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

% *Reserved on : 14th July 2025*
Pronounced on: 31st July 2025

\+ **W.P.(C) 12070/2016 & CM APPL. 47710/2016**

CENTRAL BOARD OF SECONDARY EDUCATION

.....Petitioner

Through: Ms. Manisha Singh, Advocate

versus

RAMESH KUMAR .....Respondent

Through: Mr. Aayush Agarwala, Mr. Anuj P. Agarwala, Mr. Prakash Jha and Mr. Vipul Singh, Advocates

CORAM:
HON'BLE MR. JUSTICE ANISH DAYAL

JUDGMENT

1. This petition has been filed for setting aside Award dated 29th March 2016, passed by the Labour Court, Karkardooma, in *Industrial Disputes Case No. 19/2014.*

2. The impugned award holds that the retrenchment/ termination of services of the respondent/ workman was illegal and against the principles of natural justice. The retrenchment/termination of the respondent/workman was held to be violative of Section(s) 25F and 25G of the Industrial Disputes Act, 1947 (hereinafter referred to as the '**ID Act**').

3. The respondent/workman was granted the relief of reinstatement and back wages along with all consequential benefits, from the time of termination of service i.e. May 2005.

Submissions on behalf of petitioner

4. *Ms. Manisha Singh*, counsel for petitioner, in support of the challenge to the impugned award, submitted as under:

4.1 Respondent/workman was hired as a daily wager, recurrently, for various intervals of time, between the years 1996 to 2005.

4.2 For a cumulative span of ten (10*)* years, respondent/workman rendered his services for mere *373 days*.

4.3 Respondent/workman did not serve for even a *single* day, for the year(s) *1997, 2000, 2002, 2003* and *2004*.

4.4 Respondent/ workman did not render 240 days of continuous service in any calendar year, which is a statutory/ mandatory requirement under Section 25F ID Act.

4.5 This Court in W.P.(C) No.2292/1999 *vide* judgment dated 12th February 2004, directed the petitioner herein to publish a *seniority list* and invite objections to the same, by displaying the list on the notice board of the Head Office, also, to consider and dispose of objections, if any.

4.6 Accordingly, objections were invited to the seniority list and all daily wagers (*including the respondent/workman*) were required to submit their objections by 31st July 2004.

4.7 Respondent/workman failed to submit any objection during the stipulated time period. The list was finalized and displayed *vide* Office Order dated 02nd March 2005.

4.8 Respondent/workman reported for duty on 3rd March 2005; his contact details, as published in the final seniority list, stood undisputed.

4.9 Various call letters were addressed to the respondent/ workman in the year(s) 2006, 2007 and 2008, however, the respondent/workman failed to report to the call of duty.

4.10 On 16.02.2009, the petitioner/Board entered into an agreement with the *Workers Union*. It was agreed that as per the demands of the Workers Union, the names of the daily wagers, who had not reported for work, for the years 2006, 2007 and 2008, would be deleted from the seniority list.

4.11 Consequently, respondent's/workman's name was deleted from the seniority list.

4.12 Respondent/workman approached the petitioner/Board on 21st February 2012, to rejoin duty and for his failure to attend to be excepted on humanitarian grounds. It is pertinent to note that the respondent/ workman arose from slumber after a lapse of seven (7) years, conveniently so, upon learning about the regular selection process being undertaken by the petitioner/ Board, subject to passing the *Trade Test*.

4.13 However, respondent's/workman's name was no longer in the seniority list. Thus, the request made by the respondent/workman was not acceptable.

4.14 It is submitted that there was no parity between daily wagers and workers who were regularized, post the latter, qualifying the *Trade Test*.

4.15 The striking off of the respondent's/ workman's name from the seniority list is a result of his own acquiescence. His lament regarding non-communication of the same, is ill-founded and unmerited.

4.16 It is evident that *but for* regularization, respondent/workman was not interested in working with petitioner/ Board and only wanted to

unjustly enrich himself, especially when he had not been classified as a daily wager for *seven* (*7*) *long years*.

4.17 Pursuant to complaint filed before the Labour Court, written statement was filed and issues were framed on 3rd June 2014. However, since, the matter was consistently being renotified for want of a Bench, petitioner's counsel was unable to keep track of dates.

4.18 Counsel for respondent omitted to apprise the petitioner that they had been proceeded *ex-parte*. Resultantly, petitioner could neither *lead evidence* nor *cross-examine* the respondent/workman. Thus, the impugned award was passed *ex-parte*, on 29th March 2016.

4.19 Respondent/workman did not lead any evidence to discharge his onus to prove two-forty (240) days of continuous service having been rendered by him (*except a self-serving affidavit*). The respondent/ workman was required to prove his claim, even in an *ex-parte* award. The onus to prove such service lay on the respondent/workman.

