2026:DHC:2721

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

Reserved on: 12.02.2026
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\+ W.P.(C) 1162/2008

KISHAN SHARMA & ORS. .....Petitioners

Through: Mr. R.K. Ojha, Adv.

versus

MANGT. OF MUNICIPAL CORPORATION OF DELHI

.....Respondent

Through: Mr. Sanjeev Sabharwal, SC with Ms. Shweta Singh, Adv.

CORAM:
HON'BLE MS. JUSTICE SHAIL JAIN

JUDGMENT

SHAIL JAIN, J.

1. The present Petition has been filed under Article 226 of the Constitution of India, *inter alia*, challenging the Award dated 25th October, 2007 (impugned Award), passed by the learned Presiding Officer of the Labour Court No. X, Delhi, in Industrial Dispute (I.D.) No. 2016/1994. By the said Award, the learned Labour Court declined the relief of reinstatement in service with continuity and full back wages sought by the Petitioners, holding that the Petitioners/Workmen were not entitled to any relief since the employer-employee relationship could not be established by the Petitioner/Workman.

2. At the outset, it may be noted that the present Petition pertains to the alleged termination of three workmen, namely, Mr Kishan Sharma, Mr Sunder Lal and Mr Vinod Kumar. The facts giving rise to the present Petition are common to all the aforesaid Petitioners/Workmen.

3. The Petitioners state that they were engaged with the Municipal Corporation of Delhi in its Horticulture Department on the post of Mali/Beldar on a casual, daily-rated/muster-roll basis and had worked for several years prior to the termination of their services. Aggrieved thereby, the Petitioners raised an industrial dispute which resulted in the passing of the impugned Award dated 25th October, 2007, passed by the learned Labour Court. The said Award is under challenge in the present Petition. The Petitioners seek the setting aside of the impugned Award and pray for reinstatement in service with continuity and full back wages.

BRIEF BACKGROUND

4. The brief factual background leading to the filing of the present Petition is set out hereunder.

A. The Petitioners/Workmen state that they were engaged with the Municipal Corporation of Delhi in its Horticulture Department at Roshanara Garden, New Delhi, in the post of Mali/Beldar. The Petitioners were employed as casual, daily rated/muster roll workers and were paid wages as revised from time to time. It is their case that other similarly placed employees performing identical work were regular employees of the Respondent and were receiving salaries in the prescribed pay scale along with

allowances and other service benefits, including earned leave and casual leave, in accordance with the applicable rules. According to the Petitioners, such benefits were not extended to them despite the nature of the duties performed by them being similar.

B. It is further stated in the Petition that appointment letters were not issued to the Petitioners at the time of their engagement. The Petitioners contend that although the work performed by them was of a regular and perennial nature, they continued to be treated as casual, daily rated/muster roll workers for an extended period, without being issued any formal proof of employment.

C. The Petitioners further state that on 26th September, 1990, after having worked for more than four years, their services were terminated by the Respondent without assigning any reason.

D. Subsequently, in September 1993, the Petitioners raised an industrial dispute by filing a demand notice before the Labour-cum-Conciliation Officer, alleging that their termination was illegal and unjustified. It is stated that the notice of the demand was served upon the Respondent; however, the Respondent did not participate in the conciliation proceedings despite acknowledging it. Consequently, the appropriate Government referred the dispute for adjudication to the Labour Court No. IX, Karkardooma Courts, Delhi, *vide* Notification No. F.24(3073)/94-Lab./51233–38 dated 27th October, 1994.

The terms of reference were as follows:

"Whether the services of S/Shri Kishan Sharma, Sunder Lal and Vinod Kumar have been terminated illegally and/or unjustifiably by the management and, if so, to what relief are they entitled and what directions are necessary in this respect?"

The said reference was adjudicated by the Labour Court as I.D. No. 2016/1994.

E. During the course of the proceedings of the aforesaid dispute, the following issues were framed:

"i. Whether there existed an employer–employee relationship between the parties?
ii. Whether the termination of the Petitioners/Workmen was illegal and unjustified?
iii. Relief."

F. The learned Labour Court treated Issue No. 1 as the primary issue and proceeded to decide the same first. Upon consideration of the material on record, the Labour Court held that the Petitioners/Workmen had failed to establish the existence of an employer–employee relationship with the Respondent/ Management. In view of the finding returned on Issue No. 1, the remaining issues, being consequential in nature, were also decided against the Petitioners/Workmen.

