SUPREME COURT OF INDIA

Surendranagar Distