



2025:DHC:7607



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

% ***Date of Decision: 08.08.2025***

+ W.P.(C) 14988/2022 & CM APPL. 46221/2022

SHRI SURESH KUMARPetitioner

Through: Mr. Atul T.N. & Ms. Nazmeen
Ahmed, Advocates.

versus

UNION BANK OF INDIARespondent

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

CORAM:
HON'BLE MS. JUSTICE TARA VITASTA GANJU

TARA VITASTA GANJU, J.: (Oral)

1. The present Petition has been filed under Article 226 and 227 of the Constitution of India seeking to challenge the Award dated 10.01.2022 passed by the learned Presiding Officer, CGIT-cum-Labour Court-II, New Delhi [hereinafter referred to as "Impugned Award"]. By the Impugned Award the Claim Petition that was filed by the Petitioner/Workman has been dismissed.

2. The learned Trial Court found that there is no material on record to show that he was working in continuation for the Respondent/Bank for the period from 01.08.2001 to 05.03.2010. By the Impugned Award even in the line above, the learned Trial Court has also given a finding that the factum



of the completion of 240 days in the calendar year preceding the date of his termination as is set out in Section 25-B(2)(a)(ii) of the Industrial Disputes Act, 1947 [hereinafter referred to as “ID Act”] has not been fulfilled. Thus, no relief was granted to the Petitioner/Workman.

2.1 Section 25-B(2)(a)(ii) of the ID Act reads as follows:

“25B. Definition of continuous service.—*For the purposes of this Chapter,—*

(1) ...

(2) ...

(a) ...

(i) ...

(ii) two hundred and forty days, in any other case;”

3. Learned Counsel for the Petitioner/Workman has contended that the Impugned Award suffers from an infirmity. He submits that the Claimant was working as a daily wager in the Respondent/Bank for a substantial period of time and on a casual basis. He submits that this statement has not been denied by the Respondent/Bank, including in his Written Submissions.

3.1 Learned Counsel further submits that even in the cross-examination conducted of the Management in this behalf, this aspect has not been denied. Reliance is placed in this regard on the cross-examination of the Manager – MW1/Kamal Babu Sharma in this behalf. It is contended that the Respondent’s Manager had admitted to the fact that the Petitioner/Workman was engaged casually during his tenure and before and after.

3.2 Learned Counsel submits that although initially, the burden of proof as to whether there exists an employer-employee relationship is on the Workman, however once the Workman has discharged this burden, the



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burden of proof shifts on to the Management. It is contended that the Respondent/Management thereafter failed to do so.

3.3 Learned Counsel for the Petitioner further refers to the documents that have been filed along with the Petition to submit that several documents had been placed on record showing the continuous nature of the employment of the Petitioner, thus, the burden was discharged by the Petitioner in the first instance.

4. In support of his contentions, learned Counsel for the Petitioner has relied upon the judgments of the Supreme Court in ***Bank of Baroda v. Ghemarbhai Harjibhai Rabari***¹, ***Sriram Industrial Enterprises Ltd. v. Mahak Singh***² and ***R.M. Yellatti v. Asstt. Executive Engineer***³ to submit that the burden of proof primarily initially lies on the Workman/Claimant, however, where he establishes or discharges such burden, thereafter the burden falls on the Management to produce evidence to establish that the documents produced were not genuine.

4.1 In addition, learned Counsel for the Petitioner has also relied upon the judgment in the case of ***Union of India v. Ramchander***⁴ to submit that the Courts have found upon these kind of practices and have referred to such practice as an unfair labour practice in terms of Item 10 of the 5th Schedule of the ID Act. Reliance in this behalf is placed on ***Ramchander*** case where persons appointed as daily wager for extended period of time and were terminated, a finding was given that these casual labourers continued for

¹ (2005) 10 SCC 792

² (2007) 4 SCC 94

³ (2006) 1 SCC 106

⁴ (2005) 9 SCC 365



extended periods of time and had they not been terminated, they would have completed 240 days of continuous employment, to submit that the case of the Petitioner is similar to these persons.

4.2 An alternate argument has also been made by the learned Counsel for the Petitioner that the Petitioner should have been awarded some lump sum compensation by the learned Tribunal.

5. Learned Counsel for the Respondent on the other hand submits that the dispute that has been raised by the Petitioner/Workman that he was an employee of the Bank is in the first instance, required to be proved by the employee [the Petitioner]. It is contended that the initial burden which was to be discharged by the Petitioner/employee was not discharged and thus, the learned Trial Court rightly did not grant any relief to the Petitioner/Workman.

