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

Judgment Reserved on: 12.02.2026

% ***Judgment Delivered on: 29.05.2026***

\+ **<u>LPA 296/2019, CM APPL. 20873/2019 & CM APPL. 51355/2019</u>**

THE GENERAL MANAGER, BANK OF BARODA .....Appellant

versus

NIMO DEVI .....Respondent

<u>Advocates who appeared in this case</u>

For the Appellant : Ms. Praveena Gautam, Mr. Pawan Shukla, Ms. Tissy Annie Thomas and Mr. Rohan Bansla, Advocates.

For the Respondent : Ms. Yashasavi Sharma, Ms. Megha Mishra, Ms. Vedica Mehra and Mr. Anmol Harna, Advocates.

CORAM:
HON'BLE THE CHIEF JUSTICE
HON'BLE MR. JUSTICE TEJAS KARIA

<u>JUDGMENT</u>

<u>TEJAS KARIA, J</u>

1. The present Appeal has been filed against the judgment and order dated 14.12.2018 ("**Impugned Judgment**") passed in W.P.(C) 998/2015, ("**Writ Petition**") whereby the learned Single Judge dismissed the Writ Petition filed by the Appellant while upholding the award dated 25.06.2014 ("**Award**") passed by the Central Government Industrial Tribunal *cum* Labour Court-II, New Delhi ("**Tribunal**") in ID No.89/2000.

SUBMISSIONS ON BEHALF OF THE APPELLANT

2. The learned Counsel for the Appellant made the following submissions:

2.1. The Appellant is a Nationalized Bank having its branches all over India and overseas. The Respondent was engaged as a part-time daily wager at the Ashok Vihar Branch of the Appellant-Bank for the limited work of dusting, sweeping, cleaning the branch premises and performing similar odd jobs as per the day-to-day requirements. The Respondent was paid daily wages of ₹50/-, later enhanced to ₹60/- per day, working only as a daily wager intermittently as per the requirements and worked for a total of 42 days at the Ashok Vihar Branch of the Appellant-Bank as detailed under:

DATES ON WHICH THE RESPONDENT WORKED AT ASHOK VIHAR BRANCH	NUMBER OF DAYS
23rd, 24th, 26th, 27th, 28th, 30th, 31st December 1997	7 Days
01st to 11th, 13th to 18th, 22nd to 25th, 27th to 31st January 1998	28 Days
01st February 1998	1 Day
26th to 31st May 1998	6 Days
TOTAL	42 Days

2.2. The Respondent's engagement at the Ashok Vihar Branch was purely intermittent and need-based, and she did not render continuous service at the said branch. As reflected in the attendance particulars, the Respondent worked only on isolated dates, aggregating to 42 days between December 1997 and May 1998. Consequently, she did not complete any continuous period of service in order to acquire the status of a regularly appointed member of the subordinate staff of the Appellant-Bank.

2.3. Subsequent to the aforesaid intermittent engagement at the Ashok Vihar Branch, the Respondent, of her own accord, approached the Branch Manager of the Rampura Branch seeking similar daily-wage work of sweeping and cleaning. The Branch Manager engaged the Respondent for cleaning and sweeping the branch premises on daily wages of ₹40/- per day, which were later enhanced to ₹60/- per day. The Respondent worked at the Rampura Branch in three distinct spells, aggregating to 182 days between 26.07.1998 and 17.04.1999, purely on an *ad hoc* and casual basis, without any regular appointment, as detailed below.

DATES ON WHICH THE RESPONDENT WORKED AT RAMPUR BRANCH	**NUMBER OF DAYS**
26th July 1998 to 06th November 1998	84 Days
10th December 1998 to 15th February 1999	54 Days
01st March 1999 to 17th April 1999	44 Days
TOTAL	182 Days

2.4. The work performed by the Respondent at the Ashok Vihar and Rampura Branches was solely to meet the temporary exigency arising from the retirement of the erstwhile permanent sweeper, and the Respondent was engaged only as an interim daily-wage worker. The Respondent did not complete 240 days of continuous service in any period of twelve calendar months under the Appellant-Bank, nor was she appointed against any sanctioned post in accordance with the prescribed recruitment procedure.

Consequently, the statutory protections relating to retrenchment, including the mandatory preconditions stipulated under Section 25F of the Industrial Disputes Act, 1947 ("**ID Act**"), were not attracted.

