$~3

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

% ***Date of Decision: 15th September, 2026***

\# **CNR No. DLHC010671912006**

\+ **W.P.(C) 11307/2006**

HARI PRAKASH .....Petitioner

Through: Mr. Chirayu Jain & Mr. Onaizha Habib, Advs.

versus

N.D.M.C. .....Respondent

Through: Mr. Nirvikar Verma, ASC for the State for NDMC.

CORAM:
HON'BLE MR. JUSTICE AMIT MAHAJAN

AMIT MAHAJAN, J. ***(Oral)***

1. The present petition is filed under Article 226 of the Constitution of India assailing award dated 27.03.2004 (hereinafter '**impugned award**') passed by the learned Labour Court, rejecting the claim of the petitioner.

2. Briefly stated, the petitioner was engaged as a Safai Karamchari by the respondent on 01.12.1990, on daily wage basis. The services of the petitioner were subsequently terminated by the respondent on 17.09.1991. The petitioner, thereafter, raised an industrial dispute against the said termination and consequently the following reference was made by the appropriate government to the learned Labour Court:

> *"Whether the services of Shri Hari Prakash have been terminated Illegally and /or unjustifiably by the management, and If so, to what relief is he entitled and what directions are necessary in this respect"?*

Signature Not Verified
Signed By:HARMINDER KAUR
Signing Date:17.09.2026 11:33:36

3. The learned Labour Court *vide* the impugned award observed that the workman had not completed 240 days of service with the respondent and was thus not eligible for protection under Section 25F of the Industrial Disputes Act, 1947 ('**ID Act**'). The learned Labour Court further observed that there was no evidence on record to show that juniors to the petitioner were kept in service before his services were dispensed with. Consequently, the learned Labour Court answered the reference in negative.

4. Aggrieved thereby, the present petition has been filed.

5. The learned Counsel for the petitioner submits that the learned Labour Court has erred in holding that the petitioner had not completed 240 days of continuous service with the respondent.

6. He submits that while calculating the period of service of the petitioner, the learned Labour Court has excluded Sundays and holidays. He submits that, in terms of ***Workmen of American Express International Banking Corporation v. Management of American Express International Banking Corporation*** **: AIR 1986 SC 458**, Sundays and holidays are required to be counted for determining continuous service under Section 25B of the ID Act. He submits that, once the same are included, the petitioner had completed 240 days of continuous service and, consequently, his termination without notice, notice pay and retrenchment compensation was in violation of Section 25F.

7. He submits that, even otherwise, completion of 240 days of service is not a requirement for attracting Sections 25G and 25H of the

Signature Not Verified
Signed By:HARMINDER KAUR
Signing Date:17.09.2026 11:33:36

ID Act. He submits that the learned Labour Court has failed to appreciate that the petitioner had categorically deposed that juniors were retained and fresh persons were recruited after his termination, and this testimony remained uncontroverted in cross-examination. He further submits that MW1 admitted that Safai Karmcharis were being engaged in large numbers during the relevant period. He submits that the aforesaid evidence clearly establishes violation of Sections 25G and 25H of the ID Act.

8. *Per Contra*, the learned counsel for the respondent vehemently opposes the present petition. He submits that the petitioner was engaged only as a casual/daily-rated worker from 01.12.1990 to 05.09.1991 and had worked for only 231 days in the preceding twelve months. He submits that the petitioner, therefore, had not completed the mandatory 240 days of continuous service required for protection under Section 25F read with Section 25B of the ID Act.

9. He submits that there is no violation of Sections 25G and 25H of the ID Act in the present case. He submits that the petitioner has failed to produce any evidence to establish that any junior workman was retained after his disengagement or that persons junior to him were subsequently engaged. He submits that the learned Labour Court has correctly recorded that there was no evidence on record to establish that any junior was retained.

10. I have heard the arguments and perused the record.

11. At the outset, it is necessary to note that the scope of interference under Articles 226 and 227 of the Constitution of India

Signature Not Verified
Signed By:HARMINDER KAUR
Signing Date:17.09.2026 11:33:36

with an Award passed by the Labour Court is limited. Interference is warranted only where the Award suffers from patent illegality, perversity or an error apparent on the face of the record. The present Petition does not invite this Court to re-appreciate the evidence or disturb findings of fact but is confined to examining the legality and propriety of the relief granted by the Labour Court.

12. Adverting to the merits of the present case, the principal contention of the petitioner is that the learned Labour Court erroneously concluded that the petitioner did not complete 240 days of continuous service with the respondent.

13. Reliance has been placed upon the judgment in ***Workmen of American Express International Banking Corporation*** (*Supra*) to contend that Sundays and holidays ought to have been counted while determining whether the petitioner had completed 240 days of continuous service with the respondent. However, in the opinion of this Court, the aforesaid judgment does not advance the case of the petitioner. The said judgment was rendered in the context of a temporary worker, where the holidays in question were paid holidays and, therefore, formed part of the period of continuous service. In the present case, the petitioner was a daily-rated worker and was paid only for the days on which he actually worked. It has further come on record that whenever the petitioner availed leave, wages for the said day were deducted. In these circumstances, the days of continuous service have to be determined on the basis of the days for which the petitioner was actually paid.

