims based on the letters dated 31st August, 2005 and 13th October, 2005. The learned Labour Court failed to appreciate the dictum of *Apeejay School v. Darbari Lal and Ors*, 170 (2010) DLT 608, where it was observed that the right and remedy of workmen under the Industrial Disputes Act are not curtailed or barred by the provisions of the DSEAR.

17. It is submitted that due to non-compliance of the letters dated 31st August, 2005 and 13th October, 2005, followed by various letters dated 3rd January, 2006, 15th April, 2006, and 14th August, 2006, the respondents were barred from constituting a DPC to consider the case of the petitioner as the petitioner workman had acquired the right under Rule 47 of the DSEAR to enforce the implementation of the aforementioned letters as per the ruling of this Court in *Manju Tomar and Ors. v. NCT of Delhi and Ors.* (2010) 114 DRJ 389.

18. It is submitted that the case of the petitioner workman is covered within the ambit of Section 25-B(1) of the I.D Act, which does not specify a time period of 240 days and to substantiate the same, reliance is placed upon the judgments of this Court in *Suraj Pal Singh Vs the Presiding Officer and Anr*, 2005 SCC OnLime Del 952.

19. Therefore, in light of the foregoing submissions, the learned counsel appearing on behalf of the petitioner workman seeks that the instant petition may be allowed, and the relief be granted, as prayed.



20. *Per Contra*, the learned counsel appearing on behalf of the respondent no.1 vehemently opposed the instant petition submitting to the effect that the award impugned is well reasoned, falls within the ambit of reference under Section 10 of the I.D Act and has been passed after profoundly considering all factors and evidence placed before the learned Labour Court.

21. It is submitted that the petitioner workman has wrongly prayed for setting aside of the impugned award stating thereto that the award has been passed *ex-parte* whereas the fact is totally opposite as the impugned award has been passed after duly considering the material placed before it and after thorough examination of witnesses from both, i.e., the respondent school and the petitioner workman.

22. It is submitted that the petitioner workman was employed as a part-time waterman drawing a fixed monthly remuneration without subject to any other benefits of allowances, therefore, establishing that he did not hold a regular post and is also evident from the contents of the appointment letter. The services of the petitioner workman were engaged for a fixed period of six months with two breaks in a year which clearly computes the period way below the threshold provided under Section 25-B(2) of the I.D Act, i.e., 240 days of continuous service.

23. It is submitted that the breaks in employment of the petitioner workman were neither artificial and nor *mala fide* rather were strictly in accordance with the accepted terms of employment.

24. It is submitted that the petitioner is precluded from challenging his termination as the conditions of service were expressly set out in the



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appointment letter and hence, he was well aware that his services were liable to be terminated without any notice if his conduct, work and performance was found to be unsatisfactory. Therefore, the alleged directions issued by the respondent director to keep the employees whose posts were abolished as surplus is against all cannons of law.

25. It is submitted that the petitioner has failed to provide any document to substantiate his claim that he was declared surplus rather it is an admitted position on behalf of the petitioner workman that his name did not appear in the list of surplus staff.

26. It is submitted that the post of part-time waterman to which the petitioner workman was employed was a contractual post subject to post fixation which was abolished by the respondent director vide letter dated 10th September, 2004, which was duly served upon the petitioner workman and it is in pursuance to this, the services of the petitioner workman were terminated by the respondent school.

27. It is submitted that the services of the petitioner workman have automatically ended due to efflux of tenure on 31st October, 2004, as there could not have been any further extension as the post of the petitioner workman came to be abolished.

28. It is submitted that the petitioner workman has strongly contended non-compliance of letters dated 31st May, 2005 and 13th October, 2005 which are communications between the respondents and also the fact that the same were discarded by the learned Labour Court. In this regard it is contended that the respondent school constituted a DPC, minutes of which



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are placed on record. Therefore, the petitioner's contention in such regard is untenable as the learned Labour Court rightly reasoned that the adjudication of the same is beyond the reference under Section 10 of the I.D Act.

29. It is submitted that the petitioner workman has not challenged the abolition of the post of part-time waterman rather has sought appointment/regularization to the post of a chowkidar. In this regard, it is submitted that the respondent school constituted a DPC to consider the case of the petitioner workman on the basis of his past record with the respondent school and therefore came to a conclusion that he was not found fit for the post of chowkidar. Therefore, the plea taken by the petitioner that the order of the respondent director had not been complied with is false and frivolous.

