

(2025) 12 DEL CK 0005

Delhi HC

Case No: Writ Petition (C) No. 10078 Of 2019, Civil Miscellaneous Application Nos. 65656, 66239, 66240 Of 2025

Indian Institute Of Technology,
Delhi

APPELLANT

Vs

Jitender Kumar

RESPONDENT

Date of Decision: Dec. 15, 2025

Acts Referred:

- Constitution of India, 1950- Article 226, 227
- Code of Civil Procedure, 1908- Order 41 Rule 27(aa)
- Industrial Disputes Act, 1947- Section 2(bb), 2(oo), 2(oo)(bb), 2(ra), 25F

Hon'ble Judges: Chandrasekharan Sudha, J

Bench: Single Bench

Advocate: T. Singhdev, Ramanpreet Kaur, Tanishq Srivastava, Abhijit Chakravarty, Sourabh, Vedant, Yamini Singh, Vinay Kumar Ojha

Final Decision: Allowed

Judgement

Chandrasekharan Sudha, J

1. The present writ petition under Article 226 and Article 227 of the Constitution of India (the Constitution), has been filed by the respondent/management (the Indian Institute of Technology, Delhi) in ID No. 79/2015 on the file of the Central Government Industrial Tribunal cum Labour Court-I, Dwaraka Courts, Delhi, (the tribunal) aggrieved by the Award dated 05.03.2019, by which the claimant/workman has been held entitled to reinstatement of service on the same post, with 50% back wages.

2. In this writ petition, unless otherwise specified, the parties shall be referred to as described in the original claim petition.

3. In the statement of claim, it is alleged thus: The claimant/workman, is the son of late Shri Kesari Nandan, a permanent employee of the respondent/management, who while in service expired on 07.07.2007. Pursuant to the death of his father, his mother sought appointment for him on compassionate grounds and vide communication dated 23.01.2008, she was informed that he had been appointed under the Board of Hostel Management (BHM). The claimant/workman was issued an appointment letter dated 08.01.2008, placing him as Masalchi in Jwalamukhi Hostel on a purely temporary and contractual basis for a period from 08.01.2008 to 07.07.2008.

3.1. The claimant/workman asserted that his engagement in the respondent/management as Masalchi was extended repeatedly from time to time through fresh appointment letters issued between 2008 to 2012 and that he continuously served the respondent/management until 28.02.2013. It was alleged that despite his uninterrupted and diligent services, the respondent/management neither regularised his services nor issued any further extension after 28.02.2013, effectively bringing his employment to an end without notice, reason or any sort of compliance with statutory requirements and that the non-renewal of his contract after 28.02.2013 amounted to illegal termination. Hence, the claimant/workman issued a legal notice dated 28.08.2013 seeking reinstatement, to which no response was received from the respondent/management. Subsequently, he raised an industrial dispute (ID No. 79/2015), leading to conciliation proceedings, which eventually failed, following which the matter was referred for adjudication. The claimant/workman also alleged that he has remained unemployed since the cessation of his service and sought reinstatement with back wages.

4. The respondent/management, in their written statement, inter alia, denied that the claimant/workman was ever appointed on compassionate grounds. It was contended that although the request for appointment on compassionate grounds was considered, the competent authority did not approve the same and consequently the claimant/workman applied independently for contractual engagement and he was engaged as Masalchi under the BHM. It was further contended that the claimant/workmans engagement involved breaks and that the repeated extensions were only granted on need basis; and that he worked intermittently, including as a daily wager between May 2011 and September 2011. The last contractual term, which expired on 28.02.2013, was not extended because of his irresponsible work behaviour, for which warning letters were issued. According to the respondent/management, since the contract itself expired, there was no termination and consequently provisions of Section 25F of the ID Act are not attracted, rather it attracts Section 2(oo)(bb) of the ID Act.

5. On completion of pleadings, necessary issues were raised. The parties went to trial on the basis of the aforesaid pleadings. The claimant/workman was examined as WW-1 and Exhibits WW-1/1 to WW-1/9 were marked. The

respondent/management examined its Assistant Registrar as MW-1 and Exhibits MW-1/W1 and MW-1/W2 were marked.