G. Accordingly, the learned Labour Court passed the impugned Award dated 25th October, 2007, whereby the claim of the Petitioners/Workmen came to be rejected, and no relief was granted to them.

H. Aggrieved by the said Award, the Petitioners have filed the present writ petition before this Court challenging the legality and correctness of the impugned Award and seeking the following reliefs.

> *a. Pass an appropriate writ/ orders/directions in the nature of certiorari or any other appropriate writ, order or direction in the nature thereof quashing the award dated 25.10.2007 passed by the Learned Presiding Officer, Labour Court No. X, Delhi, with respect to I.D. No. 2016/1994;*
>
> *b. Award the cost of the petition; and*
>
> *c. Pass such other and further order or orders as this Hon'ble Court may deem just and proper in the facts and circumstances of the case.*

5. In addition to the aforesaid, the grounds set out hereunder have been relied upon by the Petitioners in respect to the reliefs claimed by them.

A. Employment records of such nature are ordinarily maintained by the employer. The **non-production of the muster roll records by the Respondent, despite their relevance to the dispute,** was also a factor requiring consideration, particularly in the context of whether any adverse inference ought to have been drawn.

B. In addition, the Respondent took the stand that the muster roll records had been destroyed on the ground that records older than fifteen years are routinely destroyed; however, **no rule or policy governing such destruction was produced before the Labour Court.** The services of the Petitioners had been

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terminated on 26th September, 1990, and the industrial dispute was raised in 1993. In these circumstances, the plea regarding the destruction of the muster roll records, which were material to the adjudication of the dispute, required closer scrutiny.

C. It was also indicated during the proceedings on behalf of the Respondent/Management that the muster roll records of the concerned workmen for the period from 26th June, 1986, to 26th September, 1990, had been seen. The said **statement suggests the existence of muster roll records for the relevant period.**

6. It may also be noted that, both before this Court as well as the learned Labour Court, the consistent stand of the Respondent has been that the Petitioners were never in its employment and that material facts have been suppressed. The Respondent has denied the existence of any employer–employee relationship and has further submitted that the conciliation proceedings failed on account of non-cooperation on the part of the Petitioners. It has also been contended that the industrial dispute raised by the Petitioners was barred by limitation.

ISSUES INVOLVED

7. In light of the facts and grounds noted hereinabove, the questions that arise for consideration before this Court are set out hereunder.

I. Whether the impugned Award dated 25th October, 2007, passed by the learned Presiding Officer, Labour Court No. X, Delhi in I.D. No. 2016/1994 suffers from any illegality,

perversity or material irregularity warranting interference under Article 226 of the Constitution of India.

II. Whether the Petitioners are entitled to any relief in respect of their termination dated 26th September, 1990, and if so, to what extent.

SUBMISSIONS OF THE PARTIES

8. As regards the submissions of the parties, the following contentions were urged on behalf of the Petitioners.

a. The learned Counsel submitted that the Petitioners were engaged with the Municipal Corporation of Delhi in its Horticulture Department at Roshanara Garden, New Delhi, in the post of Mali/Beldar on a casual daily rated/muster roll basis and had rendered services for several years prior to the termination of their services on 26th September, 1990.

b. It was further contended that the Petitioners were discharging duties of a regular and perennial nature similar to those performed by regular employees of the Respondent. During the period of their engagement, their service record remained unblemished, and no allegations of misconduct were ever raised against them.

c. It was further submitted on behalf of the Petitioners that the termination of their services was illegal and unjustified as it was effected without following the procedure prescribed under the Industrial Disputes Act, 1947. No notice of termination was

issued to the Petitioners, nor were they paid wages in lieu of notice prior to the termination of their services.

d. It was further submitted that the termination was arbitrary and violative of Article 14 of the Constitution of India.

e. It was mainly contended by the learned Counsel for the Petitioners that the learned Labour Court failed to appreciate that the Petitioners were engaged on a regular basis and were discharging duties of a regular and perennial nature similar to those performed by regular employees; hence, their services could not have been terminated without following the procedure prescribed under the Industrial Disputes Act, 1947.

f. Lastly, the learned Counsel stated that, considering the Petitioners were appointed on a regular basis, their termination violated Section 25 F of the Industrial Disputes Act, 1947, as the mandatory requirements relating to notice and payment of retrenchment compensation were not complied with by the Respondent, and that the learned Labour Court failed to consider the same while deciding in favour of the Respondent Management and against the Petitioners-Workmen.