4.20 Respondent's/workman's plea for filing fresh documents is inadmissible considering the omission to file the same before Labour Court.

4.21 Furthermore, the order dated 15th November 2000 passed in W.P.(C) 2292/1999, proves that the respondent's/workman's employment was subject to need.

4.22 Till now, more than *Rs.12 lakhs* have been paid by the petitioner/Board under Section 17B of ID Act.

4.23 Where termination of workman is found to be illegal because of procedural defects, relief of reinstatement cannot be granted in a mechanical manner. At best, monetary compensation could be given. In

this regard, reliance has been placed on ***BSNL v. Bhurumal***[1], ***Jaipur Development Authority v. Ramsahai***[2], ***Management of LRS Institute v. Devender Kumar***[3].

4.24 Reliance was placed on the decision in ***District Rural Development Agency v. Mukeshkumar Gandalal Jadav***[4], where the Supreme Court, while granting compensation in lieu of reinstatement, stated that mere want of notice under the ID Act, would not entitle the terminated workman to seek reinstatement with back-wages.

4.25 Respondent's/workman's claim fatally suffers from delay as he approached the Labour Court, highly belatedly, i.e. seven (7) years after disengagement, and thus, should not be entertained. In this context, reliance is placed on ***DTC v. Mohar Singh***[5].

4.26 Respondent/workman has failed to produce any evidence on record to discharge his onus and substantiate his claim regarding having rendered service for two-forty (240) days in a calendar year. Thus, the action of termination cannot be termed as a case of retrenchment.

4.27 Reliance was placed on the impugned award to advert to the seniority list which notes the name of respondent/workman to be at *serial no. eighty-five* (*85*) and records that the respondent/workman worked from *15th November 1996 to 26th December 1996* and *29th December 1996 to 08th February 1997.* However, there is no mention of him being engaged for work, subsequently.

4.28 The Labour Court erroneously shifted the onus to prove that the respondent/workman was not a daily wager and had worked for over

[1] (2014) 7 SCC 177
[2] (2006) 11 SCC 684
[3] 2013 SCC OnLine Del 116
[4] 2023 SCC OnLine SC 1856
[5] 2015 SCC OnLine Del 11874

two-forty (240) days in a calendar year, with the petitioner/Board. It is a settled legal position that the onus to prove the factum of having rendered service of two-forty (240) days in a calendar year, lies on the workman. In this regard, the decision in ***Mohar Singh*** (*supra*) was adverted to.

4.29 Despite having observed that entitlement to reinstatement with back wages does not arise automatically and respondent/ workman may be awarded monetary compensation in *lieu* of the same (*considering the facts and circumstances of the case*), the Labour Court proceeded, erroneously, to grant relief of reinstatement along with all consequential benefits and back wages, to the respondent/workman.

4.30 Non-appearance of the petitioner/Board before the Labour Court was *bona fide.* The petitioner/ Board had valid/ substantial objections on merits/ law to the claim of the respondent/ workman, which could not be considered, due to the *ex-parte* nature of the proceedings.

Submissions on behalf of respondent

5. *Mr. Ayush Agarwala*, counsel for respondent made the following submissions:

5.1 There is no *perversity* in the impugned award and therefore interference by this Court under Article 227 of the Constitution, is not warranted.

5.2 There are four (4) chief findings in the impugned award, ***firstly***, petitioner/Board falls under the definition of *Industry* as per the ID Act (*undisputed*); ***secondly***, respondent/workman fulfilled the statutory requirement of having rendered service for two-forty (240) days in a calendar year (*finding in favour of respondent / workman*; *application to*

recall ex-parte judgment was dismissed); ***thirdly***, the respondent's address was wrongly mentioned in *call letters*, and therefore, his termination was illegal (*finding of fact not* '*specifically*' *disputed by the petitioner*); ***fourthly***, respondent/ workman is entitled to relief as granted under the impugned award, as the termination was bad in law.

5.3 On 15th November 1996, the respondent/ workman was appointed as a seasonal daily wager in relation to exams being conducted by the petitioner/ Board.

5.4 W.P.(C) 2292/1999 was filed by such workers (*including the respondent/ workman*), for regularisation in the year 1999. *Vide* order dated 19th April 1999, this Court directed that there shall be an injunction against disengaging daily wagers workers from casual employment.

5.5 The Court, *prima facie,* found merit in the submission that petitioner/Board was misusing casual workers and noted petitioner's/ Board's submission that if a workman is engaged for eighty-nine (89) days and the work stretches beyond said tenure, he cannot/ will not be replaced; his services are deemed to have been extended.

5.6 This Court disposed of the aforesaid Writ Petition *vide* order dated 12th February 2004, refusing regularisation of casual workers, however, directing the petitioner/board for maintaining *a seniority list* for eventual absorption of casual workers in regular workforce.