30. It is submitted that the findings of the DPC were duly communicated to the petitioner in writing, and the same have not been challenged before any authority or the court of law, amounting to its acceptance and leaving no cause to challenge the non-appointment.

31. Therefore, in light of the foregoing submissions, the learned counsel appearing on behalf of the respondents prayed that the present petition, being devoid of any merit, may be dismissed.

32. Heard the learned counsel for the parties and perused the records.

33. The present petitioner has approached this Court seeking setting aside of the impugned award dated 27th January, 2012, passed by the learned Labour Court against the petitioner workman on the ground that he has not completed 240 days at any stretch in the previous year thereby holding the



termination of the petitioner workman not to be illegal as per the provisions of Section 25-F of the I.D Act.

34. At the outset it is apposite for this Court to analyse the findings of the impugned award and ascertain the reasoning afforded by the learned Labour Court. The relevant paragraphs of the impugned award are reproduced herein below:

“6. On the basis of the pleadings of the parties, on 08.04.10, following issues were framed by my Ld. Predecessor

i) Whether the workman has worked for 240 days in a calender year?

ii) As per terms of reference

7. The workman, in support of his claim, has appeared in the witness box as WW1 and led his evidence by way of affidavit Ex. WW1/A. The witness has submitted on the similar lines to that of contents of his claim and has further brought on record the copy of appointment letter as Ex. WW1/1, letter/order bearing no.Per/04-05/908 dt. 08.10.04 as Ex. WW1/2, notice dt. 01.03.05 as WW1/3, copy of letter dt. 25.10.04 addressed to management no. 1 as Ex. WW1/4, copy of three reminders addressed to management no. 1 as Ex. WW1/5 to WW1/7, copy of letter dt. 17.03.05 from Public Grievance Commission as Ex. WW1/8, copy of letter bearing no. Zone-VIIDN/49?05/684 dt. 06.06.05 as Ex. WW1/9, copy of its reply dt. 17.06.05 as WW1/10, copy of the letter bearing no. 2-VII/DN/49/05/1065 dt. 31.08.05 as Ex. WW1/11, copy of letter dt. 13.10.05 as Ex. WW1/12, copy of letter dt. 29.07.06 as mark A, copy of show cause notices issued by Education Directorate as Ex. WW1/13 and Ex. WW1/14.

During cross examination on behalf of management no.2, the witness submitted it to be correct that neither he was engaged/appointed by the Directorate of Education nor his services have been removed/terminated by the management



no.2. The witness submitted that there is no relief sought by him in his statement of claim against the management no.2

In the cross examination conducted on behalf of management no.1, the witness submitted it to be correct that the management no.1 school is a Govt. aided institute. He further submitted it to be correct that he was issued appointment letter as well as the termination letter. He further submitted it to be correct that he has not given any representation or demand notice opposing the termination letter. The witness further submitted it to be correct that he had made representation for his promotion to the post of regular Waterman to Directorate of Education. He submitted that he received Ex. WW1/M1 through RTI. The suggestion was given to the witness that the memo dt. 18.10.07 was issued to him which is Ex. WW1/M1 but the suggestion was denied by him. The witness submitted it to be correct that he was engaged for 6 months in a year and he never worked for 240 days in a year.

7. On behalf of the management, Sh. B.K.Jain, Principal of the management no.1 was examined as MW1. This witness has led his evidence by way of affidavit as Ex. MW1/A. He has submitted on the similar lines to that of his WS and has also brought the documents on record as Ex. MW1/1 to MW1/7. During cross examination, the witness submitted that the workman joined the management as part time Waterman on 09.03.93. He submitted that as per record, workman performed his duties for 5 hours in a day in two spans i.e. in March and April and thereafter in July to October. The witness submitted that there is no written instrument as to whether workman would not work in May and June. He voluntarily submitted that since there are no students in the school, the services of the workman is not required in the month of may and June. He further submitted that the conduct and behavior of the workman was not satisfactory and there were complaints against him during his service tenure. The witness voluntarily submitted



that there is apology of the workman on record. The suggestion was given to the witness that the workman was full time employee of the management but the suggestion was denied. He submitted that the management has informed the Director that the post of part time Waterman and part time sweeper has ceased to exist. The suggestion was given to the witness that the post of part time waterman and part time sweeper has ceased to exist but the suggestion was denied. The suggestion was given to the witness that Ex. MW1/5 is forged and fabricated but the suggestion was also denied. The witness submitted it to be correct that the management has received a letter from Directorate of Education for giving employment to the workman for the post of Chowkidar as the post of part time Waterman ceased to exist.