6. Upon considering the evidence led by both the parties and after hearing both sides, the Tribunal found that the claimant/workman had been engaged to perform duties of perennial nature and that the series of extensions reflected continuous employment. It concluded that the cessation of his service on 28.02.2013 amounted to illegal termination, particularly in the absence of any termination letter or compliance of Section 25F of the ID Act. Accordingly, the Tribunal directed reinstatement with 50% back wages.

7. Aggrieved thereby, the respondent/management has invoked the writ jurisdiction.

8. The learned counsel for the respondent/management submitted that there is a complete misapplication of the concept of retrenchment in the impugned Award. It is urged that the claimant/workmans initial engagement on 08.01.2008, and all subsequent engagements, were purely temporary, fixed-term contractual appointments under the BHM, each expressly stipulating that the engagement would automatically expire on the last date of the contract and that no claim for regularization or continuity would arise therefrom. The contract was extended from time to time only as per requirement, ending finally on 28.02.2013, after the Wardens Committee in its meeting dated 04.01.2013 recorded that the claimant/workmans performance was unsatisfactory and recommended that no further extension be granted. Relying on the decision in *Arjan Singh v. State of Punjab*, 2014 SCC OnLine P&H 17991, it was argued that non-renewal of a contract on its expiry is not retrenchment and therefore does not attract the mandatory conditions under Section 25-F of the ID Act.

8.1. It was further submitted by the learned counsel of the respondent/management that the claimant/workman had, on several occasions, remained absent without leave, beginning in December 2010, for which successive memoranda dated 27/31.01.2011, 10.02.2011 and 08.04.2011 were issued. The learned counsel submitted that persistent unauthorized absence is a valid ground for non-continuance of employment, and reliance was placed in the dictum of *State of Rajasthan v. Mohd. Ayub Naz*, (2006) 1 SCC 589, where it was held that habitual absenteeism may justify termination and further in the dictum of *Dattaprasad Narayan Kulkarni v. Auchtel Products Ltd.*, 2023 SCC OnLine Bom 2519, which affirms that such absenteeism constitutes misconduct warranting discontinuation.

8.2. The learned counsel for the respondent/management submitted that the relevant materials/documents produced along with the writ petition would substantiate their contention that service of the claimant/workman was never satisfactory and that repeated warning had been issued, which was also a reason for not extending the contract. It was urged that the respondent/management is

entitled to rely on these documents in the present writ proceedings by invoking Order XLI Rule 27(aa) of the Code of Civil Procedure, 1908 (the CPC), which permits production of additional evidence where the party establishing due diligence satisfies that such evidence was not within its knowledge or could not, after exercising due diligence, be produced at the time when the decree or order appealed against was passed. The learned counsel submits that several crucial documents including the Wardens Committee minutes dated 04.01.2013, the internal correspondence relating to performance evaluation, and certain extension/appointment letters (Annexures P-2 to P-16), were not before the Tribunal, and though such documents existed in the institutional records, they were not traced or produced during the proceedings before the Tribunal despite due diligence. It is therefore urged that the respondent/management be permitted to rely upon these documents in this writ, and that this Court ought to consider them while examining the legality of the Award.

8.3. The learned counsel further submitted that once the additional documents are taken on record under Order XLI Rule 27(aa) CPC, it would be apparent that the nature of engagement was contractual and for a fixed-term. These documents, it was argued, clearly demonstrate that the claimant/workman was engaged through successive contractual letters containing explicit stipulations that (i) the engagement was temporary, (ii) no right to regularisation would accrue, and (iii) the engagement would automatically expire at the end of the contractual period. It was submitted that the final cessation on 28.02.2013 was a direct consequence of the expiry of the last contractual term, and not a termination. Therefore, the statutory exclusion under Section 2(o)(bb) of the ID Act squarely applies, and that the Tribunal erred in not considering this material, which according to the respondent/management now stands duly brought before this Court under the mechanism of Order XLI Rule 27(aa) CPC.

8.4. It was further submitted that the claimant/workman cannot claim, nor could the Tribunal confer, any right to regular employment from a succession of temporary appointments by relying on the dictum in *Secretary, State of Karnataka v. Uma Devi*, (2006) 4 SCC 1, wherein it was held that contractual or ad-hoc employees do not acquire a vested right to regularization by length of service. Further, reference was also made to *Resmi R.S. v. Government of India*, 2019 SCC OnLine Ker 2649, and *Renu Dalal v. GNCTD*, 2023 SCC OnLine Del 8228, reiterating that courts cannot direct regularization contrary to the recruitment framework, nor can temporary engagements ripen into substantive rights. It was contended that judicial review does not permit substitution of disciplinary or administrative satisfaction with the courts own view by placing reliance on the dictum of *B.C. Chaturvedi v. Union of India*, (1995) 6 SCC 749 and *V. Ramana v. A.P. SRTC*, (2005) 7 SCC 338, which affirm that a court cannot sit in appeal over the employers assessment unless findings are perverse or unsupported by material.

8.5. Lastly, the learned counsel would contend that even assuming, without admitting, that Section 25-F was attracted, the Tribunal erred in granting 50% back wages as a matter of course by citing the judgement of the Apex Court in *General Manager, Haryana Roadways v. Rudhan Singh*, (2005) 5 SCC 591, wherein it was held that there is no rule of thumb mandating full or substantial back wages upon finding a violation of Section 25-F.

9. Per contra, the learned counsel for the claimant/workman supported the impugned award and submitted that the findings returned by the Tribunal are based entirely on the material placed before it and warrant no interference in writ jurisdiction. It was urged that the claimant/workman was appointed on compassionate grounds following the demise of his father, an IIT Delhi employee, which is evident from the letter dated 23.01.2008 (Ex. WW1/3) and further corroborated by the respondent/managements own communication dated 26.02.2008, (Annexure P-4). The learned counsel submitted that, this is not a case of a casual or volunteer applicant, but one where compassionate engagement was in fact extended and acted upon. It is contended that thereafter, from 08.01.2008 until 28.02.2013, the claimant/workman continuously discharged duties of a perennial and regular nature, including those of Masalchi, Multi-Tasking Employee, and subsequently Junior Assistant/Storekeeper.

9.1. It was also urged by the learned counsel that an official accommodation was allotted to the claimant/workman within the IIT Campus, and under Rule 8(f)(i) of the House Allotment Rules, such accommodation could have been allotted only to an employee appointed on compassionate grounds.

9.2. The plea of fixed-term contractual engagement relied upon by the respondent/management in the present proceedings was never substantiated before the Tribunal. The respondent/management produced only two documents Ex. MW1/1 (appointment letter dated 08.01.2008) and Ex. MW1/2 (reply to legal notice) and did not file the various extension letters or Warden-Committee minutes (Annexures P-2 to P-16 of the writ petition) before the Tribunal. The learned counsel would specifically draw the attention of this Court to Para 9 of the impugned Award, wherein it was noted that the respondent/management had failed to produce the extension letters said to contain the contractual terms. The belated reliance on new documents at the writ stage cannot be permitted to defeat findings based on the record actually before the Tribunal, goes the argument.

9.3. It was further urged that the claimant/workman had completed more than 240 days of service in each year, which the respondent/management has never disputed, and that it is an admitted position that the requirements of Section 25-F of the ID Act were not complied with. The respondent/managements attempt to shelter itself under Section 2(oo)(bb) of the ID Act is wholly misconceived. Strong reliance is placed on the judgment of the Apex Court in *Bhuvnesh Kumar Dwivedi v. Hindalco Industries Ltd.*, (2014) 11 SCC 85, wherein it was held that repeated

appointments with artificial breaks for several years constitute unfair labour practice under Section 2(ra) of the ID Act read with Entry 10 of the Fifth Schedule, and that Section 2(oo)(bb) of the ID Act cannot be invoked where the contract system itself is a device to avoid conferring permanent status. Reliance was also placed on the dictum of Haryana State Electronics Development Corporation Ltd. v. Mamni, AIR 2006 SC 2427, wherein it was held that repeated short-term appointments with artificial breaks cannot be brought under Section 2(oo)(bb) of the ID Act. The learned counsel would also place reliance on the dictum of Haryana State Federation of Consumers Cooperative Wholesale Store Ltd. v. Presiding Officer, wherein it was held that once a workman has completed 240 days and the employer continues to engage him with artificial breaks, the case attracts Section 25-F of the ID Act, and the employers conduct amounts to unfair labour practice. Further reliance was placed on the dictum of Anoop Sharma v. Executive Engineer, Public Health Division No.1, Panipat, (2010) 5 SCC 497, wherein it was held that termination of a workman who has completed one year of continuous service, without compliance with Section 25-F of the ID Act, renders the action ab initio void, irrespective of the terminology used by the employer. Similar stand was taken in the decisions of Hospital Mazdoor Sabha (AIR 1960 SC 610), Sundara Money (1976) 1 SCC 822, Mohan Lal (1981) 3 SCC 225, Robert DSouza (1982) 1 SCC 645, and Gammon India (1984) 1 SCC 509, all of which affirm that non-compliance with Section 25-F nullifies the termination altogether.

9.4. It was also urged that the Tribunals finding that the claimant/workman was performing duties of a perennial nature is a pure finding of fact, immune from interference under Article 226 and Article 227 of the Constitution. He relies on the decision of Syed Yakoob v. K.S. Radhakrishnan, AIR 1964 SC 477, wherein the Apex Court held that a writ court cannot re-appreciate evidence or disturb findings of fact merely because another view may be possible. He also referred to the recent reiteration by the Apex Court in Mahanadi Coalfields Ltd. v. Brajrajnagar Coal Mines Workers' Union, 2024 SCC OnLine SC 270, that findings of fact recorded by a Tribunal are unassailable unless they disclose perversity.

9.5. Lastly, the learned counsel for the claimant/workman would contend that similarly situated persons, namely Rohit Kumar, Dinesh Kumar, Mohit Kumar, and Sudesh Rani, were all granted compassionate engagement after the claimant/workman, yet have been regularized by the respondent/management, while he alone was denied continuity.

10. Heard both sides and perused the records.

11. The principal issues that falls for consideration before this Court are as follows:

(i) Whether, on the record that was before the Tribunal, the respondent/management proved the existence of valid fixed-term contracts and their operative terms so as to invoke the exclusion under Section 2(oo)(bb) of the ID

Act;

(ii) Whether the findings recorded by the Tribunal on continuity, artificial breaks and perennial character of the work are perverse or legally vulnerable so as to permit interference in writ jurisdiction under Article 226 and Article 227 of the Constitution

(iii) Whether the respondent/management is entitled in this writ petition to have recourse to Order XLI Rule 27(aa) CPC to place additional documents on record and, if so, whether those documents would alter the conclusion reached by the Tribunal.

12. Before I proceed further, it is necessary briefly to take note of the testimony of the witnesses and the documentary position on which the Tribunal proceeded. The claimant/workman testified as WW-1 and produced Exhibits WW-1/1 to WW-1/9. WW-1 testified that he had worked continuously in the hostel establishments and that there was no termination letter or compliance with Section 25-F at the time of cessation. The respondent/management examined Sh. Mukesh Chand (MW-1), Assistant Registrar, who produced two documents marked Ex. MW-1/1 (the appointment letter dated 08.01.2008) and Ex. MW-1/2 (reply to the legal notice). MW-1 admitted that the respondent/management had not placed the series of extension letters and other internal records (which are now relied upon in these writ proceedings).

13. It is true that Annexures P-2 to P-16 were never produced before the Tribunal and they have been produced for the first time in this writ even without an application to receive it. These documents are relied on by the learned counsel for the respondent/ management to point out that the services of the claimant/workman was not satisfactory and that he had been issued several warnings by the respondent/management and, therefore, it is not an appropriate case in which reinstatement could have been ordered. There is no reason stated as to why these documents were not produced before the Tribunal. On going through the cross-examination of the managements witness, i.e. MW-1, it is seen that he refers to the warning letters etc. that were issued to the claimant/workman. Despite that, the same were never produced before the Court. The learned counsel for the respondent/ management relies on Order XLI Rule 27(aa) CPC for reception of additional evidence in this proceedings. However, as per the said provision, it will have to be established by the party seeking to produce additional evidence that notwithstanding the exercise of due diligence, such evidence was not within his knowledge or could not, after the exercise of due diligence, be produced by him at the time when the decree appealed against was passed. No such ground has been made out by the respondent/management in this case and hence, I will proceed to consider the matter on the basis of the materials already on record.