5.7 Respondent/workman worked for the petitioner/Board from *3rd March 2005* till *30th June 2005*, said interval of time constitutes more than eighty-nine (89) days. Call letters were being delivered to the wrong address for a period of three (3) years i.e. between 2005 till 2008.

5.8 A letter seeking correction of address of the respondent/ workman was sent on 5th January 2007.

5.9 Respondent/workman was dropped from the seniority list without any show cause notice or enquiry. Respondent/workman addressed a communication to the petitioner, seeking reinstatement, on 21st February 2012.

5.10 Thereafter, the respondent/workman filed a complaint before the Labour Court and the petitioner/Board failed to participate post January 2016. Consequently, the petitioner/Board was proceeded *ex-parte* and an application under Order IX Rule 13 of the Code of Civil Procedure, 1908, filed by them, was dismissed.

5.11 The nature of work was such that the workman had to be kept in '*waiting'* and if they did not report when the need arose, their services were terminated.

5.12 Respondent/ workman '*kept himself in wait*' yet, was eventually terminated.

5.13 As per order dated 15th November 2000 passed in W.P.(C) 2292/1999, the Court had directed that the services of respondent/workman shall not be substituted by any new worker, junior to respondents therein, as a daily wager, showing that there was an element of *continuance of service* recognized by the Court.

5.14 In the communication dated 7th June 2013 issued by the petitioner/Board, it is stated that the respondent/workman had worked with the petitioner, till 2005; also, that his name was deleted upon him not reporting for duty for three (3) years.

5.15 As regards delay, no communication was served to the respondent/workman. He lodged a complaint after he saw his colleagues getting regularized.

5.16 As regards the onus to prove two-forty (240) days of service having been rendered in a calendar year, since the order was passed in favour of respondent/ workman, *ex-parte*, the said issue does not arise.

5.17 Regarding the relief of reinstatement having been granted to the respondent/ workman *vide* the impugned award, counsel for respondent relied upon ***Raj Kumar v. Director of Education & Ors***[6].

Analysis

6. The impugned award has been challenged essentially on the basis that respondent/workman did not render service for more than two-forty (240) days in a calendar year and during the consecutive span of ten (10) years, he rendered service for merely three seventy-three (373) days.

7. Petitioner/Board contended that respondent/workman had not rendered service for a single day during the years 1997, 2000, 2002, 2003 and 2004. Pursuant to order dated 12th February 2004 passed in W.P. (C). 2292/1999, the petitioner/Board was directed to publish a *seniority list*. The said list was published and objections were invited on 31st July 2004, however, respondent/workman did not to submit any objections. The list was finalised and displayed on the notice board on 2nd March 2005.

8. Petitioner/Board stated that various call letters were issued to respondent/workman in the years 2006, 2007 and 2008, however, upon

[6] (2016) 6 SCC 541

his failure to report for duty, his name was struck off from the *seniority list*.

9. Respondent's/workman's primarily contends that he has a vested right (*by virtue of being a part of the seniority list*), to have been informed about the *trade test* and steps taken towards regularization of its workmen by the petitioner/ Board.

10. Respondent/workman asserts that he had already communicated his correct address on 5th January 2007, to the petitioner/ Board, and therefore, there is no reason for him to not receive communications regarding the regularization procedure, at the correct address.

11. Counsel for the respondent/ workmen has alleged before this Court that even after having received the aforesaid request for address correction, the petitioner's/ Board's action of continuing to send communications to the incorrect address regarding *regularization* and utilising the same as ground for the present petition, is a ruse to avoid regularizing the respondent/ workman.

12. Petitioner/ Board was proceeded *ex-parte* and their application for recall of the *ex-parte* judgment was dismissed on 11th August 2016.

13. Accordingly, determination of facts by the Labour Court would stand uncontested. Thus, at this juncture, it would be apposite to advert to the decision in ***Dinesh Kumar v. Central Public Works Department***[7], wherein, a Division Bench of this Court referred to various decisions of the Apex Court to demarcate the jurisdiction/ scope of interference by this Court, in its exercise of powers under Articles 226 of the Constitution of India, 1950, against an award passed by an Industrial

[7] 2023 SCC OnLine Del 6518

Tribunal. In this regard, the Court observed as under:

> "*11. The Hon'ble Supreme Court in paragraph 17 of the judgment in Indian Overseas Bank v. I.O.B. Staff Canteen Workers' Union, (2000) 4 SCC 245, has held as under:*
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> > *"17. The learned Single Judge seems to have undertaken an exercise, impermissible for him in exercising writ jurisdiction, by liberally reappreciating the evidence and drawing conclusions of his own on pure questions of fact, unmindful, though aware fully, that he is not exercising any appellate jurisdiction over the awards passed by a tribunal, presided over by a judicial officer. The findings of fact recorded by a fact-finding authority duly constituted for the purpose and which ordinarily should be considered to have become final, cannot be disturbed for the mere reason of having been based on materials or evidence not sufficient or credible in the opinion of the writ court to warrant those findings, at any rate, as long as they are based upon some material which are relevant for the purpose or even on the ground that there is yet another view which can reasonably and possibly be taken… … The only course, therefore, open to the writ Judge was to find out the satisfaction or otherwise of the relevant criteria laid down by this Court, before sustaining the claim of the canteen workmen, on the facts found and recorded by the fact-finding authority and not embark upon an exercise of reassessing the evidence and arriving at findings of one's own, altogether giving a complete go-by even to the facts specifically found by the Tribunal below."*

12. The Hon'ble Supreme Court in the aforesaid case has held that the findings of fact recorded by a fact finding authority (Tribunal) duly constituted for the purpose becomes final unless the findings are perverse or based upon no evidence. The jurisdiction of the High Court in such matters is quite limited.

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14. In Dharangadhara Chemical Works Ltd. v. State of Saurashtra, 1957 SCR 152, the Supreme Court, once again observed that where the Tribunal having jurisdiction to decide a question comes to a finding of fact, such a finding is not open to question under Article 226, unless it could be shown to be wholly unsupported by evidence.

15. In Management of Madurantakam Coop. Sugar Mills Limited v. S. Viswanathan, (2005) 3 SCC 193, the Apex Court, held that the Labour Courts/Industrial Tribunals as the case be is the final court of facts, unless the same is perverse or not based on legal evidence, which is when the High Courts can go into the question of fact decided by the Labour Court or the Tribunal. But before going into such an exercise it is imperative that the High Court must record reasons why it intends reconsidering a finding of fact. In the absence of any such defect, the writ court will not enter the realm of factual disputes and finding given thereon.

16. In a Constitution Bench judgment of the Supreme Court in Syed Yakoob v. K.S. Radhakrishnan, AIR 1964 SC 477, the Apex Court has inter alia held as under:

> *"7. The question about the limits of the jurisdiction of High Courts in issuing a writ of certiorari under Article 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 is in excess of it, or as a result of failure to exercise jurisdiction. A writ can similarly be issued where in exercise of jurisdiction conferred on it, the Court or Tribunal acts illegally or properly, as for instance, it decides a question without giving an opportunity, 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 Article 226 to issue a writ of certiorari can be legitimately exercised (vide Hari Vishnu Kamath v. Syed Ahmed Ishaque, Nagendra Nath Bora v. Commissioner of Hills Division and Appeals, Assam, and Kaushalya Devi v. Bachittar Singh.

8. It is, of course, not easy to define or adequately describe what an error of law apparent on the face of the record means. What can be corrected by a writ has to be an error of law; but it must be such an error of law as can be regarded as one which is apparent on the face of the record. Where it is manliest or clear that the conclusion of law recorded by an inferior Court or Tribunal is based on an obvious misinterpretation of the relevant statutory provision, or sometimes in ignorance of it, or may be, even in disregard of it, or is expressly rounded on reasons which are wrong in law, the said conclusion can be corrected by a writ of certiorari. In all these cases, the impugned conclusion should be so

plainly inconsistent with the relevant statutory provision that no difficulty is experienced by the High Court in holding that the said error of law is apparent on the face of the record. It may also be that in some cases. the impugned error of law may not be obvious or patent on the face of the record as such and the Court may need an argument to discover the said error; but there can be no doubt that what can be corrected by a writ of certiorari is an error of law and the said error must, on the whole, be of such a character as would satisfy the test that it is an error of law apparent on the face of the record. If a statutory provision is reasonably capable of two constructions and one construction has been adopted by the inferior Court or Tribunal, its conclusion may not necessarily or always be open to correction by a writ of certiorari. In our opinion, it is neither possible nor desirable to attempt either to define or to describe adequately all cases of errors which can be appropriately described as errors of law apparent on the face of the record. Whether or not an impugned error is an error of law and an error of law which is apparent on the face of the record, must always depend upon the facts and circumstances of each case and upon the nature and scope of the legal provision which is alleged to have been misconstrued or contravened."

17. The Hon'ble Supreme Court has in the aforesaid case again dealt with scope of interference by High Court in respect of finding of fact arrived at by Tribunals and in light of the aforesaid judgment, the question of interference by this Court does not arise.