9. In contradistinction, the following Submissions were advanced on behalf of the Respondent/Management.

a. The Respondent/Management, at the outset, denied the existence of any employer–employee relationship between the Respondent and the Petitioners.

b. Learned counsel for the Respondent further submitted that the names of the Petitioners did not appear in the seniority list maintained by the Respondent for the relevant period from 1986 to 1991, which, according to the Respondent, indicates that the Petitioners were not engaged as workmen by it.

c. It was also contended that no wage vouchers or other documents evidencing payment of wages were ever signed by the Petitioners.

d. Lastly, it was submitted by the learned Counsel that the learned Labour Court, after considering the pleadings, evidence and material on record, rightly rejected the claims of the Petitioners. According to the Respondent, the impugned Award does not suffer from any illegality or infirmity warranting interference by this Court.

DISCUSSION/ ANALYSIS

10. The Court has heard the learned Counsels for the respective parties and perused the record. At the outset, it is noted that no judgments or precedents were cited on behalf of either party. This Court has, therefore, proceeded to determine the issues arising for consideration with reference to the settled principles of law laid down in a catena of decisions of the High Courts as well as the Hon'ble Supreme Court.

11. Before adverting to the issues framed in the present Petition, it is apposite to observe that the jurisdiction of this Court under Articles 226 and

227 of the Constitution of India, while examining an Award passed by the Labour Court, is supervisory in nature and circumscribed in scope.

12. It is well settled that the High Court does not act as an appellate authority over the findings returned by the Labour Court. Interference is warranted only where the Award suffers from patent illegality, perversity, jurisdictional error, or where material evidence has been ignored.

13. The Supreme Court in the judgment of ***Syed Yakoob v. K.S. Radhakrishnan, 1964 AIR 477,*** clarified the aforesaid position. The relevant part of the judgment is extracted hereunder.

> ***"****The question about the limits of the jurisdiction of High Courts in issuing a writ of certiorari under Art. 226 has been frequently considered by this Court and the true legal position in that behalf is no longer in doubt. A writ of certiorari can be issued for correcting errors of jurisdiction committed by inferior courts or tribunals; these are cases where orders are passed by inferior courts or tribunals without jurisdiction, or in excess of it, or as a result of failure to exercise jurisdictions. A writ can similarly be issued where in exercise of jurisdiction conferred on it, the Court or Tribunal acts illegally or improperly, as for instance, it decides a question without giving an opportunity to be heard to the party affected by the order, or where the procedure adopted in dealing with the dispute is opposed to principles of natural justice. There is, however, no doubt that the jurisdiction to issue a writ of certiorari is a supervisory jurisdiction and the Court exercising it is not entitled to act as an appellate Court. This limitation necessarily means that findings of fact reached by the inferior Court or Tribunal as a result of the appreciation of evidence cannot be reopened or questioned in writ proceedings. An error of law which is apparent on the face of the record can be corrected by a writ, but not an error of fact, however grave it may appear to be. In regard to a finding of fact recorded by the Tribunal, a writ of certiorari can be issued if it is shown that in recording the said*

finding, the. Tribunal had. erroneously refused to admit admissible and material evidence, or had erroneously admitted inadmissible evidence which has influenced the impugned finding. Similarly, if a finding of fact is based on no evidence, that would be regarded as an error of law which can be corrected by a writ of certiorari. In dealing with this category of cases, however, we must always bear in mind that a finding of fact recorded by the Tribunal cannot be challenged in proceedings for a writ of certiorari on the ground that the relevant and material evidence adduced before the Tribunal was' insufficient or inadequate to sustain the impugned finding. The adequacy or sufficiency of evidence led on a point and the inference of fact to be drawn from the said finding are within the exclusive jurisdiction of the Tribunal, and the said points cannot be agitated before a writ court. It is within these limits that the jurisdiction conferred on the High Courts under Art. 226 to issue a writ of certiorari can be legitimately exercised (vide Hari Vishnu Kamath v. Syed Ahmed Ishaque(1), Nagendra Nath Bora v. The Commissioner of Hills Division and Appeals, Assam(2), and Kaushalya Devi v. Bachittar Singh(3)."