6. Learned Counsel for the Respondent further submits that from a review of the documents [the cash vouchers] and the cross-examination of the Petitioner, it can be seen that the Petitioner was not a regular employee. He was employed for *ad hoc* jobs on different days and times. The jobs were also not similar in nature, since the amounts as set out in the voucher were always different.

6.1 The emphasis is laid by the learned Counsel for the Respondent on the cross-examination of the Respondent/Management of the Petitioner, wherein the Petitioner has admitted that he is a casual employee and when a new branch of the Respondent/Bank was opened next to a temple, he was working and doing odd jobs in the temple.



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7. Learned Counsel for the Respondent further submits that this aspect was examined in detail by the learned Labour Court and thus, there is a finding in the Impugned Award that the Petitioner has not been able to show any employer employee relationship or that he worked continuously for more than 240 days and in terms of the ID Act.

7.1 Learned Counsel for the Respondent submits that the Respondent had placed on record the various documents, including the attendance record of the Respondent/Bank for the relevant period and which established that the Petitioner was not an employee. Learned Counsel further submits that they did not dispute the voucher that were signed, however the requirement of cogent oral and documentary evidence which is as laid down by the Court was not produced and thus, the learned Labour Court did not deem it fit to grant any relief.

7.2 Learned Counsel lastly seeks to rely upon the judgments of the Supreme Court in *Calcutta Port Shramik Union v. Calcutta River Transport Association and Others*⁵ to submit that unless there is a perversity on the findings of the fact of the Award, the Court is not required to interfere with the same. Reliance is also placed on the judgment of *Essan Deinki v. Rajiv Kumar*⁶ to submit that unless the burden is initially discharged by the Petitioner/Workman, no relief can be granted.

8. Briefly the facts are that a reference was raised by the Petitioner/Workman before the learned CGIT Delhi with the following terms of reference:

⁵ 1988 SCC OnLine SC 477

⁶ (2002) 8 SCC 400



“Whether the Union, Delhi Mazdoor Sangh is empowered to espouse Industrial Dispute of workman working in the Bank?

2. Whether the action of the management of Union Bank of India in terminating the services of Shri Suresh Kumar w.e.f. 05.03.2010 is legal and justified? What relief the workman is entitled to?”

8.1 The learned Tribunal had framed the following issues:

“1. Whether there exists employer and employee relationship between the management and the claimant and the services of the claimant was illegally terminated without following the procedures of Section 25 F of the ID Act.

2. Whether the claimant is entitled to the relief of reinstatement into services with other consequential benefits as prayed by him.

3. Whether Delhi Mazdoor Sangh is competent to espouse the cause of the claimant.”

9. The principal issue that requires adjudication before this Court is as to whether the claim of the Petitioner which is based on an employer-employee relationship can be sustained. It is the case of the Petitioner that the Petitioner has for the period from 01.08.2001 performed continuous and regular duties essential to the functioning of the Bank including cleaning of the branch premises, delivery and collecting documents to other branches. It is the case of the Petitioner that he was consistently being paid through cash vouchers, however his appointment was abruptly terminated on 05.03.2010 without any notice of inquiry as is envisaged under the ID Act. It is contended that even though the formal appointment letter was not issued or even when there was non-compliance of recruitment process, the employer-employee relationship cannot be negated.

10. In support of his contentions of continuous functional engagement with the Bank, reliance has been placed on a handful of documents by the Petitioner. These include:



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- (i) Authorization letter dated 13.02.2007 tendered in excess by an ATM;
- (ii) Letter requesting correction dated 02.03.2007;
- (iii) Official form signed by the Petitioner dated 18.06.2007;
- (iv) Authorization letter requesting issuance of pay order dated 22.05.2008;
- (v) Authorization letter requesting issuance of pay Order dated 15.12.2008; and
- (vi) Complaint letter issued by the Delhi Mazdoor Sangh dated 06.05.2010.

11. The Petitioner also states that the Respondent is engaged in unfair labour practices as set out under the 5th Schedule of the ID Act by giving artificial breaks in employment to the Petitioner/Workman so as to prevent him from completing 240 days of continuous service, and thus, the action of the Respondent are not in accordance with law.

12. The Respondent on the other hand has averred that the Petitioner does not fall under the category of regular employee. Emphasis has been laid by the Respondent on the fact that the Petitioner failed to discharge the burden of proof that is requisite of him.

