KRISHNA BHAGYA JALA NIGAM LTD.

V.

MOHAMMED RAFI

Civil Appeal No. 2895 of 2009

APRIL 28, 2009

(DR. ARIJIT PASAYAT AND ASOK KUMAR GANGULY, JJ.)

Industrial Disputes Act, 1947:

Sections 10, 25-F – Claim for regularization – Burden of proving that the workman had worked for more than 240 days in the preceding one year prior to the alleged retrenchment – ***Held:*** *The burden is on the workman.*

The termination of certain workmen was under challenge and the Labour Court recorded a finding that they were terminated without complying with the provisions of Section 25-F of the Industrial Disputes Act and hence the termination was illegal. It directed reinstatement of the workmen with back wages. The award was challenged by filing a writ petition. The Single Judge held that the workmen had not discharged the initial onus of proving that they worked for more than 240 days and held their reinstatement was illegal, and set aside the award. However, the Division Bench allowed the writ appeal, against which the present appeal has been filed.

Allowing the appeal, the Court

HELD : The initial burden of proof was on the workman to show that he had completed 240 days of service in the preceding one year prior to the alleged retrenchment. This burden is discharged upon the workman adducing cogent evidence, both oral and documentary. (Para 10, 11) [115-F-G; 116-D-E]

Range Forest Officer v. S.T. Hadimani 2002 (3) SCC 25;

A *Essen Deinki v. Rajiv Kumar* 2002 (8) SCC 400; *Rajasthan State Ganganagar S. Mills Ltd. v. State of Rajasthan and Anr.* 2004 (8) SCC 161; *Municipal Corporation, Faridabad v. Siri Niwas* 2004 (8) SCC 195; *M.P. Electricity Board v. Hariram 2004 (8) SCC 246; Manager, Reserve Bank of India,*
B *Bangalore v. S. Mani and Ors.* 2005(5) SCC 100; *Batala Cooperative Sugar Mills Ltd. v. Sowaran Singh 2005 (7) Supreme 165; Surendranagar District Panchayat v. Dehyabhai Amarsingh* 2005 (7) Supreme 307; *R.M. Yellatti v. The Asst. Executive Engineer JT* 2005 (9) SC 340; *ONGC*
C *Ltd. and Anr. v. Shyamal Chandra Bhowmik 2006* (1) SCC 337 *and Chief Engineer, Ranjit Sagar Dam and Anr. v. Sham Lal* 2006 AIR SCW 3574 – referred to.

Case Law Reference

2002 (3) SCC 25	**referred to**	**Para 6**
2002 (8) SCC 400	**referred to**	**Para 7**
2004 (8) SCC 161	**referred to**	**Para 8**
2004 (8) SCC 195	**referred to**	**Para 9**
2004 (8) SCC 246	**referred to**	**Para 9**
2005(5) SCC 100	**referred to**	**Para 10**
2005 (7) Supreme 165	**referred to**	**Para 10**
2005 (7) Supreme 307	**referred to**	**Para 10**
JT 2005 (9) SC 340	**referred to**	**Para 11**
2006 (1) SCC 337	**referred to**	**Para 12**
2006 AIR SCW 3574	**referred to**	**Para 12**

G CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2895 of 2009

From the Judgement and Order dated 02.08.2005 of the Hon'ble High Court of Karnataka at Bangalore in the Writ Appeal No. 1500 of 2005 (L-TER)

H

A

Naveen R. Nath, for the Appellant(s).

R.V. Naik, R.R. Naik, R.K. Gupta, S.K. Tondon, Pritam Shah (for Rameshwar Prasad Goyal), for the Respondent(s).

The Judgement of the Court was delivered by

B

DR. ARIJIT PASAYAT, J.

1. Leave granted.

2. Challenge in this appeal is to the judgment of the Division Bench of the Karnataka High Court allowing the writ appeal filed by the respondent. By the impugned judgment the Division Bench set aside the order passed by a learned Single Judge and the award made by the Labour Court.

