



2025:DHC:9743-DB



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

Date of decision: 06th NOVEMBER, 2025

IN THE MATTER OF:

+ **LPA 258/2020**

NORTH DELHI MUNICIPAL CORPORATIONAppellant

Through: Ms. Namrata Mukim, Standing
Counsel for MCD with Ms. Sakshi
Saxena and Ms. Niharika Singh,
Advocates along with Mr. Surajbhan
ASI, Civil Line Zone.

versus

BAL KISHAN & ANR.Respondents

Through: Mr. Jawahar Raja and Ms. L.
Gangmei, Advocates.

+ **LPA 299/2020**

BAL KISHANAppellant

Through: Mr. Jawahar Raja and Ms. L.
Gangmei, Advocates.

versus

NORTH DELHI MUNICIPAL CORPORATIONRespondent

Through: Ms. Namrata Mukim, Standing
Counsel for MCD with Ms. Sakshi
Saxena and Ms. Niharika Singh,
Advocates along with Mr. Surajbhan
ASI, Civil Line Zone.

CORAM:
HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD
HON'BLE MR. JUSTICE SAURABH BANERJEE

JUDGMENT



SUBRAMONIUM PRASAD, J.

1. The instant cross-appeals bearing LPA No. 258/2020 and LPA No. 299/2020 have been filed by the MCD and the Workman, respectively, impugning the Judgment dated 18.02.2020 (*hereinafter referred to as "Impugned Judgment"*) passed by the learned Single Judge in W.P.(C) 7811/2008.

2. Since both the present appeals are against the same Impugned Judgment, both the appeals are being decided by a common Judgment in order to avoid any confusion. The array of parties in LPA 258/2020 will be followed in the instant Judgment, wherein the MCD and the Workman will be hereinafter referred to as the Appellant and the Respondent respectively.

3. *Vide* Impugned Judgment, the learned Single Judge has set aside the Award dated 28.05.2007 passed by the Labour Court in ID No.645/2006, thereby directing the Appellant to regularise the Respondent with 30% back wages. The Appellant is aggrieved with the Impugned Judgment in its entirety, while the Respondent has challenged the Impugned Judgment claiming that he is entitled to 100% back wages instead of 30% back wages.

4. Shorn of unnecessary details, the facts leading to the filing of the instant appeals are as follows:-

- i. The Respondent-workman was appointed as *Avzidar Safai Karamchari* on 05.06.1995 with the Appellant-Corporation. The Respondent-workman was posted at MCD Office, Dhaka, Hudson Lines, Kingsway Camp, Delhi and was drawing a sum of Rs.70/- per day i.e., on the day he rendered his services.
- ii. It is the case of the Respondent-workman that he rendered his services continuously from 05.06.1995 to 07.09.2000 without



any break and therefore, that he has become a permanent employee of the Appellant-Corporation. However, it is the case of the Appellant-Corporation that the Respondent-workman was only appointed as a substitute *karamchari*, wherein his need to render services would arise only in the absence of any regular *karamchari*.

- iii. Material on record indicates that an FIR bearing No. 355/2000 was lodged against the Respondent-workman and that he was in judicial custody from 07.09.2000. It is pertinent to mention that the alleged offence committed by the Respondent-workman is unrelated to his work.
- iv. It is the case of the Appellant-Corporation that the Respondent-workman did not report for work after 07.09.2000 whenever called by the Appellant-Corporation. Thereby amounted to abandonment of his services. However, it is claimed by the Respondent-workman that a Senior Superintendent of the Appellant-Corporation had orally ordered him not to perform his duties which amounts to illegal termination as per the provisions of Section 25 of the Industrial Disputes Act, 1947 (*hereinafter referred to as "ID Act"*). It is further stated by the Respondent-workman that he was made a permanent *karamchari* as he worked continuously from 05.06.1995 to 07.09.2000 and that his services was terminated without assigning any reasons.