> *18. The Hon'ble Supreme Court in State of Haryana v. Devi Dutt, (2006) 13 SCC 32, has held that the writ Court can interfere with the factual findings of fact only if in case the Award is perverse; the Labour Court has applied wrong legal principles; the Labour Court has posed wrong questions; the Labour Court has not taken into consideration all the relevant facts; or the Labour Court has arrived at findings based upon irrelevant facts or on extraneous considerations.*"
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> (emphasis added)

14. Considering that the application for recall of the *ex parte* judgment has been dismissed, as also, the position of law in relation to the scope of inquiry enjoyed by this Court, in its Writ jurisdiction; it would not be prudent for this Court to allow the petitioner/Board to adduce evidence at this stage. Further, the petitioner/ Board had chosen not to appear before the Labour Court and was therefore, proceed *ex parte*. No additional submissions before this Court, can accrue to the benefit of the petitioner/Board in this context.

15. In view of the position of law as narrated in detail in ***Dinesh Kumar*** (*supra*), the scope of enquiry / intervention in the writ jurisdiction is extremely narrow and for this purpose, the Court must assess the infirmities in the decision of the Labour Court, if any.

16. The impugned award and the challenge to the same, must be examined, in light of four (4) primary issues, ***firstly***, two-forty (240) days of continuous service, having been rendered by the respondent/ workman; ***secondly***, the controversy in relation to the address of the respondent/ workman; ***thirdly***, the legality of the termination of the

respondent/ workman by the petitioner/ Board; ***fourthly***, delay in approaching the Labour Court.

Two-forty (240) days of continuous service

17. As regards the aspect of two-forty (240) days of service in a calendar year, the following facets are imperative to consider:

i. The Labour Court had noted the submissions of petitioner/Board, wherein, it was stated that respondent/workman was engaged on a daily wage basis *vide* letter dated 21st January 1998 and had been doing seasonal work for the petitioner/Board.

ii. Primary reasons which prevailed upon the Labour Court in relation to this aspect, while passing the impugned award, are as under:

a. Respondent/workman in the pleadings had specifically stated that he was engaged in the year 1996 by the management and was appointed through *Employment Exchange*. There was a reference to W.P.(C) 2292/1999 (*filed for regularisation*), where, as stated by the respondent/ workman, his name was at serial number seventeen (17) in the list of petitioners. The same has not been disputed.

b. Basis the aforesaid, the respondent/workman would have the benefit of the interim order dated 19th April 1999, passed in W.P.(C) 2292/1999, which restrained the petitioner/Board (*respondent/ Board in W.P.(C) 2292/1999*) from disengaging the respondent/workman (*petitioner/ workman in W.P.(C) 2292/1999*). The said order was subsequently modified on 15th November 2000. The Labour

Court rightly presumes that this period when the petitioner/ Board was injuncted would also accrue to the benefit of the respondent/ workman. Being a beneficiary of orders of this Court was a critical factor in discharge of the respondent's/workman's burden of proof. In this background, an assertion of having completed two-forty (240) days had been made and nothing had been produced by the management to rebut the same.

c. Reliance by the Labour Court upon the list of employees given as *Ex. WW1/2*, which mentioned respondent's/ workman's name at serial no. eighty-five (85), is also pertinent. The Labour Court notes that this demonstrated that the respondent/workman, in the year 1996, worked from 15th November 1996 to 26th December 1996 and then from 29th December 1996 to 8th February 1997. Accordingly, it was held, that engagement of the respondent/ workman in 1996 stood duly established.

iii. Therefore, there were four (4) aspects which seem to have swayed the Labour Court to the benefit of the respondent/workman, ***firstly,*** that he was indeed appointed as a Junior Assistant on daily wage basis in 1998 vide letter dated 21st January 1998; ***secondly***, that he had agitated the issue of regularisation through W.P.(C) 2292/1999 and was therefore, a beneficiary of orders that were passed by this Court; ***thirdly***, *vide* judgment dated 12th February 2004, this Court had directed CBSE to prepare a *seniority list*, of which, the respondent/ workman was a part; ***fourthly***, all these aspects had been asserted by the respondent/ workman

and since the management had been proceeded *ex-parte*, therefore, by settled principles of law, these aspects would be confirmed in favour of respondent/ workman.