2.5. Upon the cessation of the Respondent's engagement on 19.04.1999, the Appellant-Bank received an order of reference from the Ministry of Labour, Government of India, referring for adjudication before the learned Tribunal the dispute concerning the termination of the Respondent's services. The reference was framed in the following terms: '*Whether the action of management of Bank of Baroda (Rampura Branch), New Delhi in terminating the services of Smt. Nimo Devi, Sweeper w.e.f. 19.04.1999 is legal and just? If no, then what relief the workman is entitled to and from what date?*'

2.6. The dispute in question was, at its highest, an individual industrial dispute and not a collective industrial dispute referable under Section 10(1)(c) of the ID Act for adjudication by a Labour Court. Notwithstanding the same, the Government of India made the present reference under Section 10(1)(d) of the ID Act to the Tribunal on the assumption that more than 100 workmen of the Appellant-Bank were interested in, and likely to be affected by, the purported industrial dispute. It was, therefore, contended that there was no lawful or valid exercise of the power of reference by the Government of India.

2.7. The Appellant-Bank had never recruited or appointed the Respondent in a manner giving rise to any *vinculum juris* between the Parties. It was, therefore, contended that the Respondent did not fall within the ambit of a 'workman' under Section 2(s) of the ID Act to entitle her to raise an industrial dispute or claim protection thereunder. In the absence of the foundational condition precedent, there was neither any occasion nor any legal basis for the Appellant-Bank to be said to have terminated the Respondent's services. Accordingly, the order of reference being invalid and incapable of lawful adjudication, the learned Tribunal lacked jurisdiction to entertain the proceedings or to render any award thereon, and any such proceedings or award would be a nullity and of no legal consequence.

2.8. Pursuant to the aforesaid reference, the Respondent alleged illegal termination before the learned Tribunal and sought appropriate reliefs against the Appellant-Bank.

2.9. In response, the Appellant-Bank submitted before the learned Tribunal that the Branch Managers of the Ashok Vihar and Rampura Branches had no authority to make regular appointments in the subordinate cadre. It was further submitted that, under the Appellant-Bank's Rules and Regulations, only the Regional Manager acting under the authority of the General Manager was competent to make regular appointments in accordance with the prescribed procedure. Consequently, any casual engagement made by the Branch Managers could neither mature into a regular appointment nor confer any right of regularisation upon the Respondent.

2.10. Further the regular employer-employee relationship did not exist as the Respondent had never fulfilled the requirement of 240 days' continuous service under the Appellant-Bank. Accordingly, there was no violation of Section 25F of the ID Act.

2.11. During the course of cross-examination of the witness of the Appellant-Bank before the learned Tribunal, it was specifically denied that the Respondent had worked for more than 240 days under the Appellant-Bank. Notwithstanding this categorical stand and the documentary material produced on behalf of the Appellant-Bank, the learned Tribunal proceeded to accept the Respondent's case and draw adverse inferences against the Appellant-Bank.

2.12. By the Award, the learned Tribunal decided the issue of alleged illegal termination in favour of the Respondent and held that the termination of the Respondent's services with effect from 19.04.1999 was illegal and unjustified.

2.13. Being aggrieved by the Award, the Appellant-Bank invoked the writ jurisdiction of this Court by filing the Writ Petition, challenging the findings and directions contained in the Award wherein the learned Single Judge *vide* the Impugned Judgment dismissed the Writ Petition upholding the Award without appreciating the law and facts of the case and further recorded a finding that the termination of the Respondent was illegal and unjustified.

2.14. The learned Single Judge failed to appreciate that the Respondent was neither engaged through, nor sponsored by, the employment exchange and, therefore, no employer-employee relationship could be said to have arisen between the Appellant-Bank and the Respondent. It was further overlooked that the Respondent was never in continuous service with the concerned branch of the Appellant-Bank. Accordingly, the very reference was bad in law.

2.15. Since the reference made by the Government of India was invalid, the Award and the Impugned Judgment founded thereon are *non est* in the eyes of law. The learned Tribunal, being devoid of jurisdiction, could neither have acted upon nor adjudicated the said reference.

2.16. The Impugned Judgment further failed to appreciate that the reference made to the learned Tribunal could not, by its terms, reverse the settled burden of proof. The construction placed upon the reference by the learned Tribunal manifests non-application of mind and consequently vitiates the decision, rendering it *non est*.