Ms. Suman Kataria was examined as MW2. During her cross examination, she submitted it to be correct that all aided schools under the Govt. of Delhi are being provided aid as per rule by Directorate of Education. The witness submitted that a show cause notice was given to the school on 14.08.06. The witness further submitted that a DPC was held in the year 2007 on 10.09.07 for filling the vacant post of Chowkidar. During the course of cross examination, witness placed on record attested copy of show cause notice dt. 14.08.06 and minutes of meeting of DPC dt. 10.09.07 which were exhibited as Ex. MW1/X1 and MW1/X2. She submitted that the reason for rejection of the case of workman has been communicated to the workman. She further submitted that after giving show cause notice, DPC was called and in DPC, workman was not found eligible for the post of chowkidar.

Management evidence was closed.

8. I have heard the arguments of AR for workman as well as AR for management. My findings on the issues are as under:-

ISSUE NO.1:-



Whether the workman has worked for 240 days in a calender year?

On this score, it is found that the workman has claimed to be appointed on the basis of appointment letter dt. 09.03.93 Ex. WW1/1. The issuance of this letter has not been denied by management no. 1 at any stretch of time. There are no specific denial in respect of the said appointment letter even by the management no.2. The workman when appeared in the witness box as WW1 has stated to the effect that he has carried out his employment throughout the period he worked with the management on the basis of terms of appointment letter Ex. WW1/1. The appointment letter Ex. WW1/1 perused carefully, which reflects that the workman was offered the job of part time Waterman in a year with the interval 15 March to 14* July and 15* July to 14* November. It apparently transpires that by calculating the said period under no circumstances, the total period comes to 240 days a year. Even the workman has not claimed that he has worked continuously for 240 days in a year with the management. It leads to the conclusion that the workman has not worked continuously for 240 days in a year. Whether this fact would cause any hindrance in the claim of the workman would be discussed in the next coming issue. However, this issue stands decided accordingly.*

ISSUE NO.2:-

As per terms of reference.

"Whether termination of services of Sh. Rudal Prajapati s/o Sh. Ram Nath Prajapati by the management is illegal and unjustified; and if yes, to what relle is he entitled and what directions are necessary in this respect?"

It has been submitted on behalf of the workman that the workman was appointed after following the entire process of appointment viz. Considering the application and calling the workman for interview etc. against the permanent post. This fact even reflects from the appointment letter Ex. WW1/1. Under these circumstances, when the workman was appointed



against permanent post after following due process of appointment, the termination of the workman without following the procedure contained in Section 25-F of I.D. Act, is illegal, unjust and liable to be recalled. On the basis of the submissions, prayer has been made to reinstate the workman alongwith the payment of back wages etc.

It has been further submitted that after the illegal termination, the workman approached the Govt. and Dy. Director, Education, North District vide letter Ex. WW1/11 dt. 31.08.05 has asked the school authorities to regularized the part time Waterman job of the workman as full time vacant post of the Chowkidar available with the management. But despite the said directions, the post of the workman was not regularized nor the workman was appointed as the Chowkidar. This act of the management shows malafide intention of the management. Further, it has been submitted that the management has adopted unfair mean labour practice to exploit the workman by giving him part time post of waterman for six months a year with two intervals of three months by not allowing him to complete 240 days in a year so that workman does not claim permanent post. The appointment was mere camouflage.

On the other hand, AR for management no.1 has submitted that the appointment of the workman was conditional as part time Waterman. The workman was appointed for six months at two intervals. The appointment was conditional interalia that the job of the workman could be terminated without any notice. It has been further submitted that the management is Govt. aided school and is governed by the provisions of Delhi School Education Act. The appointment of any employee is subject to approval of the Directorate of Education meaning by the employee could have been appointed only with a prior approval of the Govt. In this matter, the post of the workman was declared surplus after post fixation vide letter dt. 10.09.04 Ex. MW1/3. The letter dt. 08.10.04 Ex. WW1/1 vide which the services of the workman were discontinued, was issued on the



basis of the letter Ex. MW1/3. Therefore, the job of the workman was not terminated by the management but he was simply informed vide letter Ex. WW1/2 that his post has been declared surplus and his services were no more required.