14. Therefore, it is trite that interference is justified only where the Award is vitiated by patent illegality, perversity, or an error apparent on the face of the record. The present petition does not call upon this Court to re-appreciate the evidence or re-evaluate findings of fact, but is confined to scrutinising the legality and correctness of the relief granted by the learned Labour Court. Thus, where the Labour Court fails to consider relevant evidence or misapplies settled principles governing industrial disputes, interference by this Court would be justified.

15. In that backdrop, in the present case, it becomes necessary to consider whether the findings returned by the learned Labour Court about the existence of the employee-employer relationship, the alleged violation of

Section 25F of the Industrial Disputes Act, 1947, and the relief to the Petitioners/Workmen, suffer from any perversity or manifest illegality to warrant interference in the exercise of this Court's supervisory jurisdiction.

16. The central dispute in the present case concerns the existence of an employer–employee relationship between the Petitioners and the Respondent/Management.

17. The Petitioners contend that they were engaged as Mali/Beldar in the Horticulture Department of the Municipal Corporation of Delhi and had worked for several years prior to the termination of their services on 26th September, 1990. The Respondent, however, denies the existence of such a relationship and relies upon the absence of the Petitioners' names in the seniority list for the relevant period.

18. The law relating to proof of an employer–employee relationship is well settled. The initial burden to establish the existence of such a relationship lies upon the workman. Only upon discharge of this foundational burden does the onus shift to the management to rebut the claim.

19. Nonetheless, the evidentiary burden cannot be considered in isolation. It has been consistently held that once a workman asserts employment and calls upon the employer to produce relevant records, the burden shifts to the employer who is in possession of such records.

20. In the present case, the Petitioners claim to have worked between 1986 and 1990 and have relied upon the muster roll records stated to have been maintained by the Respondent for the period from 26th June, 1986 to

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26th September, 1990. Further, the three workmen in the present Petition have deposed in support of one another, stating that each of them had worked with the Respondent for a period of approximately four years.

21. The Respondent, along with denying the existence of such a relationship, has taken the stand that the muster roll records were destroyed after fifteen years. Additionally, during the proceedings, it was indicated on behalf of the Respondent that muster roll records for the relevant period had been seen but could not subsequently be traced.

22. In general, it is safe to assume that employment records such as muster rolls, wage registers and attendance records are ordinarily maintained by the employer. Where such records are not produced despite being called for, the Court is entitled to draw an adverse inference.

23. Considering the above circumstances, the non-production of muster roll records assumes significance, particularly when such records are within the exclusive possession of the Respondent.

24. In the circumstances of the present case, this Court takes note of the fact that no rule or policy governing such destruction of records as asserted by the Respondent Management has been produced before this Court or the learned Labour Court. Moreover, the industrial dispute had already been raised in 1994, and the records in question related directly to the dispute.

25. Further, the muster roll records for the relevant period were neither produced nor satisfactorily explained despite summons by the Labour Court.

26. At this stage, this Court finds it appropriate to mention the stance of the Hon'ble Apex Court in the case of ***R.M. Yellatti v. Assistant Executive***

Engineer, 2006 (1) SCC 106. The relevant part of the judgment of the Hon'ble Apex Court is extracted hereunder.

> *"15. A court of law even in a case where provisions of the Evidence Act apply, may presume or may not presume that if a party despite possession of the best evidence had not produced the same, it would have gone against his contentions. The matter, however, would be different where despite direction by a court the evidence is withheld. Presumption as to adverse inference for non-production of evidence is always optional and one of the factors which is required to be taken into consideration is the background of facts involved in the lis. The presumption, thus, is not obligatory because notwithstanding the intentional non-production, other circumstances may exist upon which such intentional non-production may be found to be justifiable on some reasonable grounds."*
>
> *(emphasis applied)*

27. In the present case, the failure of the Respondent to produce the muster roll records, which were material for determining the Petitioners' employment during the relevant period, and were the best evidence, warranted such an inference.

