IN THE HIGH COURT AT CALCUTTA

CIVIL APPELLATE JURISDICTION

Appellate Side

Present:
The Hon'ble Justice Debangsu Basak
And
The Hon'ble Justice Ajay Kumar Gupta

MAT NO.73 OF 2024

WITH

MAT NO. 74 of 2024

Smt. S.Manohari and others
Vs
The Executive Engineer

Mr. Gopala Binnu Kumar,Adv .... For the appellant

Mr. Rakesh Kumar.Adv
...For the respondent

Heard on : 19.02.2026 & 24.02.2026

Judgment on : 25.02.2026

Ajay Kumar Gupta, J:

1. The appellants herein have assailed the Judgment and Order dated November 12, 2024, passed by the learned Single Bench in WPA No. 107 of 2020 and WPA 117 of 2020 by filing these instant two appeals. Both appeals involves common sets of facts and identical issues of law and therefore these are taken up together for disposal.

2. By the said impugned judgment and order, the Single Judge allowed the Writ Petition, *inter alia*, on the following terms:

> *"In view of the aforesaid, I set aside the impugned Award and remand the matter to the Labour Court for considering the matter afresh in the light of the observations made in this judgment and pass a fresh Award in accordance with law. I clarify that even if the Tribunal comes to a factual finding on the basis of material records that the concerned DRMs in fact worked continuously for 240 days in a year and the provisions pertaining to retrenchment embodied in the ID Act would apply, the Tribunal should consider whether or not reinstatement of the said DRMs should be ordered in the light of the period of service rendered by them and the principles of law laid down by the Hon'ble Supreme Court in the decisions discussed in this judgment. Since, the matter has been pending for about 4 years, I request the tribunal to give some precedence to this matter and arrive at a fresh decision, if necessary by calling for further evidence, as expeditiously as possible.*
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> *30. WPA 107 of 2020 is accordingly allowed consequently, WPA 117 of 2020 is dismissed. There will be no order as to costs".*

FACTS OF THE CASE

3. The brief facts, essential for proper and effective disposal of this appeals, are as follows:

a. The Appellants were engaged as Daily Rated Mazdoors (In short 'DRM') in the year 2014, under the Port Blair North Division of Andaman Public Works Department (In short 'APWD'). Their

services were abruptly discontinued with effect from September 1, 2017.

b. During the period of engagement, the appellants discharged their duties diligently and continuously, as regular employees. They were engaged in work against vacant posts and also completed the statutory 240 days in a calendar year. Consequently, they became entitled to enhanced wages, namely 1/30th of the pay plus DA as per the Office Memorandum no.289 dated 22.09.2017. The said Office Memorandum further stipulated that no fresh DRM would be engaged in any department or organisation of the Administration until all left-out DRMs appearing in the seniority list of autonomous bodies in the Andaman & Nicobar Administration as on 01.09.2017 became eligible for the benefit of enhanced wages.

c. The appellants were disengaged from service without assigning any reason. The Administration has removed them with a view to denying them the benefits of 1/30th of pay plus D.A Scheme. Several workmen who are junior to them in service were retained in service.

d. At the time of disengagement from service, the administration failed to comply with the provisions of sections 25F, 25G and 25N of the Industrial Disputes Act, 1947 (In short 'ID Act')

e. Upon failure of the conciliation proceedings, the conciliation officer, by his report dated December 19, 2018, recommended that the government refer the case to the Labour Court for its adjudication under the specific provision of the ID Act,1947.

f. The Labour Court, upon appreciation of oral and documentary evidence adduced by the parties, decided the case in favour of the Appellants and held that the retrenchment/termination of the 3 DRMs/appellants herein was illegal and in violation of the statutory provisions. The Learned Court directed the reinstatement of all 3 DRMs with full back wages and consequential benefits from the date of disengagement, to be paid within 2 months from the date of reinstatement.

g. Being aggrieved by and dissatisfied with the said impugned Award/order passed by the Labour Court, the respondent challenged the same in WPA No. 107/2020 at the behest of the Executive Engineer. At the same time, the appellants also filed WPA 117 of 2020 for the implementation of the said Award. However, upon hearing the parties, the learned single Judge passed common judgment and order as aforesaid. The said judgment and order is under challenge in these present Appeals.

SUBMISSIONS ON BEHALF OF THE APPELLANT:

4. Mr. Binnu Kumar, learned counsel appearing on behalf of the appellants, vehemently argued and submitted that when the removal from service is unlawful, the appellants are entitled to reinstatement as well as back wages. The Labour Court rightly held that the retrenchment/termination of the present DRMs was illegal and unlawful. The appellants were subjected to discrimination, inasmuch as workmen junior to them were retained in service, while the appellants were arbitrarily disengaged without assigning any reason.