14. Going by the pleadings in the statement of claim, it is the specific case of the claimant/workman himself that he had been appointed purely on contractual basis w.e.f. 08.01.2008 to 07.07.2008 on a consolidated salary of ₹4,000/- per month,

which was thereafter extended several times. I refer to the specific pleadings in the statement of claim which reads thus:-

3. That it is worthwhile to state herein that one Sh. Kesari Nandan was a permanent employee under the employment of management on the post of Junior Technical Superintendent at the pay scale of Rs. 9300-34800/- vide Employee Code No. 70116, who died on 07/07/2007 during the tenure of his service. After his sudden demise, his wife Smt. Urmila Devi prayed for appointing their son Sh. Jitender Kumar permanently under the employment of management on compassionate grounds.

4. That the Asst. Registrar of the management had informed the mother of the workman, vide letter dt.23/01/2008, that her son (Workman) has already got an appointment in BHM, IIT Delhi.

5. That after rigorous follow-up by Smt. Urmila Devi as well as the workman, a letter dt.08/01/2008 vide reference no. IITD/SAS/66/2008/ISTA-35 was issued by the Asst. Registrar (SA), to the workman thereby Informed to him that he have been appointed at the post of Masalchi in Students Affairs Section in Jwalamukhi Hostel, IIT, New Delhi on purely temporary and contractual basis w.e.f. 08/01/2008 to 07/07/2008 at the consolidated salary of Rs.4000/- per month.

6. That vide letters dt. 21/07/2008, 05/02/2009, 20/01/2010, 06/05/2011, 13/10/2011, 18/10/2011, 09/02/2012, 01/05/2012 and 04/05/2012, the appointment of the workman was extended to different posts by issuing fresh letters. It is pertinent to mention herein that instead of confirming the services of the workman as permanent employee; the management used to plot an escape route not only to prevent the workman from being a permanent employee but also undermined the law of natural justice. The management adopted a path of these breakages in the service of the workman caused by the issuance of fresh letters of appointment on temporary basis in order to avoid the permanent employment of the workman under the management.

7. That it is worthwhile to mention herein that the workman was given the job of Junior Assistant/ Store Keeper vide letter Ref. no. IITD/SAS/66/2012/ISTA-502. Further, the workman was given the job on temporary basis vide letter Ref. no. IITD/SAS/66/2012/ISTA-1408 dated 24/12/2012 the workman worked till 28/02/2013.

(Emphasis Supplied)

15. Though the claimant/workman has a case that he was engaged/employed on compassionate grounds, no materials whatsoever have been produced to substantiate the same. It is quite interesting to note that the claimant/workman has not even produced his appointment letters. The only documents that are seen to be

produced along with the statement of claim are: a copy of the appointment letter of his father; a copy of office memo dated 07.09.2007 again relating to his late father; copy of the sanction order giving the benefits accrued to the family on the death of his father; a letter dated 21.03.2008 addressed to his mother by the Assistant Registrar of the Indian Institute of Technology, Delhi by which she is informed that her request dated 14.01.2008 regarding appointment of her son on compassionate grounds was considered and that her son Jitender Kumar, i.e. the claimant/workman had already been appointed in BHM, IIT, Delhi; copy of the registered notice dated 22.02.2014 sent by the claimant/workman to the respondent/management seeking reinstatement and back wages. None of the appointment letters that are referred to in his statement of claim have been produced before this Court. The claimant/workman has no case that they were misplaced or that it was irrecoverably lost or that for some reason, he was unable to produce the same.