28. The learned Labour Court, in the present case, appears to have accepted the Respondent's explanation without examining whether the Respondent had discharged its evidentiary burden. In the present circumstances, the Labour Court ought to have considered whether the non-production and destruction of such material records warranted drawing an adverse inference against the Respondent/Management after the Petitioner duly discharged its evidentiary burden.

29. In another case titled ***"Gopal, Krishnaji Ketkar Vs Mahomed Haji Latif & Ors., 1968 AIR 1413",*** the Hon'ble Supreme Court emphasised that even if the burden of proof does not lie on a particular party, the court may draw an adverse inference if such a party withholds important documents in their possession which can throw light on the facts in issue. The relevant part of the judgment is extracted hereunder.

> *"Mr. Gokhale, however, argued that it was no part of the appellant's duty to produce the accounts unless he was called upon to do so and the onus was upon the respondents to prove the case and to show that the Dargah was the owner of plot No. 134. We are unable to accept this argument as correct. Even if the burden of proof does not lie on a party the Court may draw an adverse inference if he withholds important documents in his possession which can throw light on the facts at issue. It is not, in our opinion, a sound practice for those desiring to rely upon a certain state of facts to withhold from the Court the best evidence which is in their possession which could throw light upon the issues in controversy and to rely upon the abstract doctrine of onus of proof."*
>
> *(emphasis supplied)*

30. Furthermore, a Coordinate Bench of this Court has dealt with a similar issue as is herein in the judgment of the case titled ***"M/s Punjab Steel Works (Through its Partner) vs. Shambhu Saran Singh [W.P.(C) 16721/2024, decided on 11th December, 2025].*** The relevant part of the judgment is extracted hereunder.

> *"10. [....] It is further evident that the management has failed to produce any relevant statutory employment records, including the muster rolls, wage registers, attendance registers or PF/ESI*

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records before the Labour Inspector on 19.12.2012, despite being legally obliged to furnish the same. [....]

12. Before I proceed, at this stage, it is necessary to recall the well -settled legal position regarding the burden and onus of proof in cases alleging illegal termination. The initial burden is upon the workman/claimant to prove the engagement and the duration of service. Once, such foundational evidence is laid, the onus shifts to the employer/management, who being the custodian of all the statutory documents, has to produce the same."

(emphasis supplied)

31. In the present case, the Labour Court proceeded on the premise that the Petitioners failed to establish their employment, and consequently failed to adequately consider the effect of non-production of material employment records by the Respondent. The explanation furnished by the Respondent regarding the destruction of records was accepted without scrutiny and without examining whether such records were required to be preserved in view of the pending industrial dispute.

32. Moreover, the relevant records were admittedly in the custody of the Respondent. The Petitioners could not reasonably be expected to produce such records. The Labour Court, however, failed to draw an adverse inference despite the non-production of material documents. The approach of the Labour Court, therefore, suffers from material irregularity and hence is liable to be set aside.

33. Moving on, the Petitioners have also contended that their termination was effected without compliance with the mandatory provisions of the Industrial Disputes Act, particularly Section 25F of the Industrial Disputes

Act, 1947. The Petitioners have asserted that no notice or wages in lieu of notice were provided, and no retrenchment compensation was paid at the time of termination.

34. Section 25F of the Industrial Disputes Act, 1947, lays down mandatory conditions that an employer must fulfil before retrenching a workman who has completed continuous service of not less than one year in an industrial establishment. In essence, it is established that non-compliance with the mandatory conditions prescribed under Section 25F renders the termination illegal. The provision reads as follows-

> *"**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 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.*

35. Section 25B, on the other hand, defines the concept of "continuous service", which is a jurisdictional precondition for the applicability of Section 25F, and reads as follows.

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

(1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;

(2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer—

(a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than—

(i) one hundred and ninety days in the case of a workman employed below ground in a mine; and

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

(b) for a period of six months, if the workman, during a period of six calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than—

(i) ninety-five days, in the case of a workman employed below ground in a mine; and

(ii) one hundred and twenty days, in any other case.