- v. In lieu of this, an industrial dispute was raised by the Respondent-Corporation before the Labour Court in the following terms of reference:-

"Whether the services of Sh. Bal Kishan S/o Sh. Nathu Ram R/o House No.112, Village Dhaka, Delhi have been terminated illegally and/or unjustifiably by the management and if so, to what sum of money as monetary relief along with consequential benefit in terms of existing laws/Government notification and to what other relief is he or they entitled and what directions are necessary in this respect?"

- vi. The Labour Court, while adjudicating on the said reference, observed that the onus of proving that the Respondent-workman has worked for 240 days in any of the preceding calendar year from the date of the alleged termination lies on the Respondent-workman. To that effect, the Respondent-workman had submitted an affidavit and the Appellant-Corporation had filed a muster roll, which is Exhibit MW-2/1 and MW-2/2, showing that the Respondent-Workman actually worked from 16.12.1996 to September 2000.
- vii. Relying on the muster roll submitted by the Appellant-Corporation, the Labour Court held *vide* Award dated 28.05.2007 that *firstly*, the Respondent-workman has not worked for 240 days in any of the calendar years and therefore, he is not entitled for the benefit under Section 25F of the ID Act. *Secondly*, after perusing the evidence on record, wherein the Respondent-workman admitted in his cross-examination



stating “*I used to perform my duties whenever any daily wages/regular Safai Karamchari absented from duty*” indicating that the Respondent-workman used to be engaged with the Appellant-Corporation and was provided work whenever any regular *karamchari* is on leave and therefore, the Respondent-workman had no right to claim that he has become a permanent *karamchari*. *Thirdly*, relying on various judgments, the Labour Court came to the conclusion that regularisation of Respondent-workman would amount to backdoor entry into the public employment and moreover, it held that there is no evidence on record to show that the co-accused persons, who are junior to the Respondent-workman, have been retained in service and that the Appellant-Corporation has not followed the principle of ‘LIFO – Last In First Out’ while retrenching the Respondent-workman.

- viii. Aggrieved by the Award dated 28.05.2007, the Respondent-workman filed a Writ Petition bearing W.P.(C) 7811/2008 before the learned Single Judge challenging the said Award.
- ix. *Vide* Impugned Judgment, the learned Single Judge opined that the Appellant-Corporation had admitted that the services of the Respondent-workman were terminated in lieu of the criminal case against him. It was noted that four other workmen, namely, Ashok, Jaiber, Vikas and Rajpal, who were also involved in the same criminal case, had been permitted to continue services despite being similarly placed with the Respondent-workman. The learned Single Judge observed that the benefit was not



given to the Respondent-workman unlike the other workmen and therefore, if there was going to be any retrenchment then principle of 'LIFO - Last in First Out' ought to have been observed and the Respondent could not have been terminated. Further, the learned Single Judge observed that placing reliance on the regularization policy of the MCD, the Respondent-workman ought to be regularised and therefore, he was directed to be regularised and the Appellant-Corporation is directed to pay 30% of the back wages.

- x. Aggrieved by the Impugned Judgment, the Appellant-Corporation challenged the regularization of Respondent-workman and the Respondent-workman challenged the Impugned Judgment to the effect of awarding 30% back wages instead of 100% back wages.
- xi. It is to this effect that the Impugned Judgment is challenged in the instant cross-appeals.

5. Learned Counsel appearing for the Appellant-Corporation vehemently contends that the Respondent-workman is a substitute *karamchari* and was not a permanent employee and therefore, the benefit under Section 25F of the ID Act cannot be made available to him. Weighing more on this argument, she also states that as per the muster roll produced by the Appellant-Corporation, the requisite period of working 240 days continuously was not adhered as he was only an *Avzidar Safai Karamchari*. It is further contended that the despite being called to resume his services, the Respondent-workman did not join the services, thereby leading to



abandonment of services and hence, no question of termination of services arises.