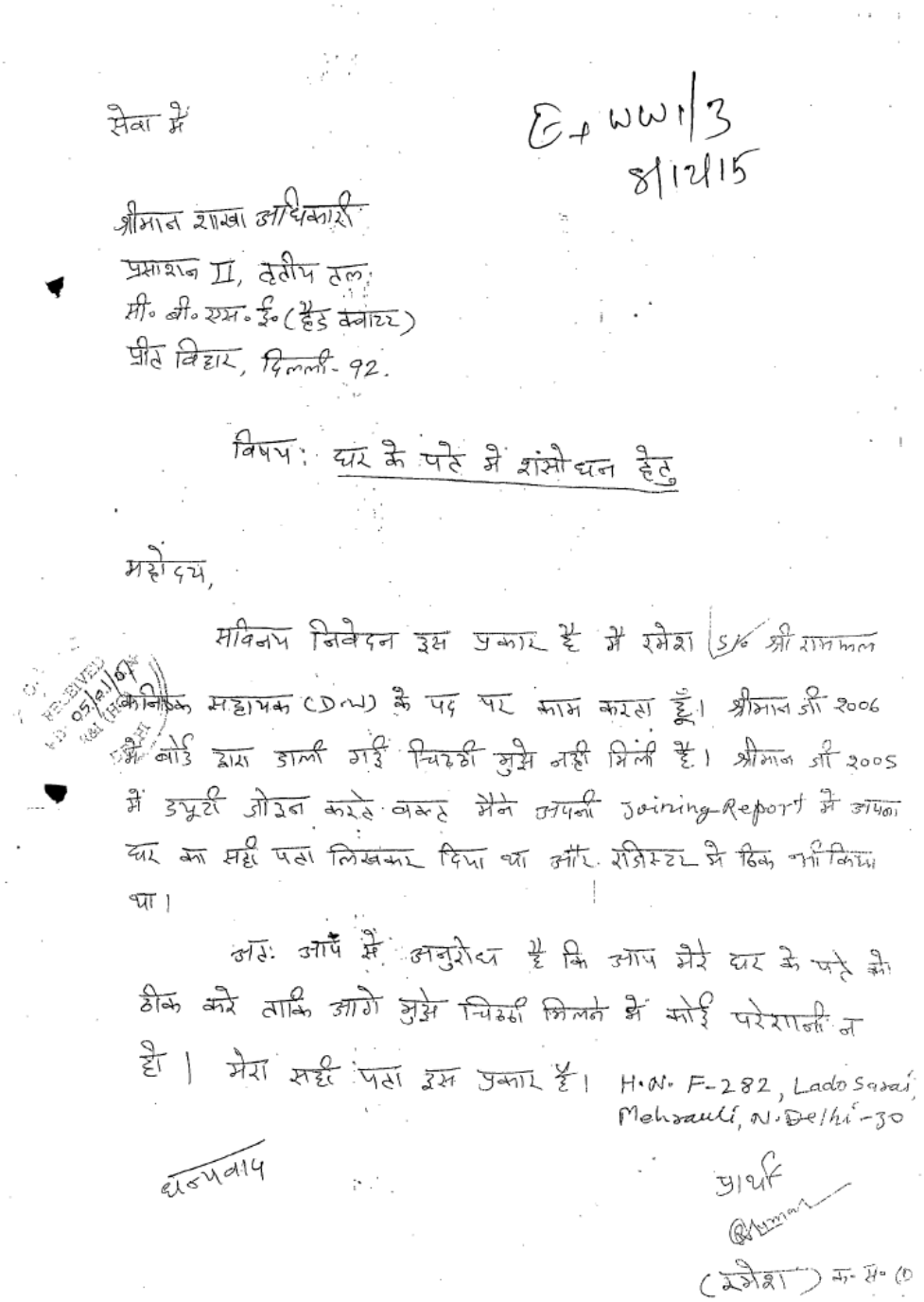
iv. Reliance placed by the petitioner's/ Board's counsel on the decision in ***Mohar Singh*** (*supra*) cannot come to the aid of the petitioner/ Board, in so far as, in facts of the said decision, the management had been able to successfully rebut the workman's assertion that he had worked for two-forty (240) days, by way of adverting to the attendance register.

v. In such circumstances, considering the limited scope of interference enjoyed by this Court in its Writ jurisdiction, at this stage, the petitioner's/ Board's submission that the respondent/ workman did not discharge his onus to prove service of two-forty (240) days in a calendar year, is tenuous at best. It is imperative to consider that even if the petitioner's submission is taken *prima facie* to be of persuasive value, the orders of this Court in W.P.(C) 2292/1999 and the factum of the respondent/ workman having been part of the *seniority list* by virtue of the same, cannot be ignored; more caution and care ought to have been exercised by the petitioner/ Board, with regard to the statutory process under the ID Act, in light of the facts of the case at hand.

Address of the respondent/ workman

18. As regards the aspect of the wrong address of the respondent/ workman, the Labor Court relied upon exhibit *WW1/3* where a request was made by the respondent/workman, for address correction. Labour Court noted, in light of the evidence adduced, that the respondent's/workman's address was wrongly mentioned in the *seniority*

list and this was specifically brought to the notice of petitioner/Board vide exhibit *WW1/3*. The stated exhibit is as under:



सेवा में

E-WW1/3
8/12/15

श्रीमान शाखा अधिकारी
प्रशासन II, तृतीय तल,
सी० जी० एस० ई० (हैड क्वार्टर)
पीतम विहार, दिल्ली-92.