16. It is well settled that foundational facts like employer-employee relationship, the terms of employment etc., will have to be established by the claimant/ workman and only then the onus would shift to the respondent/ management to disprove or discredit the same. However, none of the appointment letters stated to have been issued by the respondent/management has been produced. Even in the absence of the same, the pleadings in the statement of claim of the claimant/workman itself make it clear that he was engaged on a temporary basis/contract for fixed periods. Here, I refer to the documents produced by the respondent/management. Exhibit MW-1/W1 dated 19.10.2007 is a letter written by Executive Engineer (C-I), Indian Institute of Technology, Delhi, Hauz Khas, New Delhi-16 by which the mother of the claimant/workman was informed that her request dated 25.07.2007 for appointment of her son Jitender Kumar (the claimant/workman) on compassionate grounds had been considered by the competent authority, but the same had not been acceded to. Exhibit MW-1/1 is the first contractual appointment letter dated 08.01.2008 issued to the claimant/workman herein.

The said letter reads thus:-

Mr. Jitender Kumar

C/o Warden, Jwalamukhi Hostel

Sir,

I am directed to offer you a contractual appointment as Masalchi under the Board of Hostel Management and posted in the Jwalamukhi Hostel on the following terms and conditions:-

1. Nature of appointment The appointment will be purely : temporary on contractual basis w.e.f. 08.01.2008 to 07.07.2008

2. Salary

4,000/- (Rupees four thousand only).

3. Leave

during the above period which will be

credited in your leave

@ 21/2 days per month.

4. Duty

during the time schedule as per needs of

: You will be required

the Hostel/BHM.

5. Job Requirement

Hostel/BHM.

6. Termination of Service

be liable for termination by giving one month

: Your services shall

notice in writing on either side.

7. General

conditions of services and rules of discipline and conduct as

contained in BHM Rules and Regulations framed thereunder shall be applicable.

Yours Faithfully

(Nanak Chand)

Asst. Registrar (SA)

(Emphasis Supplied)

16.1 This apparently is the first order of appointment issued to the claimant/workman, which fact is not disputed by him. The letter itself makes it clear that it was a contractual appointment for a period which was thereafter renewed from time to time.

16.2. I refer to Section 2(oo)(bb) of the ID Act which reads:-

Section 2. Definitions

xxxxxx

(oo) retrenchment means the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action, but does not include

(a) voluntary retirement of the workman; or

(b) retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned

contains a stipulation in that behalf; or

(bb) termination of the service of the workman as a result of the non-renewal of the contract of 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;

(Emphasis supplied)

16.3. Termination of the services of a workman as a result of non-renewal of the contract of employment on its expiry or termination of such contract of appointment under a stipulation in that behalf contained therein, would not attract the definition of the term retrenchment as contemplated under Section 2(oo) of the ID Act. [Municipal Council, Samrala v. Sukhwinder Kaur, (2006) 6 SCC 516; Bhogpur Coop. Sugar Mills Ltd. v. Harmesh Kumar, (2006) 13 SCC 28; Municipal Council, Samrala v. Raj Kumar, (2006) 3 SCC 81; Express Publication (Madurai) Ltd. v. K. Daglas and Anr., (2010) 2 KHC 733; Punjab SEB v. Sudesh Kumar Puri, (2007) 2 SCC 428; Kishore Chandra Samal v. Orissa State Cashew Development Corpn. Ltd., (2006) 1 SCC 253; Harmohinder Singh v. Kharga Canteen, Ambala Cantt., (2001) 5 SCC 540; State of Rajasthan v. Rameshwar Lal Gahlot, (1996) 1 SCC 595]. In all the aforesaid decisions, it has been held that when employment is for a specific period, the case would squarely be covered by Section 2(oo) of the ID Act and in such cases, Section 25(f) of the ID Act would not be applicable.

17. As noticed earlier, even going by the pleadings in the statement of claim, the employment was purely temporary and on a contract basis. The first appointment letter itself refers to the period for which he had been engaged on contractual basis. The allegation that he was appointed on compassionate grounds is disproved by the letter that has been produced by the respondent/management. No materials have been produced by the claimant/workman to show that he had in fact been appointed on compassionate grounds. As this is a case that clearly comes under Section 2(oo)(bb) of the ID Act, the Tribunal went wrong in finding that the claimant/workman is entitled to retrenchment and back wages.

18. In the result, the appeal is allowed and the impugned order is set aside. Application(s), if any, pending, shall stand closed.