6. *Per Contra*, learned Counsel appearing for the Respondent-workman submits that the learned Single Judge had rightly observed that the Respondent-workman should not have been terminated from services, which was not the case with the other similarly placed workmen. It is submitted that the other workmen were not removed from services and were in fact, permitted to continue their services despite being appointed later than the Respondent-workman. It is further contended that there was no basis to grant only 30% back wages as the Respondent was not permitted to do the work and also there is nothing on record to show that the Respondent was employed somewhere else during that period and, therefore, the Respondent should be paid 100% back wages.

7. Heard learned Counsel appearing for the Parties and perused the material on record.

8. Before proceeding further, the entire evidence i.e., Chief Examination and the Cross-Examination of the Respondent-workman and the Appellant-Corporation along with their affidavits is being reproduced in its entirety:

“EVIDENCE BY WAY OF AFFIDAVIT OF THE WORKMAN

I, Bal Kishan son of Shri Nathti Ram, R/o House No.112, Village Dhaka, Delhi, do hereby solemnly affirm and declare as under:-

1. That the deponent is the workman in the abovenoted case, is well conversant with the facts of the case, is competent to depose this affidavit on oath. The appointment letter is Ex. WW1/1.



2. That the deponent was appointed as Avzidar Safai Karamchari on daily wages' w.e.f. 5.6.1995 with the management/MCD and he was posted at MCD Office Hudson Lane, Kingsway Camp, Delhi and he was drawing his daily wages regularly at Rs. 70/- per day.

3. That the deponent has rendered service since 5.6.1995 till 7.9.2000 without any break and he thus become the permanent employee of the MCD.

4. That on 7.9.2000 the Senior Superintendent, MCD, 15, Rajpur Road, Delhi, of the Management, orally ordered the deponent, not to perform his duties and as such the said order amounts to illegal termination.

5. That w.e.f. 7.9.2000, the deponent has not been permitted to perform his duties with the management and as such he has been illegally terminated and it amounts to retrenchment and the management has violated the provisions of Section 25 of I.D. Act.

6. That from the date of said illegal termination; the deponent is out of job and has not been able to get any employment anywhere.

7. That the said termination is illegal because no show cause notice or any charge sheet was served upon the deponent and before terminating him, no reason was disclosed and no explanation was sought.

8. That the deponent was falsely involved in a false and baseless criminal case by his neighbourers/relations as a result of which the deponent was apprehended and he was bailed on 18.9.2000. On the same day, the other persons Ashok son of Deep Chand, Jai Bir, Vikas and Rajpal were also involved in the said incidence and they were/are also the employees of the management, but their services were not terminated by the management. It is submitted that the said persons had



greased the palms of the said officer and got the deponent terminated. As such the termination of the deponent is malafide, improper. However, the said case has been compromised and the certified copy of the order is Ex.WW1/2.

9. That the deponent submits the said four named persons are/were equally situated but they have not been terminated and they are still doing their duties as employees with MCD and so the deponent has been discriminated.

10. That the law provides that till a person is convicted he cannot be terminated.

11. That even otherwise the services of the deponent, who is a permanent employee of the management, cannot be terminated without due process of law.

12. That the deponent is not gainfully employed anywhere after his illegal termination and he is at the verge of starvation.

13. That the management was served with a registered A.D. notice dated 29.5.2001 asking them to reinstate the deponent with full back wages but the said demand notice has not been acceded to nor has been replied. The said notice is Ex. WW1/3, postal receipts of the notice are Ex. WW1/4 and Ex. WW1/5, and acknowledgement card is Ex. WW1/6.

