GJRJ160001892025	Received on :	14.05.2010		
	Registered on :	14.05.2010		
	Decided on :	**08.06.2026**		
	Duration :	**16**	**00**	**24**
		Yrs.	**Mths.**	**Days**

Before the Hon'ble Member and Presiding Officer of Industrial Tribunal at Rajkot.

Ref. (I. T. C.) No.126/2025

[Old Ref. (CGITA) No.11/2010]

First Party:: 1. The Assistant General Manager,
State Bank of India,
Add.: R-6, Opp. Sardar Baug Circuit House,
Post Bag No.1, Rajkot – 360001.

V/S

Second Party:: 1. Shri Jayesh Chandulal Mehta,
Address: Nr. Sabhani’s Chora,
At & Post: Sayla,
District: Surendranagar.

##

Reference under sec.10 of the I. D. Act.

##

For First Party : Ld. advocate Mr. A. N. Shukla.

For Second Party : Ld. advocate Mr. N. H. Rathod.

<u>: Award :</u>

(1). The first party herein is the State Bank of India and the second party is the employee. The above first as well as second party for the sake of brevity and deciding this industrial dispute are referred as '*the opponent*' and '*the applicant*', respectively.

(2). The present industrial dispute was forwarded for adjudication by the Ministry of Labour under the Government of India to the Central Government Industrial Tribunal-cum-Labour Court, Ahemdabad, as the conciliation proceeding before it could not fructify, *vide* letter dtd.10.05.2010, as per it's order No.L-12012/73/2009-IR(B-I) and the exact terms of reference are as under:

"Whether the action of the management of Assistant General Manager, State Bank of India, Rajkot, in terminating the services of Shri Jayesh Chandulal Mehta w.e.f. dt.06.02.2009 is legal and justified? If not, to what relief the workman is entitled?"

(3). Now before going to the chequered history of this reference case, it is required to note that the present dispute has emerged in the year 2009 and since the first party / opponent was the establishment under the control of Central Government, so as per sec.2(a) of the Industrial Dispute Act, the appropriate Government for it is the Central Government, hence the dispute was raised before the authority under the Central Government. Since the compromise could not fructify so the dispute was referred to the CGIT, Ahemdabad. Then after as per the Order No.L-20025/01/2025-IR(CM-I) dtd.02.05.2025 and Corrigendum No.L-20025/01/2025-IR(CM-I) dtd.07.08.2025 of the Deputy Director, Ministry of Labour and Employment, Government of India and on basis of the Office Order No.ADT/1/2025/5516 dtd.29.08.2025 passed by the President, Industrial Court, Ahemdabad, the present case along with other cases were lastly transferred to this Tribunal for adjudication since the disputes were pertaining to territorial jurisdiction of this Tribunal. Hence, the present case was issued new number as Ref. (I.T.C.) No.126/2025.

(3.1). After the case was transferred to this Tribunal it was registered by issuing new number and notices were issued to the parties, wherein both parties have remained present through their respective advocates so the case has proceeded from the stage of arguments.

(4). Now if we peruse the case proceeding then the applicant has submitted his statement of claim at Exh.06. The facts of it in nutshell is as below:

The applicant has stated that the opponent herein is a Bank which is an industry as provided under sec.2(j) of the Industrial Disputes Act, 1947 and also a ‘State Authority’ within the meaning of Article 12 of the Constitution of India, whereas he is covered under the definition of ‘workman’ as defined in sec.2(s) of the I. D. Act. The applicant has stated he was working as a daily wager peon with the opponent Bank since dt.25.01.2002. He has continuously worked with honesty under the opponent. The duty discharged by him was satisfactory since during his service tenure no complaint or memo was issued to him, therefore his past record was spotless. The opponent was giving him wages of Rs.75/- per day on vouchers on monthly basis. The applicant has stated that he had put more than seven years of continuous service with the opponent therefore he had requested the authority concerned to regularize his service as a permanent employee of the Bank, because the work carried out by him was of permanent nature. Due to said demand / request, the Bank had orally terminated his service w.e.f. dt.06.02.2009, without any reason and justification or without following due procedure of law as is contemplated under the mandatory provisions of sec.25-F, G & H of the Industrial Disputes Act, 1947 and has also violated Rule 81 of the Industrial Disputes (Gujarat) Rules, 1966. At the time of termination of his service the Bank has not offered him any opportunity for hearing, so has violated the principles of natural justice. The applicant has stated that after termination of his services, he had time and again approached before the concerned authority to consider his case of reinstatement, but the Bank had neither given satisfactory reply nor has considered his request for reinstatement so he has raised the present industrial dispute.

The applicant has stated that his service was illegally terminated with malafide intention just for the sake of not regularizing his service and the Bank is avoiding their statutory and legal liabilities by way of terminating his service. The said conduct of the Bank is an unfair labour practice so same is required to be quashed and set aside by this Tribunal.

The applicant has stated that since his appointment till the termination of his service he has worked continuously without any break and has also put more than 240 days of continuous service with the Bank in each year of service tenure and also in the preceding year, even though retrenchment compensation was not paid to him at the time of his termination. The applicant has stated that it is an undisputed fact that at the time of termination the Bank had not served any notice or notice pay nor has even offered or paid any retrenchment compensation to him. Therefore, it is a clear case of violation of sec.25-F of the Industrial Disputes Act, 1947 hence, the order of oral termination of service dtd.06.02.2009 is null and void, which is required to be quashed and set aside by this Tribunal.

The applicant has stated that he has performed permanent nature of work on permanent vacant post, because it cannot be believed that regular peon has to go on leave for more than seven years and on that place the reliever peon had worked. The said contention of the Bank is vague and today also on his place some other new employee was appointed by the opponent Bank and is working on same condition / contract, but the Bank had not given any intimation to him at the time of said new appointment, therefore it is clear case of violation of sec.25-H of the I. D. Act, hence also the oral order of termination is illegal, unjust and arbitrary, which is required to be quashed and set aside. It is stated that the Bank at the time of termination of his service had not furnished or produced seniority list, which is also mandatory as provided under Rule 81 of the Industrial Disputes

(Gujarat) Rules, 1966 and therefore also the oral order of termination is illegal, unjust and arbitrary which is required to be quashed and set aside.

The applicant has stated that he has made several requests to the opponent Bank to reinstate him but same was not considered so he had sent a legal demand notice dtd.16.04.2009 through his advocate by way of registered post which was served to the Bank but no reply was given by it. So, again a reminder notice dtd.18.05.2009 was sent to the Bank which was also not responded, hence he had no option except to raise the industrial dispute so the present industrial dispute was referred to this Tribunal for adjudication. The applicant has stated that today also the work of peon is carried out by the Bank with the new employees instead of him, so the action of termination of his service is illegal, inhuman and against all cannons of law. The applicant side has relied on some citations related to issue of illegal termination of daily wager employees. Thereby, the applicant has prayed to quash and set aside the oral order of termination of his service dtd.06.02.2009 by declaring the same as illegal, unjust, arbitrary and contrary to settled law. He has further prayed to direct the opponent Bank to reinstate him on his original post along with continuity of service and full back-wages for the interim period with all consequential benefits.

(5). The opponent Bank has submitted written statement *vide* Exh.09, wherein it has denied the contentions of the applicant and has stated further that the services of the applicant was utilized as a daily wager as and when required for exigency work. It is stated that since the services of the applicant was purely temporary and casual in nature so the question of following the mandatory provisions does not arise. It is stated that the applicant has not worked continuously for 240 days in any year and therefore, violation of sec.25-F of the I. D. Act does not arise. The opponent has denied any such violation of sec.25-F, G & H of the I. D. Act and Rule 81 of the Industrial Disputes (Gujarat) Rules, 1966 thereby has contended that the applicant is not entitled to be reinstated on his original post with continuity of service and full back-wages for the interim period so has prayed to reject the reference case with costs.

(6). The following evidence is produced from applicant side.

: Oral Evidence :

1	Exh.13.	Affidavit of chief examination of the applicant.

: Documentary Evidence :

1	Mark-11/1.	Copy of service certificate issued by State Bank of India, Sayla Branch.
2	Mark-11/2.	Copy of representation made by the applicant.
3	Mark-11/3 & 11/4.	Copy of application preferred under RTI Act by the applicant.
4	Mark-11/5.	Copy of reply given to RTI application by Central Public Information Officer, SBI Ahemdabad.

5	Mark-11/6.	Copy of letter issued by the Central Public Information Officer, SBI Ahemdabad.
6	Mark-11/7.	Copy of Appeal preferred by the applicant under RTI Act before the Appellate Authority.
7	Mark-11/8.	Copy of decision passed in first appeal under RTI Act.
8	Mark-11/9.	Copy of Second Appeal preferred by the applicant under the RTI Act.
9	Mark-11/10.	Copy of decision passed in second appeal under RTI Act.
10	Mark-14/1.	Copy of legal notice issued to the opponent along with acknowledgments.
11	Mark-14/2.	Copy of reminder legal notice along with acknowledgments.

The applicant side has closed their stage of evidence on dt.16.01.2019 as can be seen from the rojnama (proceedings) of this case.

(7). The opponent side has not produced any oral evidence but has produced following documentary evidence in this case.

<u>: Documentary Evidence :</u>

1	Exh.16.	Affidavit of Branch Manager, Sayla submitted after the order of production for documents was passed below Exh.10.

2	Mark-17/1.	Copy of letter dtd.04.05.2017 written by the Branch Manager to the Assistant General Manager, SBI AAO – 5, Surendranagar along with Circular for Bank's Policy regarding retention of record.
3	Mark-17/2.	Copy of contract between SBI, Surendranagar and Care Well Allied Services for the period from dt.01.05.2018 to 31.10.2018.

The opponent side has submitted evidence closure pursis at Exh.18.

(8). The Ld. advocate of the applicant side has argued orally whereas the opponent side has submitted written arguments at Exh.26. The applicant side has relied on some citations in support of their arguments. These arguments of respective sides and citations of the applicant side will be discussed herein after at relevant stage.

(9). Having heard the learned advocates of the respective parties and having gone through the record, this Tribunal finds that three issues have emerged for consideration and judicial decision in the present industrial dispute.

(1). Whether the applicant proves that he was terminated illegally by the opponent?

(2). Whether the applicant is entitled for the relief of reinstatement on his original post with back wages or any other relief?

(3). What order?

The answers to the above issues are as below:

(1). Affirmative.

(2). Affirmative. The applicant is entitled for lump sum compensation of rupees three lacs fifty thousand in lieu of the relief of reinstatement and back wages.

(3). As per final order.

(10). <u>Reasons for issues</u>::

(11). <u>Issue Nos.1 & 2</u>::

(1). As the facts of both these issues are interconnected so the discussion of the same is done together to avoid repetition. Now looking to issue No.1, it is regarding whether the applicant was illegally terminated? For this purpose the applicant has to initially prove that he was the workman of the opponent, further he has to prove that he has served continuously as per the provision of **sec.25(B)** of the I. D. Act and then after he was retrenched from service without following the provisions of **sec.25(F)** or while terminating his service any other mandatory provisions of the I. D. Act are violated by the opponent.

(2). The applicant in his statement of claim has stated that he was working as a daily wager peon with the opponent Bank since dt.25.01.2002. The opponent was giving him wages of Rs.75/- per day on vouchers on monthly basis. He has stated that he had put more than seven years of continuous services with the opponent therefore he had requested the authority concerned to regularize his service as a permanent employee of the Bank, because the work carried out by him was of permanent nature. Due to said demand / request, the Bank had orally terminated his service w.e.f. dt.06.02.2009 without any reason and justification or without following due procedure of law as is contemplated under the mandatory provisions of sec.25-F, G & H of the Industrial Disputes Act, 1947 and has also violated Rule 81 of the Industrial Disputes (Gujarat) Rules, 1966.

Per contra, the opponent has contended that the services of the applicant was utilized as a daily wager, as and when same was required for exigency work. It is stated that since the service of the applicant was purely temporary and casual in nature, so the question of following mandatory provisions does not arise. It is stated that the applicant has not worked continuously for 240 days in any year and therefore, violation of sec.25-F of the I. D. Act does not arise. The opponent has denied any such violation of sec.25-F, G & H of the I. D. Act and Rule 81 of the Industrial Disputes (Gujarat) Rules, 1966.

Further if we peruse the documentary evidence produced herein by the applicant side then at mark-11/1 is the certificate issued by the Branch Manager of Sayla Branch stating that the applicant was serving as a daily-wager worker for miscellaneous work at the said branch from dt.01.07.2002 till dt.01.06.2004, continuously without break in services and his work was satisfactory as well as his customer service is best. The applicant has even deposed the said facts mentioned in statement of claim in his affidavit of chief examination submitted at Exh.13. In his cross examination he has stated that he had applied for job in State Bank of Saurashtra in pursuance of a notice board posted on notice board, however no vacancy or post was advertised in any newspaper. He has stated that he was not a permanent employee. He was paid salary for each month after excluding holidays and he do not have proof of payment of wages. He has admitted that he was paid wages for the days he used to work in the Bank.

Therefore, considering the above evidence it is proved that the applicant was working as a daily-wager and was performing miscellaneous work, so the said work was of unskilled type which is included in the definition of "workman" i.e. sec.2(s) of the I. D. Act. Hence, it is proved that the applicant is the workman as provided under the statute. Further the ingredients of being a casual or temporary or regular or part-time or full time workman are not required to be considered for said definition and only the nature of work is relevant factor.

(3). At this juncture it is required to refer the citation, the case before ***hon'ble Supreme Court*** between ***Devinder Singh v/s Municipal Corporation, Sanaur***[1], wherein it is held that whether a person is part-time employee or a contractual employee or a

1 2011 AIR SCW 3455.

temporary employee or casual employee, all are workman as provided in sec.2(s). It is held that the source of employment, the method of recruitment, the terms and conditions of employment / contract of service, the quantum of wages and mode of the payment are not at all relevant for deciding, whether or not a person is a workman within the meaning of sec.2(s). Further looking to the judgment which is also the case before ***hon'ble Apex Court*** between ***Srinibas Goradia v/s Arvind Kumar Sahur & Ors.***[2], wherein it is held that the designation of an employee does not determine their status as a workman; rather, the dominant nature of their work is the key criterion under the Industrial Disputes Act.

So looking to the ratio of these judgments and the definition of 'workman' enacted under sec.2(s) in the I. D. Act, the work which was performed by the applicant comes under the purview of this definition. Hence, it is proved that the applicant herein is a workman as defined in the Act.

(4). Now looking further at **sec.25(B)**, the definition of continuous service, the workman / applicant, in the instant case should have actually performed uninterrupted work as provided under sec.25(B-1) or should have worked under the opponent for minimum 240 days during a period of twelve calender months preceding the date of his termination as is provided under sec.25(B-2).

2 2025 Supreme (SC) 2083.

(5). For the discussion on this point of continuous service, some citations are required to be referred. The first citation is the case before ***hon'ble Gujarat High Court*** between ***Bilimora Nagarpalika v/s. Jashuben Jashavantbhai Solanki***[3]**,** which says about the burden of proof and onus of proof regarding the continuous service. It further says that the workman has to discharge the burden that he has completed 240 days of continuous service and once such assertion is primafacie found true with reference to the pleadings and facts on record, the burden shifts on the employer. Further looking to the citations, the case between ***Sriram Industrial Enterprise Ltd. v/s. Mahak Singh & ors.***[4] and the case between ***R. M. Yellati v/s. the Asst. Executive Engineer***[5], they also says that burden of continuous service is on workman and he has to produce cogent evidence, oral as well as documentary.

(6). The applicant in the instant case has pleaded in his statement of claim that he was working as a daily wager peon with the opponent Bank since dt.25.01.2002. The opponent was giving him wages of Rs.75/- per day on vouchers on monthly basis. The applicant has stated that he had put more than seven years of continuous services with the opponent therefore he had requested the authority concerned to regularize his service as a permanent employee of the Bank, because the work carried out by him was of permanent nature. Due to said demand / request,

3 Bilimora Nagarpalika v/s. Jashuben Jashavantbhai Solanki reported in 2013(1) GLR 845.

4 Sriram Industrial Enterprise Ltd. v/s. Mahak singh & ors. Reported in 2007 II CLR 744.

5 R. M. Yellati v/s. The Asst. Executive Engineer reported in 2005 (III) CLR 1028 (S.C.).

the Bank had orally terminated his service w.e.f. dt.06.02.2009 without any reason and justification or without following due procedure of law as is contemplated under the mandatory provisions of sec.25-F, G & H of the Industrial Disputes Act, 1947 and has also violated Rule 81 of the Industrial Disputes (Gujarat) Rules, 1966. The applicant has stated that since date of his appointment till termination of his service he has worked continuously without any break and has also put more than 240 days of continuous service with the Bank in each year of service tenure and also in the preceding year, even though retrenchment compensation was not paid to him at the time of his termination. The applicant has stated that it is an undisputed fact that at the time of termination, the Bank had not served any notice or notice pay nor has even offered or paid any retrenchment compensation to him. Therefore, it is a clear case of violation of sec.25-F of the Industrial Disputes Act, 1947 hence the order of oral termination of service on dt.06.02.2009 is null and void, which is required to be quashed and set aside by this Tribunal.

Per contra, the opponent has stated that the services of the applicant was utilized as a daily wager, as and when it was required for exigency work. It is stated that since the services of the applicant was purely temporary and casual in nature so the question of following mandatory provisions does not arise. It is stated that the applicant has not worked continuously for 240 days in any year and therefore, violation of sec.25-F of the I. D. Act does not arise. The opponent has denied any such violation of sec.25-F, G & H of the I. D. Act and Rule 81 of the Industrial Disputes (Gujarat) Rules, 1966 thereby has contended that the applicant is not entitled to be reinstated on his original post with continuity of service and full back-wages for the interim period.

(6.1). Looking to the evidence which has appeared on record in pursuance to the above rival pleadings then the applicant herein has submitted his affidavit of chief examination at Exh.13, wherein he has reiterated the facts mentioned in his statement of claim. In his cross examination he has stated that he had applied for job in State Bank of Saurashtra in pursuance of a notice posted on notice board, however no vacancy or post was advertised in any newspaper. He has stated that he was not a permanent employee. He was paid salary for each month after excluding holidays and he do not have proof of payment of wages. He has admitted that he was paid wages for the days he used to work in the Bank. He has denied that he had not work for 240 days in any calender year but has stated that he have no proof of it. However, the concerned Presiding Officer of CGIT, Ahemdabad has recorded in cross examination that, 'his advocate has said that he has filed the proof'.

(6.2). If the documentary proof / evidence for the same is perused then the applicant side at mark-11/1 has produced the certificate issued by the Branch Manager of Sayla Branch stating that the applicant was serving as daily-wager worker for miscellaneous work at the said branch from dt.01.07.2002 till dt.01.06.2004, continuously without break in services and his work was satisfactory as well as his customer service is best. Considering this certificate it can be said that the applicant has joined service as daily-wager on dt.01.07.2002 and has worked continuously till dt.01.06.2004. The opponent side has not produced any contrary evidence against this document nor has challenged the genuineness of the said certificate. Now let us further discuss regarding the remaining service tenure of the applicant till date of his termination i.e. dt.06.02.2009, and come to a conclusion that whether the remaining service of the applicant is proved to be continuous till said date.

(6.3). In pursuance to the same if the further cross examination of the applicant is perused then he has said that he does not know as to on which permanent vacancy he was working. He had denied that he used to work when exigency arise in the Bank and he was working against leave vacancy. So, the applicant has specifically denied about the defense raised by the opponent side in their written statement regarding the work being performed by the applicant as and when exigency arose.

(6.4). Now if we further discuss then the applicant side herein prior to submitting evidence has preferred an application at Exh.10 seeking production of documents from the other side, wherein they have sought documents such as certified copies of record for work performed by the applicant at Sayla Branch from dt.25.02.2001 to dt.05.02.2009, pay vouchers, peon book, daily-wager muster rolls, seniority list of daily-wager employees for the said period i.e. from dt.25.02.2001 to dt.05.02.2009. The applicant has even sought details as to how many daily-wagers were appointed after his termination and has specifically sought details such as date of appointment, mode of recruitment, etc. of daily-wagers namely Sanjay Ashokbhai Chauhan and Jayesh Kishorebhai Solanki, who as per his say were working at his place.

(6.5). The opponent side has replied *vide* Exh.12 to the said application seeking production of documents, wherein it is stated that there is no provisions to supply documentary evidence to the employee engaged by the Bank in category of daily rate / temporary or casual worker. There is no such practice to supply any documentary evidence except to permanent employees appointed by the Bank. It is stated that this Tribunal does not acquire the jurisdiction under sec.23 of the RTI Act to deal with the matter in pursuance to any order passed by the authority under said Act. It is stated that the applicant has exhausted all the provisions of the Act by filing appeal before the Authority, so this Tribunal cannot modify or change the order passed by the Appellate Authority for want of jurisdiction. It is submitted that item Nos.1 to 3 i.e. certificate of service period, payment of vouchers for the service period and peon book for service period are already dealt and decided by the Authority under the RTI Act so the applicant cannot obtain the order of this Tribunal for the same by suppressing the material fact. The opponent has stated that there is no dispute whatsoever regarding the said documents being demanded by the applicant under the provisions of RTI Act, regarding the dates of application submitted by the applicant to the RTI officer and deposit of amount as per requirement by the applicant. The opponent has also stated that there is no dispute that the RTI Officer of the opponent Bank had written letter dtd.28.07.2009 to the applicant and specified that the documents demanded by him are confidential documents so the same could not be supplied to him as per his demand so the RTI Officer had also returned the amount deposited by him. It is stated further that in case of daily-wagers no relevant documents are available with the Bank at present therefore same could not be produced. It is contended that the concerned employee was very well aware of the fact regarding signing of registers and method of payment, in spite of that without any reason he is asking for the irrelevant and confidential documents to be produced by the Bank. It is stated further that with respect to documents sought *vide* item Nos.1 to 4, the said demand is already rejected by the Authority under RTI Act holding that those documents falls under confidential documents so same could not be supplied to the applicant. The said order of PIO is confirmed by two Authorities so it is finalized and therefore this Tribunal is not having jurisdiction to alter or modify the demand for said items so it is liable to be rejected. With respect to item No.5 regarding seniority list of daily-wagers it is submitted that there is no such practice of the Bank to prepare and maintain seniority list of daily wagers for any of its Branches so same could not be produced as it was never in existence. With respect to item No.6 it is stated that dispute for termination was referred to the Tribunal in the year 2010 and even after lapse of 7 years of period the applicant has put the demand for details in the year 2017, however inspite of their sincere efforts the details could not be traced out so same cannot be produced. With respect to item

No.7 i.e. the details of the two named persons being employed in place of the applicant it is denied that no such persons are working in his place as permanent employees, so no question arise to supply any such details as per his demand. It is stated that such two persons were employed through out sourcing agency. It is stated that no such documents were sought during the tenure of service but after lapse of 8 years of raising the dispute during the pending proceedings the application for demand of documents is preferred which clearly seems to be an after thought so same is liable to be rejected.

(6.6). It is pertinent to note that after the above reply was submitted by the opponent Bank, the application of Exh.10 was decided on merits on dt.30.07.2018 and by relying on the powers under sec.11 of the I. D. Act, the concerned Tribunal has allowed the application by directing the opponent to submit the documents which are detailed in the application of Exh.10, before the Tribunal by next date failing which adverse inference shall be drawn.

(6.7). So once the said order was passed then the opponent Bank was either required to comply it by producing such documents and if it was aggrieved by said order the same was to be challenged before higher forum. The opponent Bank has neither taken any of such steps but instead has submitted an affidavit at Exh.16 of the Branch Manager, wherein it is stated that demand for documents mentioned in item No.1 does not clarify which type of certificate is demanded. Further no record for daily wagers are prepared or maintained in any branch except the payment of the vouchers. With respect to item No.2 the vouchers, it is stated such vouchers are already destroyed up to 2006 as per the policy of the Bank, which is produced in separate list and the vouchers for the remaining period up to 2009 could not be traced out inspite of since efforts so same could not be produced. With respect to item No.3 it is stated that such peon book for said period is also destroyed and so cannot be produced. With respect to item No.4 the daily wagers musters, no branch of the Bank has ever prepared such muster roll, therefore could not be produced. It is stated further that the daily-wagers are not required to sign the muster registers. With respect to item No.5, which is the seniority list of daily-wagers it is stated that no branch of the Bank has ever prepared the seniority list of daily-wagers so it could not be produced. It is stated that no daily wagers were appointed after dt.05.02.2009 at Sayla Branch in place of the applicant. With respect to item No.7 regarding two persons, it is sated that such persons were appointed through the agency who are given the contract for providing man power as per requirement of the Bank. It is stated that the policy decisions were taken and in that pursuance the Bank has started getting man power from various out sourcing agency. It is stated that after 2010, no daily wagers are recruited by the Bank. The persons named Sanjay Chauhan is working through agency named Care Well Allied Services, since dt.01.01.2010 and Jayesh Solanki has worked in the Bank as a daily-wager through agency for the period from dt.01.04.2016 to dt.31.10.2017. So the said named persons were never appointed by the Bank, no details are with the Bank nor the Bank has issued any letter of appointment or any documentary evidence. It is stated that the copy of the contract with Care Well Allied Services is produced herewith by separate list.

(6.8). The contention raised in this affidavit by the opponent Bank cannot be considered for more than one reasons *viz*, at the time of submitting the written reply to the application of Exh.10 i.e. production of documents no such contention of non-availability of said documents or such documents being destroyed were raised. Further the said order was passed on merits below Exh.10, wherein the opponent was directed to produce all such details and documents till next date failing which it was directed that adverse inference will be drawn. So there was no such direction or scope for submitting such an affidavit for clarifying the stand. Therefore, after the order as such was passed on merits the opponent Bank as a part of taking a ‘U’ turn and diluting the effect of said order has submitted the said affidavit. As stated earlier if the opponent Bank was aggrieved by the said order then only remedy available with the Bank was to challenge the same by preferring appropriate proceeding before higher forum, which has not been done by the Bank. Further one vital aspect is required to be noted that the said Branch Manager is not even examined as the Bank’s witness nor is any other officer of the Bank examined as a witness and the opponent Bank has by submitting couple of documents referred in the said affidavit has straightaway closed their evidence without producing any oral evidence, which means any of the responsible officer of the opponent Bank has not even dared to enter the witness box, for giving a fair chance to the applicant of cross examination, so that the aspects of non-availability or destruction of the demanded documents can be decided in a proper manner by thoroughly examining the pros and cons of oral evidence.

(6.9). Now if we further discuss then the applicant before preferring this proceeding has applied before the opponent Bank seeking information and details in form of such documents. The said applications dtd.21.04.2009 & 05.06.2009 are respectively, produced at mark-11/3 & 11/4. In pursuance to the same initially the CPIO of the opponent Bank *vide* letter dtd.01.07.2009 has replied asking the applicant that the cost of photocopies of such 432 pages of vouchers and branch peon book for the period from 2002 to 2009 comes to Rs.864/-, so he was asked to arrange the said amount by sending through demand draft. The said letter is produced by the applicant side at mark-11/5. This reply under RTI itself proves that the Bank was having documents such as vouchers and peon book for the said relevant periods which were total 432 pages. But then after the opponent Bank as a part of their conduct has again taken a 'U' turn and sent a letter dtd.28.07.2009 to the applicant that such documents are internal administrative documents of the Bank and as per sec.8(1)(d) of RTI Act they are exempted from being disclosed so they cannot provide the same. Thereby the amount of Rs.864/- sent through demand draft was returned back along with further amount of Rs.150/- as compensation for carrying out procedure of getting issue the demand draft and cancellation of the same. The said letter is produced by the applicant at mark-11/6. So the opponent Bank under the guise of exemption under RTI Act has not provided those documents even when they were available and the applicant has even paid charges for the same. The applicant has preferred First Appeal against the said rejection of his application but it was of no avail so then after he has preferred Appeal before the Gujarat State Information Commission, wherein it was rejected as not maintainable before the said State Commission since the opponent State Bank of India was a Public Authority under the Central Government. The applicant was given a liberty to make his appeal to the Central Information Commission, New Delhi. The said order of commission is produced at mark-11/10. But it seems that then after the applicant has not preferred any such appeal before the said Authority.

Therefore, from the above documents it can be said that the opponent Bank was in possession of documents which were relevant for deciding the present dispute but by putting an excuse of exemption granted under RTI Act and by taking a ‘U’ turn in pursuance to the same, has not provided those documents to the applicant under the RTI Act.

(6.10). Before this Tribunal when the applicant has sought production of the very same documents, a lame defense was raised by the opponent Bank regarding that the provisions of RTI Act bars the jurisdiction of this Tribunal from directing production of such document, which was rejected and the opponent was directed to produced the demanded documents. At that juncture, without being so directed or without there being any such prescribed procedure, the opponent Bank has submitted the affidavit of their Branch Manager as an after thought by raising contentions of non-availability and destruction of such documents as per policy of the Bank. The opponent Bank has not even specified the date when were such documents destroyed and what sort of unsuccessful efforts were made and by whom to trace out such documents. The opponent Bank has produced at mark-17/1 the Circular No.OP & SP/20/1998-99 for Bank's Policy on Record Retention along with letter dtd.04.05.2017 of the Branch Manager, Sayla Branch written to the Assistant General Manager, Surendranagar. In the said letter the handwritten endorsement is made to the AGM of the opponent Bank, wherein it is stated that their Sayla Branch has destroyed old record on dt.16.06.2016 and has sold out the old record to Jha brothers & Sons. It is stated that they may review branch action and also advise branch to obtain pulp certificate from the paper mill and keep certificate on branch record. Therefore, this endorsement says that the relevant record necessary for deciding the present dispute was destroyed on dt.16.06.2016 which means that the said record was destroyed after the present industrial dispute was referred for adjudication to the Tribunal and same was pending before the Tribunal. In pursuance to the same, if the circular produced along with the said letter which is the Bank's Policy on Record Retention is perused then, therein on page No.20, the provisions for retention / destruction of record under Clause B, Sub-clause No.(iii) & (iv) related to Legal Cases of

Staff and Court Cases filed against the Bank by the employee / others is provided. Therein the period is stated of 10 years after the retirement / death of the employee or closure of the case in all cases. This means that the circular of the Bank itself says that record of cases filed by employee / others or legal cases of staff is to be preserved till said case is closed. Therefore, herein the opponent Bank was duty bound to preserve the record related to this case until same is finally decided and by not preserving the said record and not producing the same even when specifically directed for the same, the opponent Bank has surely disobeyed the order and the opponent Bank has hit an axe on it's own foot by doing so, therefore this Tribunal has to draw adverse inference against the opponent Bank for not producing the relevant documents even though directed for the same.