In respect of regularization of the post of part time waterman, as pointed out, it has been submitted that the only remedy available to the was to approach Delhi School Education Tribunal. This court has got no jurisdiction to look into the matter of the workman on this score. AR for management no.2 has adopted the arguments advanced by AR for Management no.1 and further submitted that there is no preivity of contract between the workman and management no.2, therefore, the workman is not entitled to claim any relief from management no.2.

Heard besides going through the material on record carefully. Without any detailed discussion at threshold, the substance is found in the contention of AR for management that this court cannot grant any relief to the workman regarding his claim for regularizing the post of workman as Chowkidar on the basis of letter dt. 31.08.05 Ex. WW1/11. There are two folder reason.

First, it is beyond the scope of reference and secondly, this claim comes into domain of Delhi School Education Board Tribunal. Therefore, the contention of AR for workman, in this regard, stands discarded.

Further, it is not disputed that the workman was appointed after following the procedure of appointment viz. calling for interview etc. It is also not disputed that the initial appointment of the workman on the basis of the appointment letter dt. 09.03.93 Ex. WW1/1 was legal one. As discussed in issue no.1 or even otherwise, it is also a matter of fact that the workman has not completed 240 days continuously in a year.

No doubt, continuous service for 240 days in a year is condition precedent of Section 25-B of I.D. Act for granting the relief to the workman under I.D. Act. But, it depends upon the facts and circumstances whether the non completion of continuous 240



days in a year was intentional act of the management or not. In case, it is found to be intentional or malafide on the part of management by granting artificial leaves to the workman so that workman does not complete 240 days in a year, then the management cannot take this plea. In case, the break in between is justified then the position is different.

Admittedly, the terms of the appointment are mentioned in the appointment letter Ex. WW1/1. The evidence on record reveals that the workman continued with the job on the terms mentioned in the said appointment letter. There is nothing on record, which shows that the management at any point of time has violated the said terms. Neither the workman has alleged that the management has violated the terms or imposed certain new or fresh conditions. Under these circumstances, when there was no change or violations of the terms of the initial appointment, hence, the workman cannot claim two breaks of three months in a service in a year as artificial or camouflage to deprive the workman from completing 240 days. I have carefully gone through the judgment in case Rakesh Singh vs. Delhi Transport Corporation, W(C) No. 3710/2000 relied upon by the workman and it is found that the findings of the said judgment are not applicable to the facts of the instant case.

Moreover, undisputedly the management is govt. aided school. The management was informed by the Asst. Director, Education vide letter dt. 10.09.04 Ex. MW1/3 that interalia the two posts of part time employee of the management were declared surplus. On the basis of said letter vide letter dt. 10.08.04 the workman was informed by the management that his services were no more required. It transpires that the workman was not shunted out by any policy of the management but was not discontinued from the services as per instructions of the Directorate of Education by letter dt. 10.09.04 Ex. MW1/3. Under these circumstances, when the management has no control over appointing or discharging any employee, hence,



there is no question of granting any relief claimed by the workman.

In the light of above discussions, specially on the ground that the workman, at any stretch of time, has not completed 240 days in a year, it is held that services of workman has not been terminated illegally as such he is not entitled to any relief.”

35. Upon perusal of the aforementioned award, it can be summed that the learned Labour Court framed two issues *firstly*, whether the workman had worked for 240 days in a calendar year and *secondly*, as per the terms of the reference i.e., whether termination of services of the petitioner workman by the respondent management was illegal and unjustified.

36. During the cross examination, the petitioner workman admitted that no relief is sought against the respondent director as he was neither appointed, nor terminated by the respondent director. It is admitted that the petitioner workman has not preferred any representation or demand notice challenging the letter of termination. The petitioner workman further admitted that he was engaged for a period of 6 months in a year and has never worked for 240 days or more in a particular year.

37. *Qua* issue no.1 the learned Labour Court observed that it is an admitted position that the petitioner workman was appointed vide letter dated 9th March, 1993. It is further stated by the petitioner workman that he has carried out employment as per the terms of the appointment letter which when carefully perused reflects that the job offered to the workman was for the post of part-time waterman and duration of work was for intervals of 15th March to 14th July and 15th July to 14th November every year. In view of the



same the learned Labour Court observed that under no circumstances the period of continuous employment comes to 240 days in a year leading to conclude the issue against the petitioner.

