

(2026) 08 P&H CK 5095
In the Punjab And Haryana At Chandigarh
Case No : CWP No. 12726 of 2001

Bhag Singh

APPELLANT

Vs

Presiding Officer & Anr.

RESPONDENT

Date of Decision : 04-08-2026

Acts Referred:

Constitution of India — Article 226, 227

Industrial Disputes Act, 1947 — Section 2-A, 2(oo), 2(s), 25B, 25F, 25G, 25H

Citation : (2026) 08 P&H CK 5095

Hon'ble Judges : Kirti Singh, J

Bench : Single Bench

Advocate : Ms. Paramjit Kaur, Mr. Ravi Kamal Gupta, Ms. Aakanksha Gupta

Judgement

KIRTI SINGH, J. (ORAL)

1) The petitioner has invoked the writ jurisdiction of this Court under Articles 226/227 of the Constitution of India seeking quashing of the Award dated 22.01.2001 (Annexure P-3) passed by respondent No.1, whereby Reference No.241 of 1995 was answered against the petitioner and his claim for reinstatement was rejected.

2) Briefly stated, as per the pleaded facts of the case, the petitioner was engaged as a Beldar with respondent No.2 on a daily wage basis with effect from 01.04.1990, where he continued to work till 01.05.1993, when his services were illegally and wrongfully terminated by respondent No.2 with malafide intention, in violation of the provisions of the Industrial Disputes Act, 1947. It is averred that no written appointment letter specifying the period of his work was ever issued to him, and that fresh hands, including Avtar Singh, Jagtar Singh and Rajesh Kumar, were engaged after his termination, while juniors to him were retained in service.

3) Aggrieved thereby, the petitioner served a demand notice dated 01.12.1994 upon respondent No.2 under Section 2-A of the Act, whereupon the dispute was

referred for adjudication to the Labour Court.

4) Upon appreciation of the evidence on record, the Labour Court held that the petitioner had worked for a total of 154 days, comprising 126 days in the calendar year 1992 and 28 days in the calendar year 1993, and had accordingly not completed 240 days of continuous service in any calendar year as required for the protection of Sections 25F, 25G and 25H of the Act. It was further held that the seniority list, Mark X, pertained to regular staff, a category distinct from work-charged or casual labour, and that the persons named therein could not be equated with the petitioner for the purposes of Section 25H. Consequently, the reference was answered against the petitioner vide the impugned Award dated 22.01.2001. Aggrieved thereby, the petitioner has approached this Court by way of the present writ petition.

5) Learned counsel for the petitioner submits that the Labour Court failed to appreciate the settled law that the onus lies upon the employer to establish that the appointment was for specific work or a specific period, and that in the absence of a written order to that effect, it may be presumed that no such specific contract of employment existed. It is further submitted that the finding of the Labour Court regarding non-completion of 240 days of continuous service is perverse, as it ignores the retention of juniors and the engagement of fresh hands after the petitioner's termination, and that the impugned Award is, therefore, liable to be set aside

6) Per contra, learned State counsel submits that the impugned Award does not suffer from any illegality or perversity, inasmuch as the 2026.08.05 17:45 finding regarding the petitioner's period of service is founded on the evidence on record produced by respondent No.2.

7) I have heard learned counsel for the parties and have carefully perused the record.

8) Before proceeding further, a gainful reference can be made to the proposition of law as discussed by the Hon'ble Supreme Court in **Civil Appeal No.6511 of 2005** titled as **Surendranagar District Panchayat Vs. Dahyabhai Amarsinh**, relevant paras whereof reads thus:-

"8. As per Section 25F, no workman who is in continuous service for not less than one year under an employer shall be retrenched by that employer unless conditions laid therein are fulfilled. The retrenchment is defined in Clause (oo) of Section 2 of the Industrial Disputes Act 14 of 1947 (hereinafter referred to as Act). Under the definition termination of the service of a workman by the employer by any reason whatsoever, otherwise than, as a punishment, by way of disciplinary action, would constitute retrenchment except in cases accepted in the Section itself, they are :- i) a voluntary retirement of a workman; ii) retirement of a workman on reaching the age of superannuation; iii) termination of the service of a workman as a result of nonrenewal of the contract of employment; or iv) termination of the service on the ground of continued ill- health of the workman. Unless these reasons are existed and proved, termination by the employer of the service of a workman for any reason, would constitute retrenchment.

Therefore, if the employer is to retrench the workmen employed in his industry who is in continuous service has to follow the provisions of Section 25F of the Act. To attract provisions of Section 25F, the workman claiming protection under it, has to prove that there exists relationship of employer and employee; that he is a workman within the meaning of Section 2(s) of the Act; the establishment in which he is employed is an industry within the meaning of the Act and he must have put in not less than one year of continuous service as defined by Section 25B under the employer. These conditions are cumulative. If any of these conditions are missing the provisions of Section 25F will not attract. To get relief from the court the workman has to establish that he has right to continue in service and that his service has been terminated without complying with the provisions of Section 25F of the Act. The Section postulates three conditions to be fulfilled by an employer for getting a valid retrenchment, namely:-i) One month's clear notice in writing indicating the reasons for retrenchment or that the workman has been paid wages for the period of notice in lieu of such notice; ii) payment of retrenchment compensation which shall be equivalent to 15 days average pay for every completed year of continuous service or any part thereof, in excess of six months; iii) a notice to the appropriate Government in the prescribed manner.