5. It was further submitted that the appellants worked for over 240 days in a calendar year, thereby fulfilling the condition of "continuous service" within the meaning of section 25B of the ID Act. Two documents produced by the Administration itself corroborated this fact. One of the witnesses, i.e. D.W.1 from the side of the Respondent, admitted during cross-examination that the Office memo dated 21/01/2019 disclosed correctly that the petitioners worked more than 240 days continuously. Despite such admitted position, the Administration disengaged the appellants without complying with the mandatory provisions of Sections 25F, 25G, and 25N of the ID Act. It was contended that the appellants could not have been removed at the behest of one or two officials

without following due process or affording them an opportunity of hearing. The Labour Court, therefore, rightly set aside the disengagement and directed reinstatement with full back wages and consequential benefits within the stipulated period.

6. Learned counsel has further argued that the learned Single Judge misunderstood the legal provisions of the ID Act,1947 and erred in remanding the matter for afresh adjudication. Which is unsustainable in law. The Hon'ble Single Judge also failed to appreciate that all DRMs/appellants herein rendered continuous service without any break and had completed more than 240 days in the calendar year. If the DRMs have completed more than 240 days, they should not be treated unjustly. The retrenchment/termination from service without due process of law is bad in law and cannot be sustained. The Hon'ble Single Judge also overlooked the legal provisions of 25F, 25G and 25N of the ID Act, 1947 and erred in concluding that the appellants have not completed 240 days. It was further contended that the Respondent also mislead the court that the appellants have not completed 240 days in the calender year. The respondent are calculating the days of service according to English calender year although the calculation based on such English Calender year is absolutely wrong calculation. The working days must be calculated on the basis of last preceding year as such the judgment and order

impugned under challenge will not sustainable and is liable to be set aside after affirming the Award of the Labour court.

7. Learned counsel submitted that while calculating the period of 240 days, the holidays and non-wokring days are also required to be included, in accordance with settled principles of law.

8. Learned counsel has placed reliance on decisions of this High Court as well as the Hon'ble Supreme Court to bolster his aforesaid contention as under:

i. ***Workmen of American Express International Banking Corporation vs. Management of American Express International Banking Corporation***[1], particularly paragraphs 5 and 6*;*

ii. ***The Executive Engineer, North Andaman Construction Division (NACD) v. Smt. Rekha Nair and ors*** *(WPA No.241 of 2019)*

SUBMISSIONS ON BEHALF OF THE RESPONDENT:

9. Per contra, the Learned Rakesh Kumar appearing on behalf of the respondent vehemently opposed the submissions made by Mr. Binnu Kumar and contended that the Hon'ble Single Bench rightly adjudicated the issues involved and correctly remanded the matter to the Labour Court for fresh adjudication in the light of the observations made in the impugned judgment. It was submitted that

[1] ***(1985) 4 Supreme Court Cases 71***

the appellants have been afforded the opportunity to present their case before the Labour Court and that the present appeal has been filed unnecessarily with the sole intent to harass the respondent. It was further contended that the Appeal is not maintainable on multiple grounds.

10. **Firstly,** it was submitted that the appellants had already availed all remedial measures provided under the ID Act before the Learned Labour Court, and therefore, the present appeal is not maintainable and is liable to be dismissed at the threshold.

11. **Secondly,** the appellants had not completed a total of 240 days in the calendar year. In view of the decision of the Hon'ble Supreme Court in the case of ***Mohd Ali Vs. State of H.P. and Others***[2], it was argued that in the absence of completion of 240 days, the appellants are not entitled to any relief or benefits. Accordingly, it was urged that the judgment and order passed by the Single bench should not to be interferred as it was rightly decided, and that the Labour court may decide afresh in accordance with law.

DISCUSSION, ANALYSIS AND FINAL CONCLUSION OF THIS COURT:

12. Having considered the rival submissions and upon perusal of the materials on record, this Court is required to examine whether the learned Single Judge was justified in remanding the matter for fresh

[2] ***(2018) 17 SCC 1***

adjudication, despite a reasoned award passed by the Labour Court holding the retrenchment/disengagement of the appellants to be illegal.

13. Before deciding the issues involved herein, this Court would like to notice the following relevant legal provisions of the ID ACT, 1947 and the Rules for the sake of convenience and effective disposal of these appeals:-

> ***"25-B. 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 year;

(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.]

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: [* * *] [Proviso omitted by Act 49 of 1984, S.3 (w.e.f 18.08.1984)]*

(b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay [for every completed year of continuous service] [Substituted by Act 36

of 1964, Section 14, for "for every completed year of service" (w.e.f. 19.12.1964).] 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.] [Inserted by Act 36 of 1964, Section 14 (w.e.f. 19.12.1964).]