38. Dealing with issue no.2 the learned Court observed *firstly*, it lacks the jurisdiction to adjudicate upon the aspect of claim for regularisation to the post of Chowkidar on two counts i.e., *one* it is beyond the scope of the reference; *two* the respective claim falls under the domain of Delhi School Education Board Tribunal.

39. *Secondly*, the learned Court observed that it is an undisputed position that the appointment of the petitioner workman was just and based on the contents of the appointment letter. Adverting to the aspect of Section 25-B, it observed that the computation of 240 days in a year to ascertain continuous employment is a condition precedent to the said section, which must be tested to check any *mala fides* on part of the employer by granting artificial leaves to exclude the workman from the purview of the said provision.

40. The learned Labour Court further observed that it is an admitted position that the respondent school has never violated the terms of the appointment letter therefore, the petitioner workman is precluded from taking the plea that the breaks between employments were artificial breaks.

41. The learned Court further disregarded the reliance placed by the petitioner on the ratio of ***Rakesh Singh vs. Delhi Transport Corporation, (171) 2010 DLT 187***, stating the differential position of facts to the instant case. It further observed that the petitioner was not shunted out from service



by the policy of the respondent school rather the said post was abolished as per the directions of the respondent director. Thus, granting very little control to the respondent school to appoint or discharge an employee.

42. In its conclusion, the learned Labour Court, while taking into consideration the evidence placed on record, statement of claim filed by the petitioner workman and the cross examination of witnesses, observed that the petitioner workman has not completed 240 days of continuous service in a year thus, it cannot be a case for illegal termination of service.

43. The Hon'ble Supreme Court in ***Mohd. Ali v. State of H.P., (2018) 15 SCC 641***, extensively stated the developments in the provisions of Section 25-B and the intent of the scheme of the Act. The relevant paragraphs of the judgment are reproduced herein below:

“14. It is a well-known fact that the Industrial Disputes Act is a welfare legislation. The intention behind the enactment of this Act was to protect the employees from arbitrary retrenchments. For this reason only, in a case of retrenchment of an employee who has worked for a year or more, Section 25-F provides a safeguard in the form of giving one month's prior notice indicating the reasons for retrenchment to the employee and also provides for wages for the period of notice. Section 25-B of the Act provides that when a person can be said to have worked for one year and the very reading of the said provisions makes it clear that if a person has worked for a period of 240 days in the last preceding year, he is deemed to have worked for a year. The theory of 240 days for continuous service is that a workman is deemed to be in continuous service for a period of one year, if he, during the period of twelve calendar months preceding the date of retrenchment has actually worked under the employer for not less than 240 days.



15. In Surendra Kumar Verma v. Central Govt. Industrial Tribunal-cum-Labour Court [Surendra Kumar Verma v. Central Govt. Industrial Tribunal-cum-Labour Court, (1980) 4 SCC 443 : 1981 SCC (L&S) 16] , a three-Judge Bench of this Court has very categorically dealt with the theory of 240 days as contemplated under Section 25-B of the Act. The relevant paragraphs of the judgment are reproduced hereinbelow: (SCC pp. 448-450, paras 8-9)

8. ... The provision appears to be plain enough. Section 25-F requires that a workman should be in continuous service for not less than one year under an employer before that provision applies. While so, present Section 25-B(2) steps in and says that even if a workman has not been in continuous service under an employer for a period of one year, he shall be deemed to have been in such continuous service for a period of one year, if he has actually worked under the employer for 240 days in the preceding period of twelve months. There is no stipulation that he should have been in employment or service under the employer for a whole period of twelve months. In fact, the thrust of the provision is that he need not be. That appears to be the plain meaning without gloss from any source.

9. Now, Section 25-B was not always so worded. Prior to Act 36 of 1964, it read as follows:

‘25-B. For the purposes of Sections 25-C and 25-F, a workman who, during a period of twelve calendar months, has actually worked in an industry for not less than two hundred and forty days shall be deemed to have completed one year of continuous service in the industry.