(6.11). In pursuance to the same it is required to refer the citation which is the case before ***hon'ble Supreme Court*** between ***Mohammad Sagir & Others v/s Nagar Nigam Kanpur***[6], wherein it is required to quote some paras of said judgment on discussion regarding raising of adverse inference, which are as under:

> ***6.*** *Nagar Nigam, Kanpur (i.e., the respondent) contested the claim of the workmen (i.e., the appellants) by claiming that those workmen were engaged as substitutes and they hardly worked for 10 days a month, and* ***they did not render 240 days of continuous service in any calendar year****, therefore, they were not entitled to the benefit of the prescribed retrenchment procedure.*

6 SLP (C) Nos.14760-14762/2024 decided on dt.16.03.2026

*7. The Labour Court **did not accept** Nagar Nigam's stand, inter alia, on the following grounds: (a) there was no specific denial that those workmen were engaged in the year 1993 as switchmen and their services were dispensed with in the year 2006; (b) the oral testimony and documentary evidence of workmen substantiated their claim of continuously serving Nagar Nigam over the years; (c) the claim of Nagar Nigam that those workmen rendered duties for barely 10 days in a month **was not substantiated by production of records despite order summoning the records, therefore, an adverse inference was liable to be drawn against the employer**.*

*8. Aggrieved by the award(s) of the Labour Court, Nagar Nigam filed writ petitions before the High Court. The grounds pressed before the High Court, inter alia, were that **there was no cogent evidence led by any of the workmen regarding their engagement for more than 240 days in a given calendar year; and that few payment slips, etc. produced by them did not establish continuous service of 240 days**.*

*9. The High Court **took the view that the burden to establish continuous service of 240 days in a calendar year lie squarely on the workmen and as the workmen had failed to discharge their burden by producing relevant records, the burden of proof cannot be shifted on the employer to prove that they have not rendered continuous service of 240 days in a calendar year**. Based on the above, the awards were set aside.*

9. *Impugning the judgment of the High Court, the learned counsel for the petitioner submitted that the High Court had overlooked that there was no dispute that those workmen were rendering service since 1993 and their services were dispensed with in 2006. Such long continuation in service raises a presumption regarding existence of a regular vacancy as also that the job is perennial in nature. Besides, the workmen had led evidence to show that they were rendering service continuously. Moreover, an order was passed by the Labour Court requiring the employer to produce the relevant records regarding payment made to the workmen, but those records were withheld. In such circumstances, adverse inference was rightly drawn by the Labour Court against the employer to hold that the workmen had succeeded in proving that they rendered continuous service of 240 days in a calendar year and were entitled to the benefit of Section 6N of the 1947 Act. In these circumstances, it was urged that the view taken by the High Court is erroneous in law and therefore, the impugned judgment be set aside. In addition, it was submitted that similarly situated workmen were granted similar relief by the Labour Court and some of those workmen have even succeeded in the High Court and Special Leave Petition (C) No. 14528/2019 filed by Nagar Nigam, Kanpur was dismissed by this Court vide order dated 26.07.2019. Thus, it would be travesty of justice if the present appellants who are similarly situated are* *subjected to a different order.*

10. *Per contra, the learned counsel representing the Nagar Nigam, Kanpur submitted that the view taken by the High Court cannot be faulted as there was no cogent documentary evidence on record to indicate that the workmen had completed 240 days of continuous service in any given calendar year as to be entitled to the benefit retrenchment procedure prescribed by Section 6N of the 1947 Act. Besides, there was no justification for the Labour Court to award back-wages without recording a finding that those workmen were not gainfully employed elsewhere in the interregnum.*

11. *We have accorded due consideration to the rival submissions and have perused the materials available on record. A perusal of the written statement filed on behalf of the employer (Nagar Nigam, Kanpur) would indicate that there was no specific denial about the fact that the concerned workmen were engaged as Switchmen in the year 1993 and that their services were dispensed with in July 2006.* ***Nagar Nigam's claim in the written statement is that those workmen were engaged as substitutes, by way of temporary arrangement, to work for about 10 days in a month, or for a fix period, and were compensated on daily wage basis. The aforesaid stand in the written statement was sought to be substantiated by examining an employee of Nagar Nigam as a witness who made a statement that his deposition is based on record. What is important is that the Labour Court on the application of the workmen had***

summoned the records from the employer, but those were not produced. On the other hand, workmen had led evidence to substantiate their claim of rendering continuous service over the years. In such circumstances, when the records were not produced, despite order of the labour court, even though the witness examined by the employer made a statement that what he was deposing is based on record, the Labour Court, in our view, was justified in drawing adverse inference against the employer. Therefore, the finding of the labour court qua rendering of continuous service of 240 days was not liable to be interfered with.

12. In ***Gauri Shanker vs. State of Rajasthan****, this Court had relied on an earlier decision of this Court in* ***Gopal Krishnaji Ketkar vs. Mohd. Haji Latif*** *to observe that* ***even if the burden of proof does not lie on a party, the Court may draw an adverse inference if the party withholds important documents in its possession which can throw light on the facts in issue****. Based on the above legal position, it was observed:*

> *"**20**… It is not in dispute that the workman was employed with the respondent Department in the year 1987 and on the basis of material evidence adduced by both the parties and in the absence of the non-production of muster rolls on the ground that they are not available, which contention of the respondent Department is rightly not accepted by the Labour Court and it has recorded the finding of*

fact holding that the workman has worked from 1.1.1987 to 1.4.1992.

***21.** …… The Labour Court in the absence of any material evidence on record in justification of the case of the respondent Department has rightly recorded the finding of fact and held that the order of termination passed against the workman is bad in law, the same being void ab initio it has passed an award for reinstatement of the workman in his post in exercise of its original jurisdiction under provision of Section 11 of the Act.*

***22.** The Labour Court has rightly followed the normal rule of reinstatement of the workman in his original post as it has found that the order of termination is void ab initio in law for noncompliance with the mandatory provisions of the Act referred to supra. …..”*

13.** We are conscious of the law that the burden to prove that a workman had worked continuously for 240 days in the preceding one year prior to the alleged retrenchment lies on the workman. However, each case is to be decided on its own facts. In a case where engagement is for a substantial length of time, a presumption would arise that the work for which the workmen is engaged is of a perennial nature and there exists a vacant post. **In the instant case, there is no dispute that workmen were initially engaged in the year 1993 and their services were dispensed with in the year 2006. It is difficult to accept

> ***that for that long period of time they were only working as substitutes for regular workers. In such circumstances, when they had led evidence regarding their continuous service and a direction was issued to the employer to produce the relevant records and, despite such direction, records were not produced, if the Labour Court had raised an adverse inference, the same could not have been faulted****.*
>
> ***14.*** *We are, therefore, of the view that the judgment and order passed by the High Court is liable to be set aside. However, merely because the retrenchment procedure was not followed may not automatically entitle the workmen to be reinstated with full back wages.*

(6.12). The applicant side has relied on some other citations on the point of drawing adverse inference, which are the cases before ***hon'ble Apex Court***, the first of which is between ***Gauri Shanker v/s State of Rajasthan***[7], wherein the employer has withheld the muster roll so adverse inference was drawn which was held rightly to be drawn against the employer. Therein hon'ble High Court has modified the award by awarding compensation in lieu of reinstatement which was held to be contrary. The next citation is case between ***Director, Fisheries Terminal Division v/s Bhikhubhai Meghajibhai Chavda***[8], wherein it is held that when the workman was hired on daily wage basis, so he would have difficulty in having access to all official

7 (2015) 12 SCC 754.
8 2010 AIR SCW 542.

documents, muster rolls, etc. in connection with his service. In said case the workman has claimed and deposed that he has worked for 240 days, so burden of proof shifts to employer to prove that he has not completed 240 days of service in requisite period to constitute continuous service.

The other citations on this point of adverse inference relied by the applicant side are the cases before ***hon'ble Gujarat High Court***, the first is between ***Deputy Executive Engineer & ors. v/s Bhagwansinh Udesinh Thakor & ors.***[9], wherein the employer has failed to lead evidence, so it was held that the presence or absence in itself would not justify any subsequent attempt to contend that Labour Court erred in holding in favour of the workman. The next citation is case between ***Bhavnagar Municipal Corporation v/s Kantibhai Nanubhai Vaghela***[10], wherein it is held that whenever the employer fails to produce relevant documents such as Attendance Register, Monthly Payment Register, etc. even after being called for by the other party or as ordered by the Court, then there is every justification to draw adverse inference against the employer.