2.17. The learned Single Judge failed to appreciate that appointments to the subordinate staff of the Appellant-Bank are governed by statutory rules and guidelines issued by the Government of India from time to time. In terms thereof, appointments in the subordinate cadre are made only through the employment exchange, in addition to advertisement in the local newspaper, upon the occurrence of a vacancy.

2.18. It was incumbent upon the Appellant-Bank to scrupulously comply with the aforesaid directives of the Government of India. In the present case, the Respondent has failed to produce any document demonstrating that she was ever appointed by the Appellant-Bank in accordance with the said statutory procedure.

2.19. The learned Single Judge further failed to appreciate that, in ***Himanshu Kumar Vidyarthi & Others v. State of Bihar & Others***, (1997) 4 SCC 391, the Supreme Court held that where persons are not appointed to posts in accordance with the applicable rules but are engaged merely on the basis of exigencies of work, their disengagement cannot be construed as retrenchment under the ID Act.

2.20. The learned Single Judge failed to appreciate that, by the Respondent's own showing, the figure of 240 days' service has been arrived at by clubbing together the days allegedly worked at two distinct branches / establishments, namely, the Ashok Vihar Branch and the Rampura Branch of the Appellant-Bank. Even if the employer is alleged to be the same, the Respondent is stated to have worked in different branches / establishments, which is impermissible in law for the purpose of establishing continuous service. Consequently, there was no continuity of service so as to attract the benefit of Section 25F of the ID Act.

2.21. The learned Single Judge also failed to appreciate that, in ***Union of India v. Jummasha Diwan***, (2006) 8 SCC 544, the Supreme Court held that where a casual employee is engaged in different establishments, albeit under the same employer, the concept of continuous service cannot be applied. This principle was reiterated in ***Haryana State Coop. Supply & Mktg. Federation Ltd. v. Sanjay***, (2009) 14 SCC 43.

2.22. The Impugned Judgment erred in placing the burden of proof upon the Appellant-Bank to justify the alleged termination without the factum of employment having first been established. The learned Single Judge further erred in holding that, merely because the Respondent entered the witness box and asserted that she had worked continuously for 240 days in a year, the burden stood discharged and shifted to the Appellant-Bank to produce records to controvert such assertion.

2.23. The learned Single Judge failed to appreciate the caveat articulated by this Court in ***Dhara v. Presiding Officer & Anr.***, 2007 SCC OnLine Del 431, namely that '*mere affidavits or self-serving statements made by the claimant/workman will not suffice in the matter of discharge of burden placed by law on the workman.*' The learned Single Judge mis-appreciated Paragraph No. 10 of the said decision, which makes it clear that merely stepping into the witness box and reiterating the contents of an affidavit does not discharge the onus resting upon the workman; rather, the workman is required to adduce cogent evidence and produce documents on record to substantiate the plea of having worked continuously for 240 days.

2.24. The learned Single Judge failed to appreciate that the Supreme Court in ***Range Forest Officer v. S.T. Hadimani,*** (2002) 3 SCC 25, has held that:

> "…*In our opinion the Tribunal was not right in placing the onus on the management without first determining on the basis of cogent evidence that the respondent had worked for more than 240 days in the year preceding his termination. It*

was the case of the claimant that he had so worked but this claim was denied by the appellant It was then for the claimant to lead evidence to show that he had in fact worked for 240 days in the year preceding his termination. Filing of an affidavit is only his own statement in his favour and that cannot be regarded as sufficient evidence for any court or tribunal to come to the conclusion that a workman had, infact, worked for 240 days in a year. No proof of receipt of salary or wages for 240 days or order or record of appointment or engagement for this period was produced by the workman. On this ground alone, the award is liable to be set aside."

Likewise, in the present case also the Respondent has only filed her affidavit to favour herself and the same cannot be regarded as sufficient evidence in the court to conclude that the Respondent ever worked for 240 days in a year. The Impugned Judgment and the Award passed by the Industrial Tribunal is contrary to the law laid down by the Supreme Court and is thus bad in law.

2.25. The learned Single Judge failed to appreciate that this Court in ***Pankaj Dixit v. K.B.S.H Export House***, (2018) 248 DLT 357, followed the principles laid down by the Supreme Court in ***State of Gujarat v. Pratamsingh Narsinh Parmar***, (2001) 9 SCC 713 and held that since the workman therein failed to adduce any documentary evidence, not examined any witness to prove their employment with the respondent-employer therein, workman therein was not entitled to employment.