Explanation.—

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The difference between old Section 25-B and present Section 25-B is patent. The clause “where a workman is not in



continuous service ... for a period of one year” with which present Section 25-B(2) so significantly begins, was equally significantly absent from old Section 25-B. Of the same degree of significance was the circumstance that prior to Act 36 of 1964 the expression “continuous service” was separately defined by Section 2(eee) as follows:

*“(eee) ‘**continuous service**’ means uninterrupted service, and includes service which may be interrupted merely on account of sickness or authorised leave or an accident or a strike which is not illegal, or lock-out or a cessation of work which is not due to any fault on the part of the workman;”*

*Section 2(eee) was omitted by the same Act 36 of 1964 which recast Section 25-B. Section 25-B as it read prior to Act 36 of 1964, in the light of the then existing Section 2(eee), certainly lent itself to the construction that a workman had to be in the service of the employer for a period of one year and should have worked for not less than 240 days before he could claim to have completed one year's completed service so as to attract the provisions of Section 25-F. That precisely was what was decided by this Court in *Sur Enamel and Stamping Works Ltd. v. Workmen [Sur Enamel and Stamping Works Ltd. v. Workmen, AIR 1963 SC 1914]* . The Court said: (AIR pp. 1916-17, para 8)*

8. On the plain terms of the [Section 25-F] only a workman who has been in continuous service for not less than one year under an employer is entitled to its benefit. “Continuous service” is defined in Section 2(eee) as meaning uninterrupted service, and includes service which may be interrupted merely on account of sickness or authorised leave or an accident or a strike which is not illegal or a lock-out or a cessation of work which is not due to any fault on the part of the workman. What is meant by “one year of continuous service” has been defined in Section 25-B. Under this section a workman who during a



period of twelve calendar months has actually worked in an industry for not less than 240 days shall be deemed to have completed service in the industry.... The position (therefore) is that during a period of employment for less than 11 calendar months these two persons worked for more than 240 days. In our opinion that would not satisfy the requirement of Section 25-B. Before a workman can be considered to have completed one year of continuous service in an industry it must be shown first that he was employed for a period of not less than 12 calendar months and, next that during those 12 calendar months had worked for not less than 240 days. Where, as in the present case, the workmen have not at all been employed for a period of 12 calendar months it becomes unnecessary to examine whether the actual days of work numbered 240 days or more.'

Act 36 of 1964 has drastically changed the position. Section 2(eee) has been repealed and Section 25-B(2) now begins with the clause 'where a workman is not in continuous service ... for a period of one year'. These changes brought about by Act 36 of 1964 appear to be clearly designed to provide that a workman who has actually worked under the employer for not less than 240 days during a period of twelve months shall be deemed to have been in continuous service for a period of one year whether or not he has in fact been in such continuous service for a period of one year. It is enough that he has worked for 240 days in a period of 12 months; it is not necessary that he should have been in the service of the employer for one whole year. So we hold that Usha Kumari and Madhu Bala are in the same position as the other appellants."

16. Further, this Court, in Mohan Lal v. Bharat Electronics Ltd. [Mohan Lal v. Bharat Electronics Ltd., (1981) 3 SCC 225 :



1981 SCC (L&S) 478] , in paras 10 and 12 held as under:
(SCC pp. 233 & 235-36)

“10. It was, however, urged that Section 25-F is not attracted in this case for an entirely different reason. Mr Markendeya contended that before Section 25-F is invoked, the condition of eligibility for a workman to complain of invalid retrenchment must be satisfied. According to him unless the workman has put in continuous service for not less than one year his case would not be governed by Section 25-F. ...

12. Sub-section (2) incorporates another deeming fiction for an entirely different situation. It comprehends a situation where a workman is not in continuous service within the meaning of sub-section (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer for a period of one year or six months, as the case may be, if the workman during the period of 12 calendar months just preceding the date with reference to which calculation is to be made, has actually worked under that employer for not less than 240 days. Sub-section (2) specifically comprehends a situation where a workman is not in continuous service as per the deeming fiction indicated in sub-section (1) for a period of one year or six months. In such a case he is deemed to be in continuous service for a period of one year if he satisfies the conditions in sub-clause (a) of clause (2). The conditions are that commencing (sic) the date with reference to which calculation is to be made, in case of retrenchment the date of retrenchment, if in a period of 12 calendar months just preceding such date the workman has rendered service for a period of 240 days, he shall be deemed to be in continuous service for a period of one year for the purposes of Chapter V-A. It is not necessary for the purposes of clause (2)(a) that the workman should