25G. Procedure for retrenchment. *__ Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and he belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman.*

25N. [Conditions precedent to retrenchment of workmen.__ *(1) No workman employed in any industrial establishment to which this Chapter applies, 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 three months' 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; and

(b) the prior permission of the appropriate Government or such authority as may be specified by that Government by Notification in the official Gazette (hereafter in this section referred to as the specified authority) has been obtained on an application made in this behalf.

(2) An application for permission under sub-section (1) shall be made by the employer in the prescribed manner stating clearly the reasons for the intended retrenchment and a copy of such application shall also

be served simultaneously on the workmen concerned in the prescribed manner.

(3) Where an application for permission under sub-section (1) has been made, the appropriate Government or the specified authority, after making such enquiry as it thinks fit and after giving a reasonable opportunity of being heard to the employer, the workmen concerned and the persons interested in such retrenchment, may, having regard to the genuineness and adequacy of the reasons stated by the employer, the interests of the workmen and all other relevant factors, by order and for reasons to be recorded in writing, grant or refuse to grant such permission and a copy of such order shall be communicated to the employer and the workmen.

(4) Where an application for permission has been made under sub-section (1) and the appropriate Government or the specified authority does not communicate the order granting or refusing to grant permission to the employer within a period of sixty days from the date on which such application is made, the permission applied for shall be deemed to have been granted on the expiration of the said period of sixty days.

(5) An order of the appropriate Government or the specified authority granting or refusing to grant permission shall, subject to the provisions of sub-section (6), be final and binding on all the parties concerned and shall remain in force for one year form the date of such order.

(6) The appropriate Government or the specified authority may, either on its own motion or on the application made by the employer or any workman, review its order granting or refusing to grant permission under sub-section (3) or refer the matter or, as the case may be, cause it to be referred, to a Tribunal for adjudication:

Provided that where a reference has been made to a Tribunal under this sub-section, it shall pass an award within a period of thirty days from the date of such reference.

(7) Where no application for permission under sub-section (1) is made, or where the permission for any retrenchment has been refused, such retrenchment shall be deemed to be illegal from the date on which the notice of retrenchment was given to the workman and the workman shall be entitled to all the benefits under any law for the time being in force as if no notice had been given to him.

(8) Notwithstanding anything contained in the foregoing provisions of this section, the appropriate Government may, if it is satisfied that owing to such exceptional circumstances as accident in the establishment or death of the employer or the like, it is necessary so to do, by order, direct that the provisions of sub-section (1) shall not apply in relation to such establishment for such period as may be specified in the order.

(9) Where permission for retrenchment has been granted under sub-section (3) or where permission for retrenchment is deemed to be granted under sub-section (4), every workman who is employed in that establishment immediately before the date of application for permission under this section shall be entitled to receive, at the time of retrenchment, compensation which shall be equivalent to fifteen days'average pay for every completed year of continuous service or any part thereof in excess of six months.]"

14. At the outset, it is not in dispute that the appellants were engaged as DRMs under the Andaman Public Works Department since 2014 and that their services were disengaged with effect from 01.09.2017. The Labour Court, on appreciation of both oral and documentary evidence, recorded a categorical finding that the appellants had rendered continuous service and had completed more than 240 days in the relevant period preceding their disengagement. Such finding was not based merely on the testimony of the workmen but was

corroborated by documents produced by the Administration itself, including the Office Memorandum dated 21.01.2019, and by the admission of D.W.1 during cross-examination.

15. Once completion of 240 days of continuous service within the meaning of Section 25B of the Industrial Disputes Act, 1947 stood established, the statutory protection under Chapter V-A of the Act stood attracted. It is also not in dispute that, at the time of disengagement, the mandatory conditions precedent to retrenchment as laid down under Section 25F of the Industrial Disputes Act, 1947 were not complied with. Further, the Labour Court recorded findings that the principle of "last come, first go" embodied in Section 25G was violated, inasmuch as juniors to the appellants were retained in service, and no justification for such deviation was shown. Compliance with Section 25N was also absent, rendering the action of the Administration procedurally and substantively illegal.

16. The settled position of law is that retrenchment effected in violation of Sections 25F and 25G of the Industrial Disputes Act is void ab initio and non est in the eye of law. In such circumstances, reinstatement with continuity of service ordinarily follows as a natural consequence, unless there are exceptional circumstances warranting denial of such relief. The Labour Court, having found the retrenchment/disengagement to be illegal and discriminatory,

exercised its discretion to grant reinstatement with full back wages and consequential benefits. Such exercise of discretion was based on evidence and cannot be characterised as arbitrary or perverse.