विषय: घर के पते में संशोधन हेतु

महोदय,

सविनय निवेदन इस प्रकार है मैं रमेश S/o श्री रामकमल तकनीकी सहायक (D/W) के पद पर काम करता हूँ। श्रीमान जी 2006 में कोई द्वारा डाली गई चिट्ठी मुझे नहीं मिली है। श्रीमान जी 2005 में ड्यूटी जोइन करते वक्त मैंने अपनी Joining-Report में अपना घर का सही पता लिखकर दिया था और रजिस्टर में ठीक भी किया था।

अतः आपसे मेरा अनुरोध है कि आप मेरे घर के पते को ठीक करें ताकि आगे मुझे चिट्ठी मिलने में कोई परेशानी न हो। मेरा सही पता इस प्रकार है। H.No. F-282, Lado Sarai, Mehrauli, N.Delhi-30

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19. Respondent/workman disclosed that he approached the petitioner/Board several times (*after 2007*), seeking reinstatement, but he was not paid any heed.

Unlawful termination

20. Having considered the aforesaid aspects, the Labour Court discussed the issue of validity of termination in light of no notice being served to the respondent/workman. It was noted that not only was the termination devoid of any notice; no monetary compensation was paid, in lieu of the statutory requirement of notice. Thus, the termination was held to be in violation of Section 25F of the ID Act.

21. It appears that the Labour Court reached a conclusive finding on fact, that the respondent/workman had been in continuous service, except for *artificial* breaks, and therefore, termination of his services, without complying with the statutory requirements, was unjustified.

22. The impugned award therefore, takes a serious view of violations of principles of natural justice and the non-fulfilment of requirements of Section 25F of the ID Act. The Labour Court notes that it had come in evidence that the respondent/ workman had a lot of dependents and was not engaged in any other employment. The same also gets confirmed by the order dated 15th January 2020 passed by this Court under the present petition, in the application under Section 17B of the ID Act.

23. It was noted that the petitioner/Board had not brought on record any material to rebut respondent's/ workman's contention that he remained unemployed since his termination.

24. In view of failure of petitioner/Board to place anything on record, demonstrating that the respondent/workman had any other source of livelihood, the Court held the respondent/workman eligible to receive benefit under Section 17B of the ID Act, and therefore, granted payment

of last drawn wages / minimum wages from the date of filing of the application i.e. 14th March 2019.

25. It was also noted by the Labour Court that even after 2007, respondent/ workman had approached the petitioner/Board several times to give him employment but his plea was not acceded to.

26. It may also be noted that in order dated 15th November 2000 passed in W.P.(C) 2292/1999, this Court had found *prima facie* merit in the submission that petitioner/Board was misusing casual workers and if someone had worked for more than eighty-nine (89) days, he ought not to be replaced and his services would be deemed to have been extended.

Delay

27. As regards the submission of the petitioner/ Board that the respondent/ workman was delayed in approaching the Labour Court, reliance is rightly placed by the respondent/ workman's counsel, upon the decision in ***Ajaib Singh*** (*supra*), wherein, the Court observed that mere delay in approaching the Labour Court, would not disentitle the respondent/ workman from relief unless prejudice is shown to have been caused, to the management. Relevant paragraphs of the said decision read as under:

> ***10.*** *It follows, therefore, that the provisions of Article 137 of the Schedule to the Limitation Act, 1963 are not applicable to the proceedings under the Act and that the relief under it cannot be denied to the workman merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground*

of delay alone. Even in a case where the delay is shown to be existing, the tribunal, labour court or board, dealing with the case can appropriately mould the relief by declining to grant back wages to the workman till the date he raised the demand regarding his illegal retrenchment/termination or dismissal. The court may also in appropriate cases direct the payment of part of the back wages instead of full back wages. Reliance of the learned counsel for the respondent management on the Full Bench judgment of the Punjab and Haryana High Court in Ram Chander Morya v. State of Haryana [(1999) 1 SCT 141 (P&H) : ILR (1999) 1 P& H 93 (FB)] is also of no help to him. In that case the High Court nowhere held that the provisions of Article 137 of the Limitation Act were applicable in the proceedings under the Act. The Court specifically held "neither any limitation has been provided nor any guidelines to determine as to what shall be the period of limitation in such cases". However, it went on further to say that

> *"reasonable time in the cases of labour for demand of reference or dispute by appropriate Government to labour tribunals will be five years after which the Government can refuse to make a reference on the ground of delay and laches if there is no explanation to the delay".*

We are of the opinion that the Punjab and Haryana High Court was not justified in prescribing the limitation for getting the reference made or an application under Section 33-C of the Act to be adjudicated. It is not the function of the court to prescribe the limitation where the legislature in its wisdom had thought it fit not to prescribe any period. The courts admittedly interpret law and do not make laws. Personal views of the Judges presiding over the Court

> *cannot be stretched to authorise them to interpret law in such a manner which would amount to legislation intentionally left over by the legislature. The judgment of the Full Bench of the Punjab and Haryana High Court has completely ignored the object of the Act and various pronouncements of this Court as noted hereinabove and thus is not a good law on the point of the applicability of the period of limitation for the purposes of invoking the jurisdiction of the courts/boards and tribunal under the Act.*
>
> (emphasis added)

Relief granted by the Labour Court

28. As a result, Labour Court, noting that the matter had been before the Court for nine years, directed that the respondent/ workman be reinstated and back wages be paid to him (*from the date of raising the dispute, till reinstatement*). Reliance was placed upon the decision in ***Raghubir Singh v. Haryana Roadways***[8].