9. To attract the provisions of Section 25F, one of the conditions required is that the workman is employed in any industry for a continuous period which would not be not less than one year. Section 25B of the Act defines continuous service for the purposes of Chapter V-A "Lay-off and Retrenchment". The purport of this Section is that if a workman has put in an uninterrupted service of the establishment, including the service which may be interrupted on account of sickness, authorised leave, an accident, a strike which is not illegal, a lock-out or cessation of work, that is not due to any fault on the part of the workman, shall be said to be a continuous service, for that period. Thus the workman shall be said to be in continuous service for one year i.e., 12 months irrespective of the number of days he has actually worked with interrupted service, permissible under Section 25B. However, the workmen must have been in service during the period, i.e., not only on the date when he actually worked but also on the days he could not work under the circumstances set out in sub-section (1). The workman must be in the employment of the employer concerned on the days he has actually worked but also on the days on which he has not worked. The import of sub-section (1) of Section 25B is that the workman should be in the employment of the employer for the continuous, uninterrupted period for one year except the period the absence is permissible as mentioned hereinabove. Subsection (2) of Section 25B introduces the fiction to the effect that even if the workman is not in continuous service within the meaning of Clause (i) of Section 25B for the period of one year or six months he shall be deemed to be in continuous service for that period under an employer if he has actually worked for the days specified in clauses (a) and (b) of sub--section (2). By the legal fiction of sub-section 2(a) (i), the workman shall be deemed to be in continuous service for one year if he is employed underground in a mine for 190 days or 240 days in any other case. Provisions of the Section postulate that if the workman has put in at least 240 days with his employer, immediately prior to the date of retrenchment, he shall be deemed to have served with the employer for a period of one year to get the benefit of Section 25F.

16. In *Mohan Lal v. Management of M/s. Bharat Electronics Ltd.*, (1981) 3 SCC 225, it is said by this Court that before a workman can claim retrenchment not being in consonance of Section 25F of the Industrial Disputes Act, he has to show that he has been in continuous service of not less than one year with the employer who had retrenched him from service.

17. *In Range Forest Officer v. S.T. Hadimani*, (2002) 3 SCC 25 - (At Page 26, Para 3), this Court 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, in fact, 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."

19. *In the light of the aforesaid, it was necessary for the workman to produce the relevant material to prove that he has actually worked with the employer for not less than 240 days during the period twelve calendar months preceding the date of termination. What we find is that apart from the oral evidence the workman has not produced any evidence to prove the fact that he has worked for 240 days. No proof of receipt of salary or wages or any record or order in that regard was produced; no coworker was examined; muster roll produced by the employer has not been contradicted. It is improbable that workman who claimed to have worked with the appellant for such a long period would not possess any documentary evidence to prove nature of his engagement and the period of work he had undertaken with his employer. Therefore, we are of the opinion that the workman has failed to discharge his burden that he was in employment for 240 days during the preceding 12 months of the date of termination of his service. The Courts below have wrongly drawn an adverse inference for non production of the record of the workman for ten years. The scope of enquiry before the Labour Court was confined to only 12 months preceding the date of termination to decide the question of continuation of service for the purpose of Section 25F of the Industrial Disputes Act. The workman has never contended that he was regularly employed in the Panchayat for one year to claim the uninterrupted period of service as required under Section 25B(1) of the Act. In the fact and situation and in the light of the law on the subject, we find that the workman- respondent is not entitled for the protection or compliance of Section 25F of the Act before his service was terminated by the employer. As regards noncompliance of Sections 25G and 25H suffice is to say that witness Vinod Mishra examined by the appellant has stated that no seniority list was maintained by the department of daily wagers. In the absence of regular employment of the workman, the appellant was not expected to maintain seniority list of the employees engaged on daily wages and in the absence of any proof by the respondent regarding existence of the seniority list and his so called seniority no relief could be given to him for non-compliance of provisions of the Act. The Courts could have drawn adverse inference against the appellant only when seniority list was proved to be in existence and then not produced before the Court. In order to entitle the Court to draw inference unfavourable to the party, the Court must be satisfied that evidence is in existence and could have been proved."*

9) At the outset, it requires to be noticed that this Court, while exercising supervisory jurisdiction under Articles 226/227 of the Constitution of India over awards of Labour Courts and Industrial Tribunals, does not sit in appeal over findings of fact, nor does it re-appreciate the evidence to test whether a different view was possible. Interference is warranted only where a finding is shown to be

perverse, based on no evidence, or vitiated by an error of law apparent on the face of the record.

10) Tested on the aforesaid parameters, no ground for interference is made out in the impugned Award. The finding of the Labour Court that the petitioner did not complete 240 days of continuous service in any calendar year is founded on the testimony of MW1 and the attendance record produced by respondent No.2, which the petitioner failed to dislodge in cross-examination. Although the witness admitted that the attendance register was not verified by the Sub Divisional Officer concerned, the Labour Court correctly held that this circumstance alone was not sufficient to discard the record entirely.

11) The contentions that fresh hands were engaged after the petitioner's termination, or that his juniors had been retained, also do not withstand scrutiny. The seniority list, Mark X, tendered by the petitioner was shown, on his own admission in cross-examination, to pertain to regular staff and not to work-charged or casual labour such as the petitioner. The persons named therein cannot, therefore, be treated as juniors to the petitioner for the purposes of Section 25H of the Act, as correctly held by the Labour Court. The testimony of the petitioner's own witness, WW2, that the petitioner had in fact been called upon for employment at the time of fresh recruitment, it was correctly observed, further weakened the case of the petitioner.

12) Given the facts of the present case, the Labour Court has, upon appreciation of evidence, returned a specific finding that the petitioner did not complete 240 days of continuous service and that no juniors to him were retained in service. These being findings of fact based on the evidence on record, they do not warrant interference in the exercise of writ jurisdiction under Articles 226 and 227 of the Constitution of India.

13) For the reasons recorded above, no illegality, perversity or infirmity is found in the impugned Award dated 22.01.2001. The present writ petition is accordingly dismissed. Pending application(s), if any, also stand disposed of.