(6.13). So looking to the ratio of above judgments herein the applicant by producing certificate of initial service has proved the date of joining and the opponent though directed has not produced the relevant record even though was available and by way of taking a 'U' turn has contended that same is destroyed but

9 2020 I CLR 87.
10 2013-1-CLR 634.

as discussed in preceding paras, the said record was to be kept till final disposal of this case. Further the opponent has not examined any witness to substantiate their defense nor has raised any specific contention that the applicant has not worked lastly till dt.06.02.2009, therefore looking to the facts and circumstance of this case, adverse inference is required to be drawn against the opponent Bank for not producing relevant record and withholding the same, which if produced would have helped the applicant to prove his continuous service tenure as is pleaded by him. Thereby, on basis of the above cumulative discussion it is proved that the applicant herein has performed continuous service during the said period as is pleaded by him. Therefore from this discussion it is proved that the applicant has performed continuous service as provided in sec.25-B(2) of the I. D. Act.

(7). Now whether the termination of the applicant is illegal or not is to be decided. For this purpose the provision of **sec.25(F)** of the I. D. Act will have to be referred and discussed at this stage.

Section – 25(F) ::

Conditions precedent to retrenchment of workman.

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 of 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, the time of retrenchment, compensation which shall be equivalent to fifteen days average pay for every completed year of continuous service or any part thereof in excess of six months; and

(c) Notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette.

The above provisions are the condition precedent for retrenchment of an employee. So, in the instant case, whether the applicant is retrenched or not i.e. does his termination comes under the definition of “retrenchment” or not is to be decided.

(8). At this juncture, it will be fruitful to look **sec.2(oo)**, the definition of **“retrenchment”**, which is as under::

Section 2(oo) ::

“Retrenchment”, means the termination by the employer of the service of a workmen for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include -

(a) Voluntary retirement of the workmen; or

(b) Retirement of the workmen on reaching the age of superannuation, if the contract of employment between the employer and the workmen concerned contains a stipulation in that behalf; or

(bb) Termination of the service of the workmen as a result

of the non – renewal of the contract of the employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein; or

(c) Termination of the service of a workman on the ground of continued ill – health.

(9). Here in this instant case, the applicant has stated that he was orally terminated from the service without complying the legal provisions. It is stated that at the time of termination the Bank had not served him any notice nor paid notice pay neither has offered or paid any retrenchment compensation, so it is clear violation of sec.25-F of the I. D. Act. Per contra, the opponent side has merely stated that service of the applicant was utilized as a daily wager, as and when exigencies or work was required. This contention is denied by the applicant in his cross examination and the opponent herein has not produced any oral evidence to prove that there is no violation of any mandatory provisions of the I. D. Act. In this circumstance the said defense raised by the opponent side is not proved which results that the applicant was orally terminated from service by the opponent. Hence, it is proved that the termination of the applicant from service is a simpliciter termination which falls under the purview of retrenchment and when it is proved that the applicant had performed continuous service then the opponent was obliged to comply with the provisions of sec.25-F before terminating his service. Therefore in this circumstance, it is proved that this is a clear cut case of termination of service which is termination simpliciter, wherein the applicant was terminated orally without paying any retrenchment compensation, notice pay and other liabilities as per the I. D. Act. So, as discussed above this case does not fall under any exclusion clause under the definition of retrenchment nor is the applicant terminated as a part of punishment given after holding departmental inquiry, hence the termination of applicant falls under the term "retrenchment".

(10). It will be fruitful to go through some enunciation on provisions of sec.25-F of the I. D. Act. The cases are before ***hon'ble Supreme Court***, the first of which is the case between ***Mohanlal v/s The Management of Bharat Electronics Ltd.***[11], wherein it is held that when the case is not covered by any exception of sec.2(oo) then it amounts to retrenchment and if sec.25-F is not complied then such retrenchment is *ab initio void.* The next is the case between ***Ramesh Kumar v/s State of Haryana***[12], wherein it is held that when conditions precedent for retrenchment are not complied then the termination is in contravention of the provisions of sec.25-F. The third case is between ***Annop Sharma v/s Executive Engineer, Public Health Division No.1***[13], wherein it is held that provisions of sec.25-F(a) and (b) are mandatory and non compliance of the same renders the retrenchment of an employee to be nullity. Here it is an admitted fact that the mandatory provisions of sec.25-F were not complied. So non compliance of the said provisions renders the

11 Mohanlal v/s The Management of Bharat Electronics Ltd. reported in AIR 1981 SC 1253.
12 Ramesh Kumar v/s State of Haryana reported in 2010(1) Scale 432.
13 Annop Sharma v/s Executive Engineer, Public Health Division reported in 2010-II-CLR 1.

retrenchment of the applicant to be nullity and such an act is *void-ab-initio.*

(11). Further the applicant has even contended that some other new employee was appointed by the Bank and is working on same condition / contract, but the Bank has not given any intimation to him so it is also a clear case of violation of sec.25-H of the D. Act. If the said contention is discussed then the applicant in his application seeking production of documents from the opponent Bank, which is submitted at Exh.10 has also prayed for details of daily-wagers namely Sanjay Ashokbhai Chauhan and Jayesh Kishorbhai Solanki by contending that they are working at his place. In reply to the same the opponent Bank has contended that those persons are not working in place of the applicant after his discontinuation w.e.f. dt.05.02.2009 as permanent employees but those persons are engaged through outsourcing agency. In the affidavit of the Bank Manager produced at Exh.16, after the order for production was passed, it is stated that those two persons were appointed through the agency who are given the contract for providing man power as per requirement of the Bank. The policy decision for the same was taken and in pursuance, the Bank has started getting man power from various outsourcing agency. It is stated that after 2010, no daily wagers are recruited by the Bank. It is further stated that Sanjay Chauhan is working through agency Care Well Allied Services since dt.01.01.2010 and Jayesh Solanki had worked in the Bank as a daily-wager through agency for the period from dt.01.04.2016 till dt.31.10.2017, but those persons were never appointed by the Bank. So considering the said contention raised by the rival side it can be said that the work which was performed by the applicant was even available with the Bank after the applicant was retrenched, however the mode of getting the said work was changed and instead of directly employing daily-wagers, the Bank has outsourced such daily-wagers through agencies. In this circumstance the provision of sec.25-H says that when any workman is retrenched from service then subsequently when the said work becomes available the employer has to provide first opportunity to the employee who is already retrenched. Herein the opponent Bank has not given such an opportunity to the applicant by asking that whether he is ready to work as an employee of outsourcing agency. In this circumstance the violation of sec.25-H of the I. D. Act is also proved on record.

(12). Hence looking to the above discussion and enunciation of law, the facts that applicant was workman as defined in theI. D. Act, there was relationship of an employer and employee between the applicant and the opponent, the applicant was in continuous service as per the statute and was illegally terminated i.e. he was retrenched without following the due process as stated in the provision of **sec.25(F)**, as well as subsequent violation of **sec.25(H)** of the I. D. Act, are proved. Therefore issue No.1 is replied in ***"affirmative"***.