Explanation.—For the purposes of clause (2), the number of days on which a workman has actually worked under an employer shall include the days on which—

(i) he has been laid-off under an agreement or as permitted by standing orders made under the Industrial Employment (Standing Orders) Act, 1946 (20 of 1946), or under this Act

or under any other law applicable to the industrial establishment;

(ii) he has been on leave with full wages, earned in the previous years;

(iii) he has been absent due to temporary disablement caused by accident arising out of and in the course of his employment; and

(iv) in the case of a female, she has been on maternity leave; so, however, that the total period of such maternity leave does not exceed twelve weeks.]"

36. That being the scenario, a workman is in continuous service if his employment is uninterrupted, notwithstanding breaks due to sickness, authorised leave, accident, non-illegal strike, lock-out or cessation of work not attributable to his fault. Where continuity in fact is not proved, the provision creates a deeming fiction by treating a workman as having completed one year of continuous service if he has actually worked for at least 240 days, or 190 days in the case of underground mine workers, during the preceding twelve months. For this purpose, lawful lay-off, leave with full wages, temporary disablement due to employment injury, and prescribed maternity leave are included.

37. It must be acknowledged that in the present context, Sections 25B and 25F of the Industrial Disputes Act, 1947, are required to be read conjointly. By virtue of Section 25B (2), even in cases where service is not uninterrupted, a workman who has rendered service for 240 days in the preceding twelve calendar months is deemed to have completed one year of continuous service. Once the requirement of continuous service, as

contemplated under Section 25B, stands satisfied, the employer is mandatorily required to comply with the conditions stipulated under Section 25F prior to effecting retrenchment. The completion of 240 days, therefore, attracts the statutory protection under Section 25F, and any retrenchment in violation thereof would be rendered illegal and unsustainable in law.

38. Therefore, to avail the protection under Section 25F of the Industrial Disputes Act, a workman is required to establish that he has completed 240 days of continuous service in the preceding twelve months, which constitutes a mandatory evidentiary requirement. In matters of this nature, the burden of proof initially lies upon the workman.

39. At this point, the judgment of the Hon'ble Supreme Court in the case of ***Mohd. Ali vs. State of H.P. & Ors., (2018) 15 SCC 641,*** appears to be material, and the relevant part of the judgment is extracted hereunder.

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

40. That being the case, it is safe to say that the determination of whether the Petitioners herein had completed the requisite period of service under Section 25B in the present case, and whether the provisions of Section 25F were attracted, depends upon the establishment of the employer–employee relationship and the period of employment.

41. In that aspect, as in this case, once the adverse inference is drawn against the Respondent for non-production of the muster roll records, as is done in the present Petition, the Petitioners' assertion regarding their engagement between 1986 and 1990 cannot be brushed aside. **The finding of the Labour Court that no employer–employee relationship existed is thus perverse and liable to be set aside.**

42. In view of the foregoing discussion, this Court finds that the decision in the impugned Award dated 25th October, 2007, passed by the learned Presiding Officer, Labour Court No. X, Delhi, in I.D. No. 2016/1994, as regards the existence of an employer–employee relationship, cannot be sustained. The learned Labour Court failed to consider the effect of non-production of muster roll records, which were in the exclusive possession of the Respondent/Management. The explanation regarding the destruction of records was accepted without scrutiny and without examining whether an adverse inference ought to have been drawn. The Petitioners, being casual daily-rated workers, could not reasonably be expected to produce documentary records maintained by the employer. It is reiterated that the approach adopted by the Labour Court, therefore, suffers from material irregularity.

43. Now, on the point of burden of proof as to the completion of 240 days of continuous work in a year, the Hon'ble Supreme Court, while taking note of the case of ***Manager, Reserve Bank of India, Bangalore vs. S. Mani, (2005) 5 SCC 100,*** in the judgment of "***R.M. Yellatti vs. The Assistant Executive Engineer (supra)",*** has clarified the aforesaid position. The relevant part of the judgment is extracted hereunder.