13. The learned Labour Court after examination of the evidence, has held that the photocopies of the cash vouchers proves that he was only occasionally carrying out some work assigned to him. Thus, the plea of the Petitioner that he was in continuous employment and the employer-employee relationship has not been proved by the Petitioner. The relevant extract of the Impugned Award is set out below:



“Now it is to be seen if the claimant has succeeded in proving his relationship with the management as the employee of the later. The law is well settled that the burden of proving employer and employee relationship always rests on the person ascertaining the same. In the case of **Ram Singh and others vs. Union territory of Chandigarh and others reported in (2004) 1 SCC page 126** it has been held that for determination of employer and employee relationship the factors to be considered inter alia are (i) control (ii) integration (iii) power of appointment and dismissal (iv) liability to pay remuneration (v) liability to organize the work (vi) nature of mutual obligation etc. the factual matrix of the present dispute as evident from the oral and documentary evidence is that no advertisement was issued for the appointment of the claimant nor any appointment letter was issued. Similarly there is no document available on record to presume that the management bank was exercising control for integration of the work allegedly done by the claimant. There is also no material on record that the claimant was getting monthly remuneration like other employees of the Bank and he was signing the attendance register in acknowledgment of his daily attendance of duty. The mutual obligation in the nature of deducting PF subscription extension of other benefits is no way evident from documents filed by the parties. Production of the photocopies of the cash vouchers for payment to the claimant only proves that he was occasionally carrying out some work assigned to him by the Branch Manager for which as stated by the management witness the Branch Manager is authorized to make payment towards labour charge in the capacity of the branch manager. **This intermittent discharge of duty cannot confer the status of the employee on the claimant as claimed by him. There is absolutely no material on record that he was working continuously for the bank from August 2001 to 05.03.2010 and had completed 240 days of work in the calendar year preceding to the date of his termination. Once the employer and employee relationship is not established it is not proved that the claimant’s service was terminated and that too illegally without following the provisions of section 25F of the ID act by the management. This point is accordingly decided against the claimant workman.**”

[Emphasis Supplied]

14. The Courts have while discussing the burden of proof in the Industrial Dispute matters has held that the burden of proof lies upon the Workman and unless there is a relationship of master and servant between the Workman and the Management, the Workman cannot be entitled to any relief.



15. The Supreme Court in *R.M. Yellatti* case has while relying on the *Manager, Reserve Bank of India v. S. Mani*⁷ held that the question of burden of proof as to the completion of 240 days, the initial burden of proof lies on the Workman and this burden can only be discharged upon the Workman stepping into the witness box and adducing cogent evidence, both oral and documentary in this behalf. It further held that mere self-serving statements by a Claimant/Workman will not suffice in the matter and the Workman would have to prove that he worked for 240 days in a given year. The relevant extract of the *R.M. Yellatti* case is below:

*“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.**”*

⁷ (2005) 5 SCC 100



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[Emphasis Supplied]

16. The Petitioner in his evidence has also admitted that he is not a regular but a casual employee. He has also stated in his evidence that he would sometimes accept payment in the account of other employee of the Bank by the name of Kishan Lal. The evidence of the Petitioner shows that he has affirmed that he was working at a temple when a new branch of the Respondent/Bank opened and there was a requirement of peon at the Bank. However, clearly the Petitioner was not engaged by the Bank either as a peon or a cleaner but was filling in a few times a year when the other employee was absent or not available. It is apposite to extract the statements of Petitioner from his cross examination in this regard, which is below:

“WWI Sh. Suresh Kumar cross examined on fresh oath on 28.08.2014.

Xxxx by Sh. Rajat Arora A/R for ngt letter issue to me in August 2001. No test or interview was hold at the time of my engagement in August 2001.

No advertisement was issued by the Bank at the time of my engagement.

Vol: I was working at the temple (Mandir) and a new branch of the Bank of Pitampura North was opened and there was a requirement of peon at the branch. The manager of the branch Sh. S.K. Goel had informed the temple to Sh. P.C. Gupta (Gen. Secy.) Mandir trust and I was sent to Sh. S.K. Goel.

I do not have any termination letter to show that I am terminated in 2010. I was paid the salary on voucher by the Bank.

It is correct that regular employee of the Bank were not paid Salary on vouchers.

It is correct that I was not a regular employee to Bank and but the casual employee.

It is correct that Ex WWI/6 at page no. 8 to 31 at some of the places doesn't bear my signature.

Vol: Some times when Kishan Lal PTS was not present in the bank his expenses were paid to me to be given to him when he comes back after taking my signatures on the vouchers.



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It is correct that the money has projected in the vouchers belongs to Sh. Kishan Lal and not to me.

That some of the letters have been filed by me as WWI/6.

It is correct that none of the letters are addressed to me.

Vol: I was only a messenger for the bank. It is incorrect to suggest that I was a casual employee and that had not completed 240 day in a calendar year.

It is incorrect to suggest that I am deposing falsely.