(13). Now it is to be decided that whether applicant is entitled for the relief of reinstatement on his original post with back wages or not. The Ld. advocate of the applicant side has strongly argued by saying that this is a fit case for awarding reinstatement and has relied on many citations in support of the said contention. So let us refer the said citations relied by the applicant side. They are the cases before ***hon'ble Supreme Court***, first of which is between ***Jasmer Singh v/s State of Haryana and another***[14], wherein the termination was found to be in violation of sec.25-F, G & H of the I. D. Act so it was set aside directing reinstatement. The next case is between ***Ajaypal Singh v/s Haryana Warehousing Corporation***[15], wherein the workman was awarded the relief of reinstatement with consequential benefits by the Labour Court, which was declined by the Single Judge and Division Bench of hon'ble High Court, but the hon'ble Apex Court has held that in absence of pleadings on part of management that the service of workman was terminated on the ground that his initial appointment was made in violation of Article 14 and 16 of the Constitution of India such relief of reinstatement cannot be denied. The next case is between ***State of U. P. v/s Charan Singh***[16], wherein workman was working as a tube-well operator and his service was terminated treating him as temporary employee by giving one months salary. The plea was raised that his service was terminated as the post was abolished but such contention was not stated in the order of termination so reinstatement was ordered on equivalent post. The next case is between ***Ramesh Kumar v/s State of Haryana***[17], wherein the

14 (2015) 4 SCC 458.
15 2015 – CLR 591.
16 2015 LAB.I.C. 2347.
17 2010(1) SCALE 432.

workman was appointed as mali on casual basis and was illegally terminated so was directed to be reinstated with continuity of service with fifty percent back-wages. Therein the similarly placed workmen were regularized in service by the Government, so the award of Labour Court was confirmed. The next citation is case between ***Jeetubha Khansangji Jadeja v/s Kutchh District Panchayat***[18], wherein Labour had directed the reinstatement of a workman who was retrenched 20 years ago. The hon'ble High Court has modified the award by way of lumpsum compensation of rupees one lac, but hon'ble Apex Court has held that such interference was unwarranted in facts of the case. The next citation is the case between ***Deepali Gundu Surwase v/s Kranti Junior Adhyapak Mahavidhyalal***[19], wherein it is held that when reinstatement is awarded direction of continuity of service and consequential benefits should follow as a matter of course. Therein various directions are issued for granting back-wages in different situations.

(13.1). The next citations are the cases before ***hon'ble Gujarat High Court,*** the first of which is between ***Deputy Director of Animal Husbandry v/s Govindbhai Ukabhai Labana***[20], wherein the workman was terminated without compliance of sec.25-F. Further in para No.5 of said judgment it is stated that the outsourcing agency has retained the workman's service and he was not a part-time employee but he was given appointment letter as a temporary daily-wager so he was reinstated. The next

18 2022 LiveLaw (SC) 797.
19 2014-II-CLR 813.
20 2024 – II – CLR 604.

citation is case between ***Chaudhary Baldevbhai Hiralal v/s Kheralu Municipal Borough & Anr.***[21], wherein it is held that once the termination of service of a workman is held to be illegal and unjust the relief of reinstatement is not automatic. Therein the Labour Court has awarded compensation but hon'ble High Court has held that upholding the said award would legitimize the arbitrariness, victimization and resorting to nepotism by the authority, so the award was modified awarding reinstatement with continuity of service. The next citation is the case between ***Dakor Municipality v/s Bhavin Rajnikant Bhatt & others***[22], wherein the workman was reinstated way back in 2013 so the same was not disturbed in the Letters Patent Appeal. The next case is between ***Rameshbhai Bhathibhai Pagi v/s Deputy Executive Engineer***[23], wherein Labour Court has award compensation of Rs.72,000/- to petitioner which was held to be detrimental to him as he has worked for over a period of 20 years, so he was directed to be reinstate with continuity of service but without any back-wages. The next case is between ***Kantibhai Ramabhai Gamar v/s Anubhag Nirikshakni Kacheri & anr.***[24], wherein it is held that only because the workman was not allowed to complete 240 days in the preceding year before termination, the employer cannot contend that they are not bound to follow provisions of sec.25-F of I. D. Act. Since the workman was working continuously from 1989 to 1998, but has failed to prove 240 days of service in last preceding year so he is

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21 2013 – III - CLR 165.
22 2024 I CLR 73.
23 2024-I-CLR 59.
24 2013-II-CLR 627.

presumed to put in continuous service under sec.25-B of the I. D. Act. The next citation is the case between ***Prakashbhai Bababhai Patel & ors. v/s Deputy Executive Engineer***[25], wherein six workmen were terminated and out of them one was reinstated, whose service was regularized and was still working with the respondent. The decision with respect to said workman was accepted by the respondent so all the remaining workmen were held to be entitled for reinstatement with continuity of service. The next citation is the case between ***Gujarat Maritime Board v/s Hansraj Tapubhai Solanki***[26], wherein after termination of workman, 10 other persons were appointed to the post of Driver, so in such circumstance, it was held that terminated worker should not be denied reinstatement.

So, the relief of reinstatement in all above judgments were granted looking to the facts and circumstance of each particular case on hand.

(14). So this crucial question regarding entitlement of relief is to be decided on basis of the facts and circumstance of each case. The same is to be decided on basis of the bundle of facts emerging from the date of termination till the present day situation. Looking to the cross examination of the applicant herein, he has stated his birth date to be dt.06.02.1975, so considering the same at present he might be of 51 years, which means only few years have left with him before he reaches age of

25 2024 III CLR 158.
26 2025 III CLR 685.

retirement. Further looking to the dispute, it is of the year 2010 which is presently decided in the year 2026, i.e. almost after period of 16 years. Further the applicant wasn't a regular employee and at the relevant time has merely worked for almost seven years. In pursuance to the same it is required to refer the citation, which is the case before ***hon'ble Supreme Court*** between ***Senior Superintendent Telegraph (Traffic) Bhopal v/s Santosh Kumar Seal and ors.***[27], wherein it is held that relief by way of reinstatement with back-wages is not automatic even if termination of an employee is found to be illegal or is in contravention of the prescribed procedure and that monetary compensation in lieu of reinstatement and back-wages in cases of such nature may be appropriate. In the said case the workmen were engaged as daily-wagers about 25 years ago and they had worked hardly for 2 or 3 years, so it was held that relief of reinstatement and back-wages to them cannot be justified and instead monetary compensation would subserve the ends of justice.

(15). In pursuance to the above discussion it is further required to refer some citations which are the cases before ***hon'ble Supreme Court***. First citation is the case between ***Surendra Kumar Verma v/s Central Government Industrial Tribunal, New Delhi***[28], wherein it is held that plain common sense dictates that the removal of an order terminating the services of workmen must ordinarily lead to the reinstatement in

27 2010 LawSuit (SC) 247.
28 1981 LLJ 386.

the services of the workmen. It is as if the order of termination was never been passed and so it must ordinarily lead to back-wages also. But there may be exceptional circumstances which make it impossible or wholly inequitable *vis-a-vis* the employer and the workmen to direct reinstatement with full back-wages. For instance, the industry might have been closed down or might be in severe financial doldrums; the workman concerned might have secured better or other employment elsewhere and so on. In such situations, there is a vestige of discretion left in the Court, to make consequential orders. Further looking to the citation, which is the case between ***Tapash Kumar Paul v/s BSNL & another***[29], wherein the Administrative Tribunal had passed the order of reinstatement and in lieu of back-wages compensation was granted. This order was confirmed by Single Judge of hon'ble High Court but the Division Bench had set aside the order and awarded compensation in lieu of reinstatement. The hon'ble Apex Court has set aside the order of Division Bench and restored the order of Tribunal and Single Judge. Further looking to the para no.5 of the said judgment, the justifiable grounds under which the order of reinstatement can be substituted by compensation are narrated. They are *viz*, (i) where the industry is closed; (ii) where the employee has superannuated or going to retire shortly and no period of service is left to his credit; (iii) where the workman has been rendered incapacitated to discharge the duties and cannot be reinstated and/or (iv) when he has lost confidence of the management to discharge the duties.

29 2014 LAB. I.C. 4486.

(16). So considering the facts of present case since the applicant herein was not a regular employee but was working as a daily-wager and has worked for almost seven years and the present dispute is of the year 2010 as well as we are presently in the year 2026, hence now at this juncture the relief of reinstatement with back-wages will not be considered to be an appropriate relief. Therefore, this case is of one particular category, wherein the relief of granting lump sum compensation will be appropriate enough and it will also serve the cause of justice. Hence, when this Tribunal has reached to a decision that in the present case the applicant is to be awarded the relief of lump sum compensation then as per the ratios of hon'ble Apex Court, any Tribunal which has power to grant compensation then such Tribunal should see that the amount of compensation awarded is just, proper and reasonable, by considering the overall facts of the case.