14. That the claim of the deponent is correct and he is entitled to reinstate his service with full back wages and benefits as prayed in the claim.

xxx

ID No.645/06



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WW1 Balkishan S/o Sh. Nathu Ram R/o House No.
112, Village Dhaka, Delhi.
ON SA

*Evidence by way of affidavit. I tender my affidavit Ex.
WW 1/A bears my signature at point A & B. The
documents are Ex. WW 1/1/ to 6.*

XXXXX on behalf of Management

*It is correct that I was engaged as substitute as
Safai Karamchari in MCD. It is correct that I used to
perform my duties whenever any daily wages regular
safai karamchari absented from duty. It is correct that
an FIR bearing no. 355/2000 was lodged against me
u/s 323/308/34 IPC. I remained for 13-14 days in
judicial custody. It is incorrect to suggest that I was
not performing my duty because a criminal case was
pending against me. I have not given any intimation in
respect of my arrest and being remained in J/C to the
management. In criminal case which was pending
against me I was discharged. It is incorrect to suggest
that no domestic enquiry is required in case of
substitute safai karamchari. It is incorrect to suggest
that I have never completed 240 days in any calender
year. It is incorrect to suggest that the management
does not engage the persons who are involved in the
criminal case. I do not remember if I have submitted
any representation against the denial of work to me by
the senior Superintendent of MCD. It is incorrect to
suggest that I made the false deposition.*

xxx

**EVIDENCE BY WAY OF AFFIDAVIT ON
BEHALF OF THE MANAGEMENT**



I, D.S. Chaddha, Sanitation Superintendent, Civil Line Zone, 16, Rajpur Road, M.C.D. Delhi-110054, do hereby solemnly affirm and declare, as under;-

1. That the deponent is presently working as Sanitation Superintendent, Civil Line Zone, 16, Rajpur Road, M.C.D. Delhi-110054 and well conversant with the facts and circumstances of the case and competent to swear the present affidavit.

2. That the present claim is not maintainable as the applicant is not the workman of the M.C.D. He was engaged by the MCD as a daily wager substitute on purely temporary basis and the services of substitute and taken only when there is no regular/daily wager Safai Karamchhari. The said substitute is not the workman of the MCD. Hence, no case is made in favour of the claimant. A copy of the office order showing that the claimant was simply engaged as Avjidar/substitute Safai Karamchhari is Ex. MW-1/1.

3. That admittedly, the criminal case U/s 323/308/334 IPC is pending against the workman in FIR No. 355/2000, P.S. Mukharji Nagar, Delhi and the case is under trial. The claimant also remained in the judicial custody and further never informed the management about his arrest. A copy of the FIR No. 355/2000 is Ex. MW-1/2.

4. That the workman was never terminated but he was disengaged since he was simply a substitute Safai Karamchhari and since he was involved in a criminal case U/s 323/308/34 IPC as such he was never engaged by the management keeping in view his conduct. It is further submitted that he was never engaged against the post of permanent nature.



5. That the workman had never completed duty of 240 days in any Calender year, so the claim of the workman is totally baseless as he was never engaged as a daily wager on muster roll. A copy of the chart showing that he never completed 240 days in any calender year is Ex. MW-1/3.

6. That it has been wrongly alleged by the workman that he rendered service w.e.f. 05/06/1995 till 07/09/2000 without any break. It is submitted that the claimant being the Avjidar/Substitute Safai Karamchari was not engaged on any regular or sanctioned post but was engaged only on leave vancacies i.e., vacancy occurred due to proceeding on leave by any regular or daily wager Safai Karamchari. It is further submitted that the substitute Safai Karamchari is not a workman.

7. That the services of the workman was never terminated because he was not a regular employee/workman of the management. It is further submitted that the workman has himself left the work with MCD because of he was under trial at that time.

8. That the workman was not a regular employee, so no question arises for issuing any chargesheet or disciplinary action against the workman. The workman is also not entitled for reinstatement as alleged by him.

9. That the engagement of workman was purely on the substitute basis and the question of termination does not arise in that case.

10. That the claimant was paid wages for the days, he actually worked under the payment of Minimum Wages Act and nothing is due against him.

11. That no discrimination has been made to the claimant as wrongly alleged.



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*ID No.645/06**MW-1: D.S. Chaddah, Sanitary Superintendent, Civil Lines zone, MCD, Delhi.**OnSA*

I tender in evidence my affidavit which is Ex. MW1/A which bears my signature at points A and B. I rely documents Ex. MW 1/1 to Ex. MW1/3.