be in service for a period of one year. If he is in service for a period of one year and that if that service is continuous service within the meaning of clause (1) his case would be governed by clause (1) and his case need not be covered by clause (2). Clause (2) envisages a situation not governed by clause (1). And clause (2)(a) provides for a fiction to treat a workman in continuous service for a period of one year despite the fact that he has not rendered uninterrupted service for a period of one year but he has rendered service for a period of 240 days during the period of 12 calendar months counting backwards and just preceding the relevant date being the date of retrenchment. In other words, in order to invoke the fiction enacted in clause (2)(a) it is necessary to determine first the relevant date i.e. the date of termination of service which is complained of as retrenchment. After that date is ascertained, move backward to a period of 12 months just preceding the date of retrenchment and then ascertain whether within the period of 12 months, the workman has rendered service for a period of 240 days. If these three facts are affirmatively answered in favour of the workman pursuant to the deeming fiction enacted in clause (2)(a) it will have to be assumed that the workman is in continuous service for a period of one year and he will satisfy the eligibility qualification enacted in Section 25-F. On a pure grammatical construction the contention that even for invoking clause (2) of Section 25-B the workman must be shown to be in continuous service for a period of one year would render clause (2) otiose and socially beneficial legislation would receive a set back by these impermissible assumptions. The contention must first be negated on a pure grammatical construction of clause (2). And in any event, even if there be any such thing in favour of the construction, it must be negated on the



ground that it would render clause (2) otiose. The language of clause (2) is so clear and unambiguous that no precedent is necessary to justify the interpretation we have placed on it.”

In view of the aforesaid principles laid down by this Court and also the categorical findings of the High Court, the contention of the appellant herein is not sustainable in the eye of the law since the provisions are very clear qua the calculation of period.”

44. Upon perusal of the ratio of the above cited case, it can be summarily stated that the provision of Section 25-F of I.D Act appears to be plain enough and mandate for a workman to be in continuous service for not less than one year under an employer before that said provision could apply to the case of the workman.

45. In order for the aforementioned provision to attract the statutory mandate of Section 25-B(2) of the I.D Act, which provides that even if a workman has not been in continuous service under an employer for a period of one year, he shall be deemed to have been in such continuous service for a period of one year, if he has been in continuous employment under the employer for 240 days in the preceding period of twelve months. In fact, the thrust of the provision is liberal and therefore, there exists no express stipulation within the section which stipulates that the workman has been in employment under the employer for a whole period of twelve months.

46. Another aspect that must be reiterated is with regards to onus of proof to substantiate ‘continuous employment’. The Hon’ble Supreme Court in ***State of Uttarakhand v. Sureshwati, (2021) 3 SCC 108***, observed that it is a



settled position of law that the onus of proof to substantiate ‘continuous employment’ rests upon the workman. The relevant paragraphs of the judgment are reproduced herein below:

“25. On the basis of the evidence led before the Labour Court, we hold that the School has established that the respondent had abandoned her service in 1997, and had never reported back for work. The respondent has failed to discharge the onus to prove that she had worked for 240 days in the preceding 12 months prior to her alleged termination on 8-3-2006. The onus was entirely upon the employee to prove that she had worked continuously for 240 days in the twelve months preceding the date of her alleged termination on 8-3-2006, which she failed to discharge.

26. A Division Bench of this Court in Bhavnagar Municipal Corpn. v. Jadeja GovubhaChhanubha [Bhavnagar Municipal Corpn. v. Jadeja GovubhaChhanubha, (2014) 16 SCC 130 : (2015) 2 SCC (L&S) 513] held that : (SCC pp. 134-35, para 7) 7. It is fairly well settled that for an order of termination of the services of a workman to be held illegal on account of non-payment of retrenchment compensation, it is essential for the workman to establish that he was in continuous service of the employer within the meaning of Section 25-B of the Industrial Disputes Act, 1947. For the respondent to succeed in that attempt he was required to show that he was in service for 240 days in terms of Section 25-B(2)(a)(ii). The burden to prove that he was in actual and continuous service of the employer for the said period lay squarely on the workman. The decisions of this Court in Range Forest Officer v. S.T. Hadimani [Range Forest Officer v. S.T. Hadimani, (2002) 3 SCC 25 : 2002 SCC (L&S) 367] , Municipal Corpn., Faridabad v. Siri Niwas [Municipal Corpn., Faridabad v. Siri Niwas, (2004) 8 SCC 195 : 2004 SCC (L&S) 1062] , M.P. Electricity Board v. Hariram [M.P. Electricity Board v. Hariram, (2004) 8