Signature Not Verified
Signed By:HARMINDER KAUR
Signing Date:17.09.2026 11:33:36

14. Though the petitioner has also placed reliance upon the judgments of the Gujarat High Court in ***Bhathibhai Valambhai Baria v. State of Gujarat & Ors.***, **Special Civil Application No. 16189 of 2020** and ***Medical Officer v. Dashrathsinh Gajubha Zala***, **Special Civil Application No. 4258 of 2011**, to contend that the principle laid down in ***Workmen of American Express International Banking Corporation*** (*Supra*) applies equally to daily-wage workers, and that Sundays and other permissible holidays are required to be counted for determining continuous service, this Court is unable to agree with the view taken therein. In any event, in the facts of the present case, the issue is academic, since even upon the petitioner's own muster roll, he has been shown to have worked for only 238 days including holidays.

15. The entire controversy in the present matter can be put to rest upon a mere perusal of the muster roll card of the workman, which is the petitioner's own document and was exhibited before the learned Labour Court as WW1/7. It is the petitioner's contention that the said muster roll which shows that the petitioner has worked with the respondent for a period of 238 days does not include Sundays and other holidays and if the same were included he would have completed 240 days.

16. The relevant extract of the muster rolls of the petitioner showing the period for which he worked is reproduced hereinbelow:

Period of Work		
Month & Year	*No. of days*	*Progress live Total*
01/12/90 to 31/12/90	*31*	

Signature Not Verified
Signed By:HARMINDER KAUR
Signing Date:17.09.2026 11:33:36

01/01/91 to 31/01/91	*31*	*62*
01/02/91 to 28/01/91	*28*	*90*
01/03/91 to 31/03/91	*30*	*120*
02/05/91 to 30/05/91	*25*	*145*
01/06/91 to 30/06/91	*30*	*175*
01/07/91 to 30/07/91	*30*	*205*
01/08/91 to 31/08/91	*28*	*233*
01/09/91 to 05/09/91	*5*	*238*

17. A perusal of the above makes it evident that in quite a few months the muster rolls of the petitioner records that he had worked on all days of the month, in such circumstances, the petitioner can by no stretch of imagination contend that Sundays or other paid holidays were not included in the said muster roll. Though MW1 in his cross examination has stated that in the said muster roll Sundays and other holidays are not shown, the same does not further the case of the petitioner as evidently, Sundays and holidays have been accounted for in the muster roll produced by the petitioner before the learned Labour Court.

18. It is well settled that the onus of establishing that the workman worked for a continuous period of 240 days prior to his termination lies upon the workman himself. In the present case, the petitioner produced WW1/7, which was his muster roll, the same provided that he had only worked for a period of 238 days from 01.12.1990 to 05.09.1991. Though the petitioner contended that he worked till 17.09.1991, he failed to produce any document before the learned

Signature Not Verified
Signed By:HARMINDER KAUR
Signing Date:17.09.2026 11:33:36

Labour Court to establish the same. The petitioner further also admitted in his cross examination that he had been doing his own business of selling vegetables after 07.09.1991. Additionally, it is not clear whether the petitioner had taken a break from services during the month of April, 1991 as the aforesaid muster roll shows that the petitioner has not worked with the respondent for the month of April, 1991. The petitioner in his cross examination had just baldly denied the assertion that he did not work for the respondent during the month of April, 1991, however admitted that he did not have any evidence to establish he had worked with the respondent during the said period.

19. In these circumstances, the conclusion of the learned Labour Court that the petitioner had failed to establish completion of 240 days of continuous service is a plausible view based upon the evidence on record. This Court, exercising jurisdiction under Article 226 of the Constitution, does not sit in appeal over such findings of fact. In the absence of any perversity or patent illegality having been demonstrated, no interference is warranted.

20. The second contention of the petitioner is that the respondent violated provisions of Sections 25G and 25H of the ID Act, while terminating the services of the petitioner.

21. Insofar as Section 25G is concerned, the petitioner's case is that juniors to him were retained in service after his disengagement. However, the mere assertion of the petitioner in his statement of claim and evidence is not sufficient to establish such violation. The petitioner was required to place material on record to identify the

Signature Not Verified
Signed By:HARMINDER KAUR
Signing Date:17.09.2026 11:33:36

persons who were junior to him and demonstrate that they had been retained while his services were discontinued. The learned Labour Court, upon appreciation of the evidence, has recorded a categorical finding that there was no evidence on record to establish that any junior workman was retained in service. The petitioner has not been able to demonstrate that the said finding is perverse. The finding of the learned Labour Court with regard to Section 25G, therefore, does not warrant interference.

22. As regards Section 25H, the said provision does not arise for consideration in the present proceedings. The reference made to the learned Labour Court was confined to the question whether the termination of the petitioner's services was illegal and/or unjustified and the relief, if any, to which he was entitled. There was no reference before the learned Labour Court concerning the petitioner's claim for re-employment under Section 25H. Consequently, the learned Labour Court was not required to adjudicate upon any alleged violation of Section 25H, and no interference can be sought on that ground.

23. In view of the aforesaid discussion, this Court finds no patent illegality, perversity or error apparent on the face of the record warranting interference with the impugned Award in exercise of its jurisdiction under Articles 226 and 227 of the Constitution of India.

24. The present Petition is, accordingly, dismissed.

25. Pending applications (if any), also strand disposed of.

AMIT MAHAJAN, J

SEPTEMBER 15, 2026/*"SK"*

Signature Not Verified
Signed By:HARMINDER KAUR
Signing Date:17.09.2026 11:33:36