XXXXXXXX by AR for workman

It is correct that workman has never worked under my supervision and control. I am deposing today in the court on the basis of record. No other record is maintained regarding service of workman because he is a casual safai karamchari (substitute) except three documents mentioned in my affidavit. It is correct that department maintains muster roll of the employees. It is correct that muster roll regarding workman was also maintained. It is correct that the same is preserved and maintained by the management. I can produce in the court the said muster roll.

At this stage, AR for workman submits that direction be given to witness for producing the said muster roll. AR for management opposes for giving such direction at this stage and submits that workman may have summoned muster roll during recording of his evidence. Heard. The case is adjourned for deciding this issue on hearing both the parties whether such direction can be given at this stage or not.

xxx

ID No. 645/06



MW- 1 Sh. D. S Chadda recalled for further cross examination.

ONSA

XXXXX by AR for workman.

I have brought the muster roll attendance register of the workman concerned w.e.f January 1997 to December 1999. I have not brought the attendance register of the year 2000. It is incorrect to suggest that I have not brought the muster roll attendance register of the year 2000 deliberately and intentionally as it would have to the case of the workman. I do not know whether the co-workmen shown in Ex. MW- 1/1 are still working with the management. It may be possible that the co-workmen shown in the muster roll attendance register w.e.f January 1997 to December 1999 are still working with the management. It is incorrect to suggest that the work against which the workman used to work is of permanent and perennial nature and is still continuing with the management. I do not know whether the management has appointed fresh hands in the category of sweepers after September 2000. It is correct that there are 12 zones of MCD. It is also correct that the combines category wise seniority list of 12 zones is prepared and maintained by the management in the Head Office. It is correct that the said seniority list is in the exclusive control and possession of the management. It is correct that I have not brought the said seniority list. I cannot say whether the management has issued any call letter to the workman to resume duties. It is correct that no charge sheet or memo was issued to the workman like wise no departmental enquiry was conducted against the worlman. Vol. Because he was not a regular employee and is not governed by the CCS conduct rules as such no call back notice, domestic enquiry is



required in case of absentism of a daily wager/substitute safai karamchari. Even other wise he was involved in a criminal case. It is correct that the services of the workman were terminated because of the above mentioned criminal case. I do not know whether the workman has been honourably acquitted in the above mentioned criminal case. Vol. He has not informed the department. It is incorrect to suggest that the workman has not informed the management. It is correct that the management does not have any document or material to show that the workman is gainfully employed somewhere else after 7.09.2000. It is incorrect to suggest that the workman concerned was ordered by the senior superintendent MCD not to perform his duties w.e.f 7.09.2000. I do not know whether other workmen namely S/Sh. Ashok, Jaibeer, Vikas and Rajpal were also involved and arrested and a criminal case was also registered against the above named persons. I do not know whether the said criminal case is still pending against the above said persons in the criminal court. It is correct that the above said persons are still working with the management. I do not know whether the above said persons were regularized by the management. I do not know whether Ex. WW-1/3 which is the demand notice was received by the management. However, it bears the correct address of the management. I was posted at the present place in the year 2005. It is correct that I have no personal Knowledge about this ease. I have got prepared the affidavit on the basis on records. It is incorrect to suggest that the contents of my affidavit are false and I am deposing falsely.

xxx

**EVIDENCE BY WAY OF AFFIDAVIT ON
BEHALF OF THE MANAGEMENT**



I, Budh Prakash, Sanitary Inspector, Civil Line Zone, 16, Rajpur Road, M.C.D. Delhi-110054, do hereby solemnly affirm and declare as under:-

1. That the deponent is presently working as Sanitary Inspector, Civil Line Zone, 16, Rajpur Road, M.C.D. Delhi-110054 and well conversant with the facts and circumstances of the case and competent to swear the present affidavit.