ROC AC

SD/-

Suresh Kumar”

[Emphasis Supplied]

17. The facts in the present case however show that the Petitioner was not a daily wage earner nor a regular employee but someone who was working on an *ad hoc* basis and intermittently doing odd jobs for the Respondent. Evidence that has been produced by the Petitioner in this behalf comprises of 8-10 cash vouchers as well as 5-6 letters for calculation of pay orders/documents of such nature. The cash vouchers are also of a different denomination. These range from payment of Rs.50/- to Rs.800/- and have also not been issued daily. In fact, for instance, there are 5 cash vouchers for the period of November, 2007 and thereafter, 4 cash vouchers for the different dates in January, 2010. The same is the case for the other documents showing 5 instances of the Petitioner in 2 years of being authorised to collect documents on behalf of the Petitioner. These documents do not show any kind of regular and continuous employment as is the mandate of law.

18. Given the evidence on record and on review of the documents filed, this Court finds no ground to interfere with the Impugned Award.



19. The other ground that has been raised by the Petitioner is that the Respondent is carrying out unfair practices in terms of Item 10 of the 5th Schedule of the ID Act. The relevant extract of the ID Act is below:

“10. 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.”

20. Learned Counsel for the Petitioner has relied upon the **Ramchander** case to submit that where casual labourers were appointed and continued in service for four spells and on completion of 89 days were made to be terminated, Section 25(g) of the ID Act was violated since the continuous reappointment shows that there was sufficient work available with the employer and thus, the employer had violated Section 25(g) of the ID Act. The relevant extract is below:

“4. The respondents were appointed against casual labourers but nevertheless they continued in service for four spells and that too their reappointments were made immediately within a few days of termination on completion of 89 days. It shows that sufficient work was available with the employer and had there been no termination on completion of 89 days, they would have completed 240 days of continuous employment. In that view of the matter the appellants had violated Section 25-G of the Industrial Disputes Act. We do not find any error or illegality in the decision rendered by the Division Bench. We direct the appellants to re-employ the respondents as daily-wagers. However, the direction of the High Court for payment of entire salaries and allowances for the period they were out of service was not justified under the circumstances. The termination of the respondents was from 11-1-1995 and now a fairly long period has passed and in the meantime, the respondents must have been engaged in employment in any other work. Therefore, we direct the appellants to re-employ the respondents with 50% back wages from the date of their termination till their re-employment. The appellants shall re-employ the respondents within a period of one month. The appeals are disposed of accordingly. No costs.”

[Emphasis Supplied]

21. A review of the above judgment shows that the judgment would not



be applicable in the facts of the present case since there is nothing on record to show that the services of the Petitioner were required continuously. The duration of the services being a 5-10 days over the period of 2-3 years cannot in any manner be said to be continuous or that non-employment of the Petitioner would amount to an unfair trade practice in the present circumstances.

22. The Supreme Court in the *Calcutta Port Shramik Union* case has held that this Court is not required to sit in Appeal over an Award passed by the learned Labour Court and appreciate the findings on fact unless there is perversity in the Award. It was held that the object of the ID Act and making a provision for referring the disputes to Tribunals would be defeated if the Courts exercised power of judicial review and pick holes on the Award on trivial points. The attempt should be made by the Courts to sustain as far as possible the awards that have been made. Relevant extract is below:

“10. The object of enacting the Industrial Disputes Act, 1947 and of making provision therein to refer disputes to tribunals for settlement is to bring about industrial peace. Whenever a reference is made by a government to an Industrial Tribunal it has to be presumed ordinarily that there is a genuine industrial dispute between the parties which requires to be resolved by adjudication. In all such cases an attempt should be made by courts exercising powers of judicial review to sustain as far as possible the awards made by industrial tribunals instead of picking holes here and there in the awards on trivial points and ultimately frustrating the entire adjudication process before the tribunals by striking down awards on hypertechnical grounds. Unfortunately the orders of the Single Judge and of the Division Bench have resulted in such frustration and have made the award fruitless on an untenable basis.”

23. From the documents on record, it is the case of the Petitioner that he was working as a peon in the Bank from August, 2001 to 2010 for a period of 9 years. This fact has not been proved. This Court agrees that the



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contentions of the learned Counsel for the Respondent that no cogent documentary evidence has been placed on record by the Petitioner in support of its contentions. The judgments in the case of *Bank of Baroda v. Ghemarbhai Harjibhai Rabari*, *Sriram Industrial Enterprises Ltd. v. Mahak Singh* and *R.M. Yellatti v. Asstt. Executive Engineer* have been passed in very different circumstances which do not obtain in the present case.

24. In view of the foregoing, this Court finds no grounds to interfere with the Impugned Award.

25. The Petition is dismissed. The pending Application also stands closed.

26. The parties shall act based on a digitally signed copy of the order.

TARA VITASTA GANJU, J

AUGUST 8, 2025/pa