(17). At this juncture it is required to refer the citation which is the case before ***hon'ble Gujarat High Court*** between ***Bhikhabhai Fatabhai Solanki v/s Executive Engineer, Narmada Project Canal System & Anr.***[30], wherein as per the facts of case total 12 employees have preferred different reference cases with respect to dispute of their termination of service, wherein the Labour Court has granted relief of lump sum compensation ranging from Rs.1.5 lacs to Rs.2.00 lacs, considering the length of services of the employees, which was ranging from 16 years to 20 years. The said common award was passed on dt.30.09.2015.

30. L. P. A. No.908 of 2023 and allied matters decided on dt.18.04.2024.

The discontinuance of service of the employees was somewhere in the year 1991-99 as well as in the year 2001. So since almost 18 years were passed hence the Labour Court has granted such lump sum compensation. The employee's side has challenged the said award by preferring separate writ petitions, wherein it was challenged by contending that the compensation granted is not just and reasonable. However, the said petitions were rejected by confirming the order of Labour Court. Against the said order passed by the Ld. Single Judge, the petitioners have preferred above referred Letters Patent Appeal, wherein the hon'ble High Court has proposed to give compensation of Rs.3 lacs, Rs.5 lacs and Rs.7.5 lacs considering the respective years of services ranging from 5 to 10 years; 10 to 15 years and 15 to 20 years. Further the numbers of years of delay which has occurred in raising the dispute was deducted from the total length of service. It is pertinent to note that the hon'ble High Court has granted the said amount by observing it as the proposed amount of compensation. However it is required to note that the said tabular column cannot be considered in each and every case by considering it as a straight jacket formula, since bundle of factors such as length of service, delay in raising dispute, remaining years of service, time length taken for culmination of proceeding, delay, if any which has occurred in the proceeding and party liable for the same, the monetary and fiscal values of commodities at the time when dispute was raised and their respective values at the time when award is to be passed, the present situation of the litigating parties, etc. are to be considered by keeping balance and awarding just, proper and reasonable amount of lump sum compensation.

(18). If the said factors pertaining to present dispute are perused then same are as under:

- The applicant herein was terminated from service on dt.06.02.2009. The dispute was raised then after, wherein order of reference was passed in the year 2010 and present case was registered for adjudication as reference case in the year 2010.
- In the present case the applicant has submitted his statement of claim *vide* Exh.06 on dt.26.10.2010, i.e. without any inordinate delay. Then after the opponent has submitted their written statement at Exh.10 on dt.20.12.2016 i.e. after a period of six years.
- Then after the applicant side has completed their evidence on dt.16.01.2019 and the opponent has closed their evidence on dt.10.04.2023. Then after the case was pending at the stage of arguments at that juncture it was transferred to this Tribunal in the year 2025 and before this Tribunal both the sides have concluded their arguments. In this circumstance, the delay caused in the proceeding is mostly attributable to the opponent side.
- It is pertinent to note that the present case was transferred from C.G.I.T., Ahemdabad to the present Industrial Tribunal, Rajkot in the month of September 2025, as due to non availability of Presiding Officer, the cases were not proceeded at C.G.I.T., Ahemdabad. So the said aspect has even caused substantial period of delay. Any of the

stake holders connected with the adjudicatory proceeding, on perusing such facts of delay will be agonized and can understand the plight of the litigants. This Tribunal even takes judicial notice of the fact that such alike matters of more than 3 and 2 decades old have been transferred to various State Government Industrial Tribunals from Central Government Industrial Tribunals due to absence or non-appointment of regular Presiding Officer.

- Now considering the facts of present case, as discussed above it will not be appropriate enough to grant relief of reinstatement to the applicant in this case and so the relief of lump sum compensation is to be granted to him which will be appropriate and judicious. Therefore, the said amount which is to be granted to the applicant as lump sum compensation should be adequate and just. Further there is every possibility that the present award will be challenged further by the opponent side, which is the Government entity, till the highest forum which will cause further delay till the applicant will actually receive the amount of compensation.
- Further had the applicant been granted appropriate relief without any delay then he might have received it’s fruit and enjoyed it, and even if the same was challenged by the opponent side then the said challenge might have even been decided during this decade.
- So considering the said overall factors this Tribunal has now to reach for an amount to be granted to the applicant

as lump sum compensation which is just and reasonable in all terms.

- This Tribunal has to even keep in mind the comparative price index values of articles during these period of last couple of decades. For example, the value of Gold in the year 2005 per 10 gms was approximately Rs.7,000/-, in the year 2015 it was about Rs.26,343/- and presently in the year 2026 it is about Rs.1.5 lacs. So, the value of Gold during this three decades has increased almost about 2,200 times. The next example is of food grain i.e. wheat which was priced at Rs.360/- per quintal in the year 1995 which at present is Rs.2,550/-. So, it has increased almost 700 times. Hence, these multiple factors of rise in price index related to various commodities is to be considered while awarding lump sum compensation.
- In the instant case the applicant at the time of termination from service has performed work of almost seven years and since the date of raising dispute till the present date it has been almost 17 years and the delay caused is mostly attributed to the opponent herein and the judicial system, wherein the case has been transferred from one forum to another due to non availability of Presiding Officer for long period.
- Therefore, considering the above referred factors and circumstances, this Tribunal at present juncture is of the opinion that passing an award of Rs.3,50,000/- lacs as lump sum amount of compensation will be just and proper which will serve the ends of justice.

(19). So as per the forgoing discussion the answers to issue No.2 is accordingly given in ***"affirmative"***. At this juncture, one more thing is to be discussed before concluding and departing. As discussed in the forgoing paras, the Tribunal has passed the award of said amount of compensation on basis of the past record as well as present facts of the case but it may happen that the applicant may not receive the same within short span of time and may be many years will be passed further. So in that case when the applicant actually receives the said amount, it's monetary value may be decreased further to a greater extent. In such situation, the award passed and justice done, both might be frustrated and indirectly injustice may be further done to the applicant. To nullify such situation, if interest is awarded on the said amount then only proper justice might be done. At this juncture, the citation of ***hon'ble Supreme Court*** in case between ***Asst. Engineer, Rajasthan Dev. Corp. & ors. v/s Gitam Singh***[31] will be fruitful to consider. In said case, the hon'ble Supreme Court had awarded the compensation to the workman which was to be paid within six weeks failing which, it was ordered that, the same will carry interest @ 9 percent per annum. However the said judgment was of the year 2013 and we are in the present year of 2026, so the interest rate at present can be on reduced side @ 7.5%. Hence in this case it will be appropriate enough to direct the opponent that the applicant should be paid the said amount of lump sum compensation within fixed time period and if the same is not paid within specified time then order to pay interest on it can be passed as per ratio laid in above dictum. So

31 Civil Appeal no.8415/2009 decided on dt.31-1-2013.

the final order for issue No.3 is passed as below in the larger interest of justice.

:: ORDER ::

(1). The reference case is hereby partly allowed.

(2). The termination of the applicant from service by the opponent Bank is held to be an illegal act. Hence, the applicant herein is entitled for the relief of lump sum compensation of Rs.3,50,000/- (in words rupees three lacs fifty thousand only) from the opponent Bank of this case. The applicant is not entitled for the relief of reinstatement and back wages.

(3). The applicant should be paid the said amount within 60 days from publication of this award failing which the said amount then after i.e. on completion of sixty days, will carry interest@ 7.5 percent per annum till its realization.

(4). No order as to cost.

Digitally signed by
MALAVIYA PARVEZAHEMAD
ALIMOHMAD
Reason: Judgment
at Rajkot
on 08/06/2026 15:13:44 IST.

Date : 08.06.2026 **Parvezahemad A. Malaviya**

Place: Rajkot **Member,**

Industrial Court, Rajkot.

Code No. GJ00837.