> *"Now coming to the question of burden of proof as to the completion of 240 days of continuous work in a year, the law is well settled. In the case of Manager, Reserve Bank of India, Bangalore v. S. Mani reported in (2005) 5 SCC 100, the workmen raised a contention of rendering continuous service between April, 1980 to December, 1982 in their pleadings and in their representations. They merely contended in their affidavits that they had worked for 240 days. The tribunal based its decision on the management not producing attendance register. In view of the affidavits filed by the workmen, the tribunal held that the burden on the workmen to prove 240 days service stood discharged. In that matter, a three-judge bench of this court held that pleadings did not constitute a substitute for proof and that the affidavits contained self-serving statements; that no workman took an oath to state that they had worked for 240 days; that no document in support of the said plea was ever produced and, therefore, this court took the view that the workmen had failed to discharge the burden on them of proving that they had worked for 240 days. According to the said judgment, only by reason of non-response to the complaints filed by the workmen, it cannot be said that the workmen had proved that they had worked for 240 days. In that case, the workmen had not called upon the management to produce relevant documents. The court observed that the initial burden of establishing the factum of continuous work for 240 days in a year was on the workmen. In the circumstances, this court set aside the award of the industrial tribunal ordering reinstatement."*
>
> *(emphasis supplied)*

*44. Furthermore, in the case of **"R.M. Yellatti vs. The Assistant Executive Engineer (supra)"** itself, the Hon'ble Apex Court has also considered the decision in **"Municipal Corporation, Faridabad vs Siri Niwas, (2004) 8 SCC 195**", wherein the concrete principles in respect to the concept of 240 days by the workman are laid out. The relevant paragraph is extracted hereunder.*

> *"In the case of Municipal Corporation, Faridabad v. Siri Niwas reported in (2004) 8 SCC 195, the employee had worked from 5.8.1994 to 31.12.1994 as a tube-well operator. He alleged that he had further worked from 1.1.1995 to 16.5.1995. His services were terminated on 17.5.1995 whereupon an industrial dispute was raised. The case of the employee before the tribunal was that he had completed working for 240 days in a year; the purported order of retrenchment was illegal as the conditions precedent to section 25-F of Industrial Dispute Act were not complied with. On the other hand, the management contended that the employee had worked for 136 days during the preceding 12 months on daily wages. Upon considering all the material placed on record by the parties to the dispute, the tribunal came to the conclusion that the total number of working days put in by the employee were 184 days and thus he, having not completed 240 days of working in a year, was not entitled to any relief. The tribunal noticed that neither the management nor the workman cared to produce the muster roll w.e.f. August, 1994; that the employee did not summon muster roll although the management had failed to produce them. Aggrieved by the decision of the tribunal, the employee filed a writ petition before the High Court which took the view that since the management did not produce the relevant documents before the industrial tribunal, an adverse inference should be drawn against it as it was in possession of best evidence and thus, it was not necessary for the employee to call upon the management to do so. The High Court observed that the burden of proof may not be on the management but in case of non-production of documents, an adverse inference could be drawn against the management. Only on that basis, the writ petition was allowed holding that the*

employee had worked for 240 days. Overruling the decision of the High Court, this court found on facts of that case that the employee had not adduced any evidence before the court in support of his contention of having complied with the requirement of section 25-B of Industrial Disputes Act."

(emphasis supplied)

45. This Court also finds support from the judgment of the Hon'ble High Court of Madhya Pradesh at Jabalpur, in the case of ***Goverdhan vs Chief Municipal Officer, (Misc. Petition No. 6329 of 2022, pronounced on 17th October 2025).*** The relevant part of the judgment is extracted hereunder.

"5. Considering the argument advanced by learned counsel for the petitioner, on perusal of impugned award so also the record of Labour Court, I am of the opinion that the trial Court has committed illegality while shifting burden upon the claimant/petitioner to prove that he continuously worked in a calendar year for 240 days. As per settled legal position, though initial burden lies upon the claimant/workman to prove his claim, but the movement the claimant/workman deposed about completion of 240 days of his/her service in the preceding year, then it is the duty of employer to rebut the oral evidence of the claimant/workman by producing cogent documentary evidence and if it is not done by the employer then adverse inference can be drawn against them. [....]

7. In view of the aforesaid facts and circumstances of the case and the settled legal preposition, it is proper to hold that initial burden which was upon the workman to prove that he worked continuously for 240 days had been discharged by him and there was material available on record to show the same, but when the burden shifted upon the employer to rebut the stand of the workman, then they failed to do so and, therefore, under such circumstances, an adverse inference is drawn against them. Under the existing scenario, I have no hesitation to say that the order of petitioner's termination was passed in violation of provision of

Section 25(f) of Act, 1947. Furthermore, I have no iota of doubt to say that the award passed by the Labour Court on 06.08.2022 (Annexure-P/1) is not sustainable in the eyes of law because it was based upon the incorrect analogy and settled legal position and, therefore, it is hereby set aside. Thus, the respondent is directed to reinstate the petitioner in service with 50% back-wages and also to pay consequential benefits to him accordingly."