2. That on 04/12/2006, this Hon'ble Court had directed the management/M.C.D. to produce the muster roll record of the claimant for the last three years. Accordingly, the management produced the originals of the muster roll for the period 1997, 1998 and 1999. The same was also got to verified by the workman and his authorized representative.

3. That the claimant has never completed 240 days in any calender year. The chart showing the days, he actually worked w.e.f. 16/12/1996 to September, 2000 is Ex. MW-2/1.

4. That the claimant has wrongly alleged in his affidavit that he has continuously worked w.e.f. 16/12/1996 to September, 2000. It is respectfully submitted that the claimant has worked on a very temporary nature of work as and when occurred and has never completed 240 days in any calender year. The claimant was paid the wages for the days, he actually worked and nothing is due towards him. The copy of the muster roll of the last three-four years as per the direction of the Hon'ble Court are Ex. MW-2/2 (Colly).

xxx

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MW-2 Sh. Budh Prakash, s/o Sh. Chhote Lal, Sanitary Inspector, Civil Lines, Zones, 16, Rajpur Road, MCD, Delhi

ONSA

I tender my affidavit EXMW2/A in examination in chief. Same is true and correct and is signed by me at point A and B. I rely upon documents EX MW- 2/1 and MW2/2.

XXXXX by A.R. for Workman

It is incorrect to suggest that muster roll produced by us are false and fabricated. The muster roll bears my signature at point C. It is correct that the persons mentioned in the muster roll alongwith this workman, are still working with the management. It is incorrect to suggest that those persons have been regularised. It is incorrect to suggest that claimant has never completed 240 days in any calender year. It is correct that the work against which the workman was working, is of permanent nature and still continuing with management. Vol. But the workman was working as a leave substitute. It is incorrect to suggest that I am deposing falsely in this regard. It is incorrect to suggest that contents of my affidavit are false and I am deposing falsely.”

(emphasis supplied)

9. A perusal of the affidavit dated 16.01.2007 shows that the Appellant-Corporation had produced the muster roll of the Respondent-workman for the last three years. The officer of the Appellant-Corporation has been examined on the said aspect. A perusal of the muster roll indicates that the Respondent-workman has worked 54 days in the year 1995, 127 days in the year 1996, 117 days in the year 1997, 99 days in the year 1998, 135 days in



the year 1999 and 112 days in the year 2000. The muster roll also indicates that the Respondent-workman has not even worked for a complete month.

10. The learned Single Judge has primarily gone into the question that the services of four other workmen, who were identically placed with the Respondent-workman, were not terminated by the Appellant-Corporation. The learned Single Judge has placed reliance upon a Judgment passed by the Apex Court in Harjinder Singh v. Punjab State Warehousing Corpn., (2010) 3 SCC 192 and more particularly Paragraph No.16 of the said Judgment which is being quoted below:

“16. It is true that in the writ petition filed by it, the Corporation did plead that the dispute raised by the appellant was not an industrial dispute because he had not worked continuously for a period of 240 days, the learned Single Judge rightly refused to entertain the same because no such argument was advanced before him and also because that plea is falsified by the averments contained in Para 2 of the reply filed on behalf of the Corporation to the statement of claim wherein it was admitted that the appellant was engaged as work-charge motor mate for construction work on 5-3-1986 and he worked in that capacity and also as work munshi from 3-10-1986 and as mentioned above, even after expiry of the period of three months specified in the order dated 5-2-1987, the appellant continued to work till 5-7-1988 when the first notice of retrenchment was issued by the Managing Director of the Corporation. Therefore, it was not open for the Corporation to contend that the appellant had not completed 240 days' service. Moreover, it is settled law that for attracting the applicability of Section 25-G of the Act, the workman is not required to prove that he had worked for a period of 240 days during twelve calendar months preceding the termination of his service and it is sufficient for him to plead and prove



that while effecting retrenchment, the employer violated the rule of “last come first go” without any tangible reason.”

