A

THE RANGE FOREST OFFICER

v.

S.T. HADIMANI

FEBRUARY 15, 2002

B

[B.N. KIRPAL AND ARIJIT PASAYAT, JJ.]

Labour Law:

C *Workman—Termination of services—Claim of workman that he had worked for 240 days in the relevant year and his services were terminated without paying him any retrenchment compensation—Management denying that workman had worked for 240 days—Tribunal holding that services of workman were terminated without giving retrenchment compensation and that affidavit of workman was sufficient to prove that he had worked for 240 days* D *in a year and burden was on Management to justify the termination—Held, Tribunal was not right in placing onus on Management without first determining on the basis of cogent evidence that workman had worked for more than 240 days in the year preceding his termination—The claim of workman having been denied by Management, it was for workman to show that he had worked for 240 days— In the absence of any documentary proof, mere statement in the* E *affidavit can not be regarded as sufficient evidence—Burden of proof.*

State of Gujarat **v.** *Pratam Singh Narsinh Parmar,* **JT (2001) 3 SC 326, referred to.**

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1283 of F 2002.

From the Judgment and Order dated 25.11.1999 of the Karnataka High Court in W.A. No. 3962 of 1999.

WITH

G C.A. No. 1284 of 2002.

Sanjay R. Hegde for the Appellant.

Mohan V. Katarki and Ashok Kumar Sharma for the Respondent.

H The following Order of the Court was delivered :

Leave granted.

In the instant case, dispute was referred to the Labour Court that the respondent and worked for 240 days and his service had been terminated without paying him any retrenchment compensation. The appellant herein did not accept this and contended that the respondent had not worked for 240 days. The Tribunal vide its award dated 10th August, 1998, came to the conclusion that the service had been terminated without giving retrenchment compensation. In arriving at the conclusion that the respondent had worked for 240 days, the Tribunal stated that the burden was on the Management to show that there was justification in termination of the service and that the affidavit of the workman was sufficient to prove that he had worked for 240 days in a year.

For the view we are taking, it is not necessary to go into the question as to whether the appellant is an "industry" or not, though reliance is placed on the decision of this Court in *State of Gujarat* v. *Pratam Singh Narsinh Parmar*, JT (2001) 3 SC 326. In our opinion the Tribunal was not right in placing the onus on the Management without first determining on the basis of cogent evidence that the respondent had worked for more than 240 days in the year preceding his termination. It was the case of the claimant that he had so worked but this claim was denied by the appellant. It was then for the claimant to lead evidence to show that he had in fact worked for 240 days in the year preceding his termination. Filing of an affidavit is only his own statement in his favour and that cannot be regarded as sufficient evidence for any Court or Tribunal to come to the conclusion that a workman had, in fact, worked for 240 days in a year. No proof of receipt of salary or wages for 240 days or order or record of appointment or engagement for this period was produced by the workman. On this ground alone, the award is liable to be set aside. However, Mr. Hegde appearing for the Department states that the State is really interested in getting the law settled and the respondent will be given an employment on compassionate grounds on the same terms as he was allegedly engaged prior to his termination, within two months from today.

The appeals are disposed of in the aforesaid terms.

R.P. Appeals disposed of.