17. The appellants have relied upon a judgment in the case of ***Workmen of American Express International Banking Corporation vs. Management of Amiracan Express International Banking Corporation (Supra)***, wherein, particularly at paragraph no.5, it has been held as follows:-

> *"Section 25-F of the Industrial Disputes Act is plainly intended to give relief to retrenched workmen. The qualification for relief Under Section 25-F. is that he should be a workman employed in an industry and has been in continuous service for not less than one year under an employer. What is continuous service has been defined and explained in Section 25-B of the Industrial Disputes Act. In the present case, the provision which is of reliance is Section 25-B(2)(a)(ii) which to the extent that it concerns us, provides that a workman who is not in continuous service for a period of one year shall be deemed to be in continuous service for a period of one year if the workman, during a period of twelve calendar months preceding the date with reference to which the calculation is to be made, has actually worked under the employer for not less than 240 days. The expression which we are required to construe is 'actually worked under the employer'. This expression, according to us, cannot mean those days only when me workman worked with hammer, sickle or pen, but must necessarily comprehend all those days during which he was in the employment of the employer and for which he had been paid wages either under express or implied contract of service or by compulsion of statute, standing orders etc. The learned counsel for the Management would urge that only those days which are mentioned in the Explanation to*

Section 25-B(2) should be taken into account for the purpose of calculating the number of days on which the workmen had actually worked though he had not so worked and no other days. We do not think that we are entitled to so constrain the construction of the expression 'actually worked under the employer'. The explanation is only clarificatory, as all explanations are, and cannot be used to limit the expanse of the main provision. If the expression 'actually worked under the employer' is capable of comprehending the days during which the workman was in employment and was paid wages-and we see no impediment to so construe the expression-there is no reason why the expression should be limited by the explanation. To give it any other meaning then what we have done would bring the object of Section 25-F very close to frustration. It is not necessary to give examples of how 25 F may be frustrated as they are too obvious to be stated."

18. Such reliance is apposite, inasmuch as the Hon'ble Supreme Court has authoritatively held that for the purpose of determining completion of 240 days, all days for which the workman was paid, including holidays and non-working days, are liable to be included. The contention of the respondent that the calculation must be confined to the English calendar year is misconceived and contrary to the statutory scheme, which mandates computation with reference to the twelve months immediately preceding the date of retrenchment.

19. On the other hand, the reliance placed by the respondent on ***Mohd. Ali (Supra)*** does not advance its case, as the said decision applies to situations where the workman fails to establish completion of 240 days of continuous service. In the present case, the Labour Court

has returned a clear finding of fact, supported by documentary evidence and admissions, that the appellants had completed the requisite period of service. Such a finding, being neither perverse nor unsupported by evidence, ought not to have been lightly interfered with.

20. Secondly, the Single Bench of this court in **WPA No.241 of 2019** relying upon several judgments abd finally held that in case of termination of Daily wages worker, where the termination is found to be illegal because of violation of Section 25F of ID Act,1947 and junior to the terminated worker retained and violated the priniciple of last come first go they should be allowed to be reinstated in service.

21. Finally, the judgment relied upon by the respondent is much clearer and explicit with regard to the calculation of continuous working days of a workman in the calendar year. The calendar year refers to the last preceding year. It was further held that it is a well-known fact that the ID Act is a welfare legislation. The intention behind the enactment of this Act was to protect the employees from arbitrary retrenchments or termination. Section 25F provides a safeguard in the form of giving one month's prior notice, indicating the reasons for termination 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.

22. In the present case, after calculation all the three DRMs worked for more than 240 days in the calender years.

23. The scope of interference by the writ court with an award of the Labour Court is limited. Unless the award suffers from patent illegality, perversity, or jurisdictional error, the writ court ought not to substitute its own view for that of the fact-finding forum. In the present case, the learned Single Judge, while remanding the matter, did not record any finding that the award of the Labour Court was perverse or vitiated by an error apparent on the face of the record. The remand, therefore, amounts to reopening a concluded adjudication without adequate justification, which is impermissible in law.

24. Thus, in the light of the above discussion and foregoing reasons, we set aside the impugned judgement and order passed by the learned Single Judge on November 11, 2024. Judgement and award dated

10.01.2020 passed by the learned Labour Court in I.D.Case No.01 of 2019 is hereby affirmed.

25. In the result, the present appeals, being **MAT 73 of 2024** and **MAT 74 of 2024**, filed by the appellants, are allowed without order as to costs. Connected applications, if any, stand disposed of.

26. Interim order, if any, stands vacated.

27. Urgent photostat certified copy of this Judgment, if applied for, is to be given to the parties on a priority basis on compliance of all legal formalities.

(Ajay Kumar Gupta, J.)

28. I Agree.

(Debangsu Basak, J.)