11. In the opinion of this Court, the above-mentioned paragraph has no application to the present case. There is no material on record to show that the other four workmen, who were identically placed with the Respondent-workman, have worked 240 days or not, or whether they were appointed prior or later to the Respondent-workman. The learned Single Judge could not have applied the Principle of ‘LIFO - Last in First Out’ without there being any material on record to indicate the particular date of appointment of other four Workmen and also muster roll of the said workmen has also not been asked to be produced by the Appellant-Corporation. The finding of the learned Single Judge that the Principle of ‘LIFO - Last in First Out’ ought to have been followed by the Appellant-Corporation, therefore, has no basis. Though, the learned Single Judge has placed reliance upon the deposition of MW-1 Sh. D.S. Chadda, however, has not taken into consideration the affidavit dated 16.01.2007 wherein muster roll was produced and on which the employee of the Appellant-Corporation was also cross-examined which clearly shows that the Respondent-workman has not worked for 240 days in any of the preceding calendar year and not even worked for a complete month. There is nothing on record to show that the Respondent-workman was working in a substantive capacity or as a regular *Safai Karamchari* whenever any daily wages/regular *Safai Karamchari* used to be on leave. The effect of such employment has not been taken into consideration by the learned Single Judge in its Impugned Judgment.



12. Furthermore, the learned Single Judge has also placed reliance on a regularization policy of the Appellant-Corporation without discussing the said policy whether the Respondent-workman had fulfilled the terms of the policy or not. The Impugned Judgment is, therefore, completely contrary to the Judgment passed by the Apex Court in State of Karnataka v. Umadevi (3) & Ors., (2006) 4 SCC 1. In fact, the terms of reference did not even advert to any regularization and, therefore, a direction to that effect could not have been passed by the learned Single Judge for regularization of the Respondent-workman. As stated earlier, the policy of regularization has not been discussed by the learned Single Judge and therefore, a direction for regularization of the Respondent could not have been passed at all.

13. It is also imperative for this Court to look into whether the Respondent-workman is entitled to the benefit under Section 25F of the ID Act. For the said purpose, the definition of “retrenchment” laid down under Section 2(oo) of the ID Act is reproduced hereinunder-

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

(a) voluntary retirement of the workman; or

(b) retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf; or

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

(c) termination of the service of a workman on the ground of continued ill-health;”



14. For the sake of convenience, Section 25F of the ID Act reads as under:-

*“25F. Conditions precedent to retrenchment of workmen.—
No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until—*

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

(b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay 2 [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].”

15. In order to receive the benefit under Section 25F of the ID Act, it is imperative for the workman to satisfy that he is retrenched as per Section 2(oo) of the ID Act.

16. After reading Section 2(oo) and Section 25F of the ID Act together along with the material on record, which is discussed hereinabove, this Court is of the view that the Respondent-workman has not completed 240 days in service, which is a requisite condition to avail the benefit under Section 25F of the ID Act.

17. Furthermore, it is the case of the Appellant-Corporation that the Respondent-workman was not a regular employee. The evidence and cross-examination shows that the services of the Respondent-workman were



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terminated because of the criminal case registered against him and that does not concern with the fact that the Respondent-workman was a regular employee or not. Since the Respondent-workman has not fulfilled the condition of 240 days of work, Section 25F of the ID Act is not applicable to him. Since Section 25F of the ID Act is not applicable, the question of retrenchment and the Principle of 'LIFO - Last in First Out' is not applicable to the case of the Respondent-workman.

18. In view of the above, the Impugned Judgment passed by the learned Single Judge is set aside. LPA No. 258/2020, filed by the Appellant-Corporation is, hereby, allowed and the LPA No. 299/2020, filed by the Respondent, is dismissed, thereby upholding the Award dated 28.05.2007 passed by Labour Court.

19. Pending applications, if any, are disposed of.

SUBRAMONIUM PRASAD, J

SAURABH BANERJEE, J

NOVEMBER 06, 2025

S. Zakir