2.26. Thus, no adverse inference could have been drawn against the Appellant-Bank by the Courts below for non-production of documents to show that the Respondent had worked less than 240 days when the Respondent was unable to establish her own case of having worked for more than 240 days. Mere filing of an affidavit by the Respondent that she has completed 240 days of service is not in itself sufficient to shift the burden / onus on the Appellant-Bank.

2.27. The learned Single Judge erred in appreciating that reversing the burden of proof and laying it on the Appellant-Bank is contrary to the established principle of '*semper necessitas probandi incumbit ei qui agit*'. The allegations made by the Respondent should have been first established by the Respondent before looking into the defence of the Appellant-Bank. Assuming, that the Appellant-Bank failed to prove its defence, the same cannot lead to the conclusion that the Respondent has established its case at the first place.

2.28. The Impugned Judgment is bad in law as it flagrantly ignored the law laid down by the Supreme Court that adverse inference cannot be drawn when the initial burden of proof has not been discharged by the workman and that the initial burden of proof is always on the workman. Thus, violation of the said principle renders the Award *non est*.

2.29. A bare reading of the Impugned Judgment and Award disclose that the Impugned Judgment and Award merely record the pleadings of the Parties and then render decisions on an erroneous assumption that the burden to proof lay on the Appellant-Bank which clearly discloses the non-application of mind by the Courts below.

2.30. The Impugned Judgment is bad in law as with no evidence having been led by the Respondent to establish any aspect of her case such as appointment letter, continuous service, transfer or termination etc. and the reversal of burden of proof by the Courts below leads to a situation where any person employed temporarily / casually / on *ad hoc* basis would be able to get regular employment by backdoor by making unsubstantiated assertions since the management will be compelled to prove the negative.

2.31. The Award wrongly relied on settlements which have taken place between the Appellant-Bank and labour unions. Such settlements were in no way concerned with the case before the learned Tribunal, and the Respondent also did not prove how the Respondent was a signatory or was affected by such settlement. A mere recording by the Appellant-Bank's employee in her cross examination that a settlement was binding on the Appellant-Bank cannot be read as making that particular settlement having application to the present case.

2.32. In view of the aforesaid, this Court may allow the Appeal and set aside the Impugned Judgment.

<u>SUBMISSIONS ON BEHALF OF THE RESPONDENT</u>

3. The learned Counsel for the Respondent made the following submissions:

3.1. The Respondent was engaged as a sweeper at the Ashok Vihar Branch by the Branch Manager of the Appellant-Bank. It is the Respondent's case that she remained in continuous employment with the Appellant-Bank from June 1997 until the termination of her services on 19.04.1999, which, according to her, was effected illegally. No notice, nor wages in lieu of notice, were paid prior to the termination of her services on 19.04.1999.

3.2. An employer-employee relationship existed between the Appellant-Bank and the Respondent as the work performed was for the Appellant-Bank; the duties were discharged within the premises of the Appellant-Bank; the work was assigned by the Appellant-Bank; wages were paid by the Appellant-Bank; and supervision and control were exercised by the officials of the Appellant-Bank.

3.3. No special qualifications were required for performing sweeping work at the Ashok Vihar Branch of the Appellant-Bank. According to the Respondent, the continuity of her engagement was itself indicative of the permanent nature of the work and sufficient to establish the subsistence of an employer-employee relationship. The duties carried out by the Respondent, it was submitted, were duties of the management, performed within the premises of the Appellant-Bank, under its directions, for wages paid by it, and subject to its supervision and control.

3.4. The Respondent further submitted that the work performed by her was of a permanent and perennial nature. It was contended that vacancies existed in several branches of the Appellant-Bank. In this regard, reliance was placed on the letter dated 01.10.1999 addressed by the Bank of Baroda Employees' Union to the Assistant General Manager, DCR-I and DCR-II, setting out the details of vacancies existing in various branches of the Appellant-Bank. The same details, it was submitted, were also placed during conciliation proceedings. Despite the permanent nature of the work and the existence of vacancies, the services of the Respondent were allegedly terminated in gross violation of Sections 25F, 25G and 25H of the ID Act.