SCC 246 : 2004 SCC (L&S) 1092] , Rajasthan State Ganganagar S. Mills Ltd. v. State of Rajasthan [Rajasthan State Ganganagar S. Mills Ltd. v. State of Rajasthan, (2004) 8 SCC 161 : 2004 SCC (L&S) 1055] , Surendranagar District Panchayat v. Jethabhai Pitamberbhai [Surendranagar District Panchayat v. Jethabhai Pitamberbhai, (2005) 8 SCC 450 : 2005 SCC (L&S) 1167] and R.M. Yellatti v. Executive Engineer [R.M. Yellatti v. Executive Engineer, (2006) 1 SCC 106 : 2006 SCC (L&S) 1] unequivocally recognise the principle that the burden to prove that the workman had worked for 240 days is entirely upon him. So also the question whether an adverse inference could be drawn against the employer in case he did not produce the best evidence available with it, has been the subject-matter of pronouncements of this Court in Municipal Corpn., Faridabad v. Siri Niwas [Municipal Corpn., Faridabad v. Siri Niwas, (2004) 8 SCC 195 : 2004 SCC (L&S) 1062] and M.P. Electricity Board v. Hariram [M.P. Electricity Board v. Hariram, (2004) 8 SCC 246 : 2004 SCC (L&S) 1092] , reiterated in RBI v. S. Mani [RBI v. S. Mani, (2005) 5 SCC 100 : 2005 SCC (L&S) 609] . This Court has held that only because some documents have not been produced by the management, an adverse inference cannot be drawn against it.”

47. Upon perusal of the aforementioned paragraphs, it can be summarily stated that the onus of proof is unequivocally upon the workman to substantiate that he has worked for not less than 240 days in the preceding twelve months computed from the date of the alleged termination.

48. Tersely stated, the burden to prove squarely rests upon the workman and thus it is upon the workman to establish continuous service under the employer within the meaning of Section 25-B of the I.D Act. In order for the workman to succeed, he is required to evidence an account of continuous



employment of 240 days as per the terms specified under Section 25-B(2)(a)(ii).

49. In light of the above, this Court is of the considered view that the scheme of the Industrial Disputes Act contemplates that if a workman has worked under an employer in any capacity for more than 240 days in the preceding 12 months from the alleged date of termination, the employer must observe due compliance of the twin clauses (a) and (b) of Section 25F of the I.D Act, in order to terminate the services of such a workman.

50. Non-compliance of the aforementioned provisions would amount the alleged termination to be *void ab initio* and so far as the consequential effect of non-observance of the provisions of Section 25F of the I.D Act, may lead to grant of relief of reinstatement with full back wages and continuity of service in favour of the retrenched workman.

51. In this backdrop, this Court is of the considered view that as the petitioner workman has failed to provide an account of continuous employment of 240 days in the preceding year from the date of his termination hence, the learned Labour Court has rightly concluded that the petitioner workman has not completed 240 days of continuous service in a year thus, it cannot be a case of illegal termination of service.

52. In view of the foregoing discussions of facts, material placed on record and law, this Court is of the view that the impugned award dated 27th January, 2012, does not suffer from any infirmity since the learned Labour Court has minutely scrutinised the evidence placed before it and has



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extensively dealt with the issue surrounding the reference both, on fact and law.

53. This Court discerns no material to establish the proposition put forth by the petitioner. There is no material to characterise the award of the learned Labour Court as perverse and therefore, this Court is of the view that the learned Court below was well justified in passing the impugned Award.

54. In light of the above, the impugned award dated 27th January, 2012, passed by the Presiding Officer Labour Court-XVI Karkardooma Courts, Delhi in I.D No.179/09, is upheld and the instant writ petition is dismissed.

55. Pending applications, if any, also stand dismissed.

56. The order be uploaded on the website forthwith.

CHANDRA DHARI SINGH, J

FEBRUARY 12, 2024
SV/DA/AV

Click here to check corrigendum, if any