C

3. Background facts in a nutshell are as follows:

D

The workman had been working as a daily wage employee with the Krishna Bhagya Jala Nigam Limited (for short the 'Jala Nigam') which, at the relevant point of time was executing the Upper Krishna Project in the State of Karnataka. His services were allegedly terminated which gave rise to an industrial dispute. According to the claim made by the workman he served the Jala Nigam from 29.10.1989 to 1.4.1996. He further claimed that his services were terminated without complying with the provisions of Section 25-F of the Industrial Disputes Act 1947 (for short the Act). A reference under Section 10(1) (c) of the Act was made to the Labour Court, Gulbarga. Several other employees had also challenged the termination of their services and other references had been made to the Labour Court and some of the employees had also filed applications before it under sub-section (4-A) of Section 10 of the Act. The reference made at the instance of the workman was contested by the Jala Nigam and on a consideration of the oral and documentary evidence led by the parties, the Labour Court recorded a finding that the services of the workman had been terminated without complying with the provisions of Section 25-F of the Act and therefore the termination was illegal. Accordingly the termination

E

F

G

H

A was set aside and the Jala Nigam was directed to reinstate the workman with full back wages and continuity of service. This award came to be challenged by the Jala Nigam in W.P. No.40822/1999. This writ petition was heard along with the writ petitions filed in the case of other workmen as well and all the B writ petitions were disposed of by the learned single Judge by a common order. In the case of other workmen there was considerable delay in raising the industrial dispute and therefore the learned single Judge non-suited them on that ground. In the case of the workman the Labour Court observed that there had C been no delay but the provisions of Section 25-F of the Act had not been complied with and therefore the termination was wrongful. The learned single Judge set aside the award of the Labour Court holding that there was no evidence before it indicating that the workman had ever been in the service of the D Jala Nigam. According to the learned single Judge, the workman had not discharged the initial onus of proving that he had worked for more than 240 days with the Jala Nigam and therefore the award directing his reinstatement was illegal. The writ petition was allowed and the award of the Labour Court set aside. It is against this order of the learned single Judge that a writ appeal E was filed before the Division Bench. By the impugned judgment, the writ appeal was allowed.

4. Learned counsel for the appellant submitted that the basic approach of the High Court is erroneous. It proceeded on F the basis as if the period of employment/engagement of a workman has to be established by the employer. There is no appearance on behalf of the workman.

5. Learned counsel for the respondent-workman supported the judgment of the High Court.

G 6. In a large number of cases the position of law relating to the onus to be discharged has been delineated. In *Range Forest Officer v. S.T. Hadimani* (2002 (3) SCC 25), it was held as follows:

H "2. In the instant case, dispute was referred to the Labour

Court that the respondent had 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 10.8.1998 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.

3. 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. Pratamsingh Narsinh Parmar* (2001) 9 SCC 713. 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

A compassionate grounds on the same terms as he was allegedly engaged prior to his termination, within two months from today."

7. The said decision was followed in *Essen Deinki v. Rajiv Kumar* (2002 (8) SCC 400).

B

8. In *Rajasthan State Ganganagar S. Mills Ltd. v. State of Rajasthan and Anr.* (2004 (8) SCC 161), the position was again reiterated in paragraph 6 as follows:

> "It was the case of the workman that he had worked for C more than 240 days in the year concerned. This claim was denied by the appellant. It was for the claimant to lead evidence to show that he had in fact worked up to 240 days in the year preceding his termination. He has filed an affidavit. It is only his own statement which is in his favour D and that cannot be regarded as sufficient evidence for any Court or Tribunal to come to the conclusion that in fact the claimant had worked for 240 days in a year. These aspects were highlighted in *Range Forest Officer v. S.T. Hadimani* (2002 (3) SCC 25). No proof of receipt of salary E or wages for 240 days or order or record in that regard was produced. Mere non-production of the muster roll for a particular period was not sufficient for the Labour Court to hold that the workman had worked for 240 days as claimed."