3.5. The Appellant-Bank paid wages through vouchers, at times in a different name, and that upon becoming aware of this alleged unfair labour practice, the Respondent raised oral protest. Reference was made to one Smt. Kamlesh, who had been working at the Badli Branch of the Appellant-Bank since 1980 and was thereafter transferred to the Rampura Branch in 1994 and subsequently to the Ashok Vihar Branch in 1998. It was contended that the Respondent was thereafter transferred orally from the Ashok Vihar Branch to the Rampura Branch, without any written transfer order, and that her wages were reduced from Rs. 50/- to Rs. 40/- per day pursuant to such transfer. According to the Respondent, she was neither employed against a leave vacancy nor engaged owing to any temporary increase in work but had continuously and regularly performed sweeping and cleaning duties at the Ashok Vihar Branch and, upon transfer, at the Rampura Branch.

3.6. During the period of the Respondent's engagement, no other person was employed as sweeper to clean the premises of the Appellant-Bank. It was submitted that vacancies for sweepers existed at the Rampura and Ashok Vihar Branches, as well as in other branches of the Appellant-Bank. Reliance was also placed on advertisements issued by the Appellant-Bank inviting applications for permanent vacancies of sweepers. According to the Respondent, several vacancies for the post of sweeper existed in approximately 30 branches of the Appellant-Bank in Delhi, yet the Appellant-Bank deliberately refrained from making permanent appointments to those posts. It was further submitted that sweeping and cleaning work had been taken on daily wages for several years, and that such unfair labour practice continued.

3.7. The Respondent was not paid bonus or other legal benefits by the Appellant-Bank and that she was entitled to wages in the applicable pay scale in terms of the relevant bipartite settlements. It was contended that the Appellant-Bank committed unfair labour practice by continuously extracting work from the Respondent while failing to pay wages, allowances, bonus and other service benefits in accordance with the said settlements. It was further submitted that the non-issuance of an order of appointment was contrary to the Sastri Award and the applicable bipartite settlements.

3.8. No seniority list, as required in law, had been maintained by the Appellant-Bank. According to the Respondent, her continuous employment had given rise to a right to remain in service, which could not be taken away arbitrarily. The termination of the Respondent's services was arbitrary, unreasonable and discriminatory. The principle of "first come, last go" had not been followed by the Appellant-Bank and that, subsequent to her termination, fresh hands had been engaged by the Appellant-Bank.

3.9. The Respondent's continuous engagement from June 1997 onwards itself established the existence of a vacancy of a permanent nature. It was contended that sweeping work is of such a character that it is required to be carried out continuously in the branches of the Appellant-Bank and is, therefore, inherently permanent in nature.

3.10. Being illiterate and economically vulnerable, the Respondent had been exploited by the Appellant-Bank by being paid a meagre sum as wages while being required to perform full-time work, without issuance of appointment, transfer or termination letters as contemplated under the applicable bipartite settlements and awards. The Respondent contended that the denial of service benefits, despite extraction of work of a regular nature on a continuous basis, constituted unfair labour practice and was in non-compliance with Sections 25F, 25G and 25H of the ID Act.

3.11. As regards the reference made by the Government of India, the Respondent had been employed by the Appellant-Bank to perform work at the premises of the Appellant-Bank and that the termination of her services would, therefore, constitute an industrial dispute within the meaning of the ID Act. The Respondent answers the description of a 'workman' under the ID Act and, having been employed and paid by the Appellant-Bank, the dispute raised by her squarely falls within Section 2A of the ID Act. On that basis, the reference made by the Government of India was asserted to be valid.

3.12. In view of the aforesaid submissions, it was prayed that the present Appeal, being devoid of merit, be dismissed.

ANALYSIS AND FINDINGS

4. The questions that arise for determination in the present Appeal are:

a) Whether the Respondent was a 'workman' within the meaning of Section 2(s) of the ID Act and, consequently, whether the reference made by the Government of India under the provisions of the ID Act was valid?

b) Whether the Respondent had completed 240 days of continuous service so as to attract the provisions of Section 25F of the ID Act, and whether the learned Tribunal was justified in drawing an adverse inference against the Appellant-Bank for withholding material records that may have reflected the actual number of days worked by the Respondent?

c) Whether the learned Single Judge committed any error in upholding the Award passed by the learned Tribunal so as to warrant interference by this Court in the present Appeal?

5. Before deciding whether the Respondent was a 'workman' within the meaning of Section 2(s) of the ID Act, it is necessary to consider Section 2(s) of the ID Act reproduced below:

> *"Section 2 (s) "workman" means any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person—*
> *(i) who is subject to the Air Force Act, 1950 (45 of 1950), or the Army Act, 1950 (46 of 1950), or the Navy Act, 1957 (62 of 1957); or*
> *(ii) who is employed in the police service or as an officer or other employee of a prison; or*
> *(iii) who is employed mainly in a managerial or administrative capacity; or*
> *(iv) who, being employed in a supervisory capacity, draws wages exceeding 3 [ten thousand rupees] per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of a managerial nature.]"*

6. Section 2(s) of the ID Act does not draw a distinction between a workman who is employed on wages payable at a daily rate and another being paid on a monthly rate or on piece rate or time rate. A person may be a workman, regardless of the manner in which he is remunerated or paid wages. Only those persons who are mentioned in the exclusive part of the definition are not considered as workmen. The workmen who are doing manual or technical work can be classified as (a) permanent (b) probationers (c) *badlis* or substitutes (d) temporary (e) casual and (f) apprentices. The categories are dependent on the nature of work performed by these workmen and not on the manner in which they are paid wages.

7. The determinative test for ascertaining the existence of an employer–employee relationship is whether the workman was engaged in connection with the affairs of the establishment and was subject to its supervision and control. In the present case, the material placed on record indicates that the Respondent performed sweeping and cleaning duties at the Ashok Vihar and Rampura branches of the Appellant-Bank and was paid daily wages by the Appellant-Bank. The duties were discharged within the premises of the Appellant-Bank, for its benefit, and under the supervision and control of its officials.

8. The Respondent has consistently maintained that wages were paid by the Appellant-Bank and that the work was assigned by the Branch Manager. Significantly, the Appellant-Bank itself admitted that an individual had been engaged on an *ad hoc* basis to undertake sweeping, dusting and cleaning work following the retirement of the permanent sweeper and pending the posting of a regular replacement. In these circumstances, the contention of

the Appellant-Bank that no employer–employee relationship existed between the Appellant-Bank and the Respondent cannot be accepted.

9. The duties performed by the Respondent were manual and unskilled in nature and bore a direct nexus to the functioning of the establishment of the Appellant-Bank. The mere absence of a formal letter of appointment, or the fact that the Respondent was engaged on a daily-wage or need-based basis, would not by itself deprive the Respondent of the status of a 'workman' within the meaning of Section 2(s) of the ID Act. The Respondent must, therefore, be held to fall within the ambit of Section 2(s) of the ID Act, and the dispute raised by her squarely constitutes an industrial dispute under the provisions of the ID Act. Accordingly, the contention of the Appellant-Bank that the reference itself was invalid does not merit acceptance.

10. As regards the termination of the Respondent by the Appellant-Bank , it is necessary to take into account Section 25F of the ID Act which provides that:

> *"Section 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 [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.]"*

11. The entitlement to relief under Section 25F of the ID Act is contingent upon the workman having been in continuous service for not less than one year under the employer. The concept of "continuous service" is defined in Section 25B of the ID Act, which provides, *inter alia*, that a workman who is not in uninterrupted service for one year shall nevertheless be deemed to be in continuous service for that period if, during the twelve calendar months immediately preceding the relevant date, the workman has actually worked under the employer for not less than 240 days. The expression "*actually worked under the employer*" is not to be construed in a narrow or pedantic sense so as to include only those days on which physical labour was performed; rather, it comprehends all such days during which the workman remained in the employment of the employer and was paid wages, whether under an express or implied contract of service or by operation of statute, standing orders, or analogous conditions of service.

12. It is not in dispute that, on the Appellant-Bank's own showing, the Respondent worked for 221 days. That computation, however, excludes Sundays and other paid holidays. It is well settled that Sundays and paid holidays are liable to be taken into account while computing continuous service under Section 25B of the ID Act. The learned Tribunal, in the Award, has rightly noted that the admitted period of 221 days, during which the Respondent is stated to have worked at the premises of the Appellant-Bank, did not include the intervening Sundays, which, in law, were required to be counted.

13. According to the Respondent, no documentary material was furnished by the Appellant-Bank from the date of her engagement until the cessation of her services, including any appointment, transfer or termination letters,

from which she could independently establish completion of 240 days of continuous service by leading documentary evidence. The attendance registers in which the Respondent's presence was allegedly marked were admittedly in the custody of the Appellant-Bank. Despite that the said records were neither produced nor proved before the learned Tribunal for the purpose of rebutting the Respondent's assertions.