(emphasis supplied)

46. It is well settled that for a workman to successfully assail termination under the Industrial Disputes Act, 1947, two foundational requirements must be satisfied. First, the existence of an employer–employee relationship must be established. Second, the workman must demonstrate that he had completed continuous service within the meaning of Section 25B of the Industrial Disputes Act, 1947, i.e., that he had worked for at least 240 days in the twelve calendar months preceding the termination. Only upon satisfaction of these conditions does the protection under Section 25F of the Industrial Disputes Act, 1947, become applicable. In the absence of compliance with these statutory requirements, a plea of illegal retrenchment cannot be sustained.

47. The judgment of the Hon'ble Apex Court in ***Mohal Lal vs. Management of M/s Bharat Electronics Ltd., (1981) 3 SCC 225,*** reaffirms the afore stated position.

"Before a workman can complain of retrenchment being not in consonance with section 25F, he has to show that he has been in continuous service for not less than one year under that employer who has retrenched him from service. Section 25B is the dictionary clause for the expression 'continuous'."

(emphasis supplied)

48. While the first requirement is satisfied in the present case, the position regarding the completion of 240 days of continuous service remains unclear. The Petitioners have asserted that they worked with the Respondent for approximately four years; however, neither in the statement of claim before the learned Labour Court nor in the pleadings before this Court have the Petitioners specifically averred that they had completed 240 days of service in the twelve months preceding the termination. The pleadings are conspicuously silent on this essential statutory requirement.

49. This Court has also examined the evidence available on record, including the Evidence Affidavits of the Petitioners and their cross-examinations forming part of the Labour Court Record. Even upon such examination, no material is forthcoming to indicate that the Petitioners had completed 240 days of service in the preceding year before the termination. The Petitioners have deposed regarding their engagement and the nature of duties performed; however, there is no categorical assertion or proof relating to completion of 240 days in any relevant twelve-month period.

50. It is true that in cases involving daily-rated workers, strict documentary proof may not always be available. However, even in such cases, a foundational pleading or oral assertion regarding completion of 240 days is required, upon which the burden may shift to the employer. In the present case, the Petitioners have not even laid such foundational facts. In the absence of any pleading or evidence to this effect, this Court cannot presume completion of 240 days of service.

51. It is trite that the statutory protection under Section 25F of the Industrial Disputes Act, 1947, is attracted only when the workman has completed one year of continuous service as defined under Section 25B. In the absence of proof regarding completion of 240 days of service in the preceding year, the Petitioners cannot claim the benefit of Section 25F. Consequently, although the termination may appear harsh, it cannot be held illegal on the grounds of non-compliance with Section 25F.

52. In this context, it is settled that a Court exercising jurisdiction under Article 226 of the Constitution of India cannot assume facts which remain unproven. The Court cannot substitute proof with presumption nor grant relief on equitable considerations contrary to the scheme of the Industrial Disputes Act, 1947. The burden to establish completion of 240 days lies upon the workman.

53. In the present case, although this Court sympathises with the Petitioners, particularly in view of their engagement as casual daily-rated workers and the lapse of considerable time, relief cannot be granted in the absence of satisfaction of the statutory requirements.

54. Therefore, the impugned Award is set aside to the limited extent of the findings returned with respect to the existence of an employer–employee relationship, in terms of the aforesaid discussion. However, in view of the failure of the Petitioners to establish completion of continuous service within the meaning of Section 25B of the Industrial Disputes Act, 1947, they are not entitled to the protection under Section 25F. In the absence of such proof, the termination dated 26th September, 1990, cannot be held illegal for non-compliance with Section 25F of the Industrial Disputes Act, 1947.

Consequently, the ultimate conclusion rejecting the claim of the Petitioners does not warrant interference.

55. The present Writ Petition is accordingly dismissed. There shall be no order as to costs.

SHAIL JAIN
JUDGE

APRIL 01, 2026
MM