29. It is quite clear that the petitioners used to keep such junior assistants on *wait* and would call them for work, from time to time. This was a difficult proposition for persons like the respondent/ workman, who were supposed to join as and when called, presumably, for the sake of employment and an opportunity to continue to earn their livelihood.

30. Therefore, the respondent/ workman, not reporting for service due to incorrectly dispatched communication, cannot serve to his disadvantage.

Relief

[8] (2014) 10 SCC 301

31. Clearly, for the reasons mentioned above, the respondent/ workman missed out on the process of regularization despite having been a part of the original *seniority list*, only because of communication regarding regularization being sent to the wrong address by the petitioner/ Board.

32. Therefore, there is no reason why the respondent should not get recompensed. The intervention/ inquiry of this Court shall remain limited to, whether that benefit should remain, as per what the Labour Court ordered i.e. reinstatement and back wages with consequential benefits or could a lump-sum monetary compensation be awarded in *lieu* of the same.

33. Considering the passage of time, since the matter has been pending before this Court, as also, the submission of the petitioner's/ Board's counsel, that retrenchment can be monetarily compensated (*especially considering the objection to termination being procedural in nature*) instead of forcing reinstatement; the solution therefore, before the Court, is obvious.

34. Reliance is rightly placed, in this regard, on the decision(s) in ***Bhurumal*** (*supra*) and ***Mukeshkumar Gandalal Jadav*** (*supra*). Relevant paragraph(s) of the decision in ***Bhurumal*** (*supra*), read as under:

> "*33. It is clear from the reading of the aforesaid judgments that the ordinary principle of grant of reinstatement with full back wages, when the termination is found to be illegal is not applied mechanically in all cases. While that may be a position where services of a regular/permanent workman are terminated illegally and/or mala fide and/or by way of victimisation, unfair labour*

practice, etc. However, when it comes to the case of termination of a daily-wage worker and where the termination is found illegal because of a procedural defect, namely, in violation of Section 25-F of the Industrial Disputes Act, this Court is consistent in taking the view that in such cases reinstatement with back wages is not automatic and instead the workman should be given monetary compensation which will meet the ends of justice. Rationale for shifting in this direction is obvious.

34. The reasons for denying the relief of reinstatement in such cases are obvious. It is trite law that when the termination is found to be illegal because of non-payment of retrenchment compensation and notice pay as mandatorily required under Section 25-F of the Industrial Disputes Act, even after reinstatement, it is always open to the management to terminate the services of that employee by paying him the retrenchment compensation. Since such a workman was working on daily-wage basis and even after he is reinstated, he has no right to seek regularisation [see State of Karnataka v. Umadevi (3) [(2006) 4 SCC 1 : 2006 SCC (L&S) 753]]. Thus when he cannot claim regularisation and he has no right to continue even as a daily-wage worker, no useful purpose is going to be served in reinstating such a workman and he can be given monetary compensation by the Court itself inasmuch as if he is terminated again after reinstatement, he would receive monetary compensation only in the form of retrenchment compensation and notice pay. In such a situation, giving the relief of reinstatement, that too after a long gap, would not serve any purpose."

(emphasis added)

35. In any event, application under Section 17B of the ID Act was allowed by the Court *vide* order dated 15th January 2020, and the last drawn wages, have been paid by the CBSE, at a rate of Rs. 17,914/- per month. The petitioner/ Board has not been able to adduce any evidence of any alternative employment secured by the respondent/workman.

36. Considering that the respondent was employed, on daily wages, over a period of time, the Court is therefore inclined to grant a lump sum compensation of Rs.15 lakhs, in lieu of reinstatement (directed in 2016), as a one-time relief. This includes the amount disbursed till date pursuant to directions under Section 17B ID Act application. The balance amount to be paid within three (3) months, at an interest rate of seven (7) percent per annum, leviable in the event of delayed payment.

37. This petition is disposed of with the above directions. Pending applications, if any, are rendered infructuous.

38. Judgment be uploaded on the website of this Court.

(ANISH DAYAL)
JUDGE

JULY 31, 2025/SM/*kp*/*sp*