14. The testimony of the Respondent remained substantially unshaken in cross-examination. Significantly, although the Appellant-Bank was in possession of the relevant attendance registers and other records maintained in the ordinary course concerning the engagement and attendance of persons performing sweeping and cleaning duties, no such records were produced before the learned Tribunal. Nor did the Appellant-Bank offer any satisfactory explanation for withholding the said documents.

15. The principal evidence relied upon by the Appellant-Bank to contend that the Respondent had not completed 240 days of service is the testimony of MW-1. In the facts of the present case, however, where the Respondent specifically asserted continuous service of 240 days and further stated that the Appellant-Bank had not supplied any document relating to her engagement from the date of appointment until the termination of service on 19.04.1999, and where the attendance records were asserted to be in the custody of the Appellant-Bank, the failure to produce such records, without even disputing possession thereof, assumes considerable significance.

16. In the case of daily-wage workers, there may be no formal letter of appointment or termination. In such cases, the workman can ordinarily do no more than call upon the employer to produce the nominal muster rolls, wage registers, attendance registers, and any available letters of appointment or

termination for the relevant period. The withholding of the best available evidence, which would have conclusively reflected the nature and duration of the Respondent's engagement, therefore justified the learned Tribunal in drawing an adverse inference against the Appellant-Bank.

17. In the facts of the present case, the claim of the Respondent is not founded merely upon a self-serving affidavit. Consequently, the reliance placed by the Appellant-Bank upon ***Dhara*** (*supra*) and ***Pratamsingh Narsinh Parmar*** (*supra*) is misplaced. The Respondent entered the witness box and, in discharge of the initial burden resting upon her, specifically deposed that she had continuously worked with the Appellant-Bank for the requisite period and that no documents relating to her engagement had been furnished to her from which completion of 240 days of continuous service could be independently established.

18. The Appellant-Bank neither placed on record any material to show that such documents were ordinarily supplied to daily-wage workers nor disputed that the relevant records pertaining to engagement and attendance were in its possession. Once the Respondent entered the witness box and asserted continuous engagement, the burden legitimately shifted to the Appellant-Bank to produce the best available evidence in its custody to rebut those assertions. Despite adequate opportunity, the Appellant-Bank failed to place the relevant records before the learned Tribunal.

19. It is well settled that a Labour Court or Industrial Tribunal is the final forum on questions of fact, save where its findings are shown to be perverse or unsupported by evidence, in which event alone the High Court may interfere. In the present case, the learned Tribunal arrived at its conclusion based on the evidence adduced by the Parties, including the conduct of the

Appellant-Bank in withholding relevant records despite the dispute concerning the Respondent's continuous service and the duration of her engagement at the concerned branches.

20. Upon scrutiny of the record, the learned Single Judge observed that the Appellant-Bank's witness, namely MW-1, had failed to produce the original vouchers and attendance registers to establish the actual number of days for which the Respondent had worked with the Appellant-Bank and to displace the Respondent's evidence that she had continuously worked for more than 240 days in a year.

21. Accordingly, the learned Single Judge held that the Award had correctly concluded that the documentary evidence in the possession of the Appellant-Bank had not been produced and that the adverse inference drawn against the Appellant-Bank by the learned Tribunal was justified. In these circumstances, no ground for interference is made out.

22. The reliance placed by the Appellant-Bank on ***Jummasha Diwan*** (*supra*) does not advance its case in the peculiar facts of the present matter. In ***Jummasha Diwan*** (*supra*), the Supreme Court observed that where a casual employee is engaged in different establishments, albeit under the same employer, the concept of continuous service may not apply. However, the employee in that case was working under different administrative set-ups, for different projects, and for distinct requirements. The present case stands on a materially different footing, as the work in question was of the same and continuous nature, namely sweeping, dusting, and cleaning duties at the branches of the Appellant-Bank.

23. In view of the foregoing, we are of the considered opinion that the learned Single Judge was justified in declining to interfere with the concurrent findings returned by the learned Tribunal.

24. Accordingly, the present Appeal is dismissed. All pending applications, if any, shall stand disposed of.

TEJAS KARIA, J

DEVENDRA KUMAR UPADHYAYA, CJ

MAY 29, 2026
HK/ap