F 9. In *Municipal Corporation, Faridabad v. Siri Niwas* (2004 (8) SCC 195), it was held that the burden was on the workman to show that he was working for more than 240 days in the preceding one year prior to his alleged retrenchment. In *M.P. Electricity Board v. Hariram* (2004 (8) SCC 246) the G position was again reiterated in paragraph 11 as follows:

> "The above burden having not been discharged and the Labour Court having held so, in our opinion, the Industrial Court and the High Court erred in basing an order of reinstatement solely on an adverse inference drawn

H

erroneously. At this stage it may be useful to refer to a judgment of this Court in the case of *Municipal Corporation, Faridabad v. Siri Niwas* JT 2004 (7) SC 248 wherein this Court disagreed with the High Court's view of drawing an adverse inference in regard to the non-production of certain relevant documents. This is what this Court had to say in that regard:

"A court of law even in a case where provisions of the Indian Evidence Act apply, may presume or may not presume that if a party despite possession of the best evidence had not produced the same, it would have gone against his contentions. The matter, however, would be different where despite direction by a court the evidence is withheld. Presumption as to adverse inference for non-production of evidence is always optional and one of the factors which is required to be taken into consideration is the background of facts involved in the lis. The presumption, thus, is not obligatory because notwithstanding the intentional non-production, other circumstances may exist upon which such intentional non-production may be found to be justifiable on some reasonable grounds. In the instant case, the Industrial Tribunal did not draw any adverse inference against the appellant. It was within its jurisdiction to do so particularly having regard to the nature of the evidence adduced by the respondent."

10. In *Manager, Reserve Bank of India, Bangalore v. S. Mani and Ors.* (2005(5) SCC 100) a three-Judge Bench of this Court again considered the matter and held that the initial burden of proof was on the workman to show that he had completed 240 days of service. Tribunal's view that the burden was on the employer was held to be erroneous. In *Batala Cooperative Sugar Mills Ltd. v. Sowaran Singh* (2005 (7) Supreme 165) it was held as follows:

"So far as the question of onus regarding working for more than 240 days is concerned, as observed by this Court in

A B C D E F G H

A *Range Forest Officer v. S.T. Hadimani* (2002 (3) SCC 25) the onus is on the workman."

The position was examined in detail in *Surendranagar District Panchayat v. Dehyabhai Amarsingh* (2005 (7) Supreme 307) and the view expressed in *Range Forest Officer, Siri* B *Niwas, M.P. Electricity Board* cases (supra) was reiterated.

11. In *R.M. Yellatti v. The Asst. Executive Engineer* (JT 2005 (9) SC 340), the decisions referred to above were noted and it was held as follows:

C "Analyzing the above decisions of this court, it is clear that the provisions of the Evidence Act in terms do not apply to the proceedings under section 10 of the Industrial Disputes Act. However, applying general principles and on reading the aforestated judgments, we find that this D court has repeatedly taken the view that the burden of proof is on the claimant to show that he had worked for 240 days in a given year. This burden is discharged only upon the workman stepping in the witness box. This burden is discharged upon the workman adducing cogent E evidence, both oral and documentary. In cases of termination of services of daily waged earner, there will be no letter of appointment or termination. There will also be no receipt or proof of payment. Thus in most cases, the workman (claimant) can only call upon the employer to F produce before the court the nominal muster roll for the given period, the letter of appointment or termination, if any, the wage register, the attendance register etc. Drawing of adverse inference ultimately would depend thereafter on facts of each case. The above decisions however make G it clear that mere affidavits or self-serving statements made by the claimant/workman will not suffice in the matter of discharge of the burden placed by law on the workman to prove that he had worked for 240 days in a given year. The above judgments further lay down that mere non-production of muster rolls per se without any plea of H

suppression by the claimant workman will not be the ground for the tribunal to draw an adverse inference against the management. Lastly, the above judgments lay down the basic principle, namely, that the High Court under Article 226 of the Constitution will not interfere with the concurrent findings of fact recorded by the labour court unless they are perverse. This exercise will depend upon facts of each case."

12. The above position was again re-iterated in *ONGC Ltd. and Anr. v. Shyamal Chandra Bhowmik* (2006 (1) SCC 337) and *Chief Engineer, Ranjit Sagar Dam and Anr. v. Sham Lal* (2006 AIR SCW 3574).

13. Appeal is allowed. No order as to costs.

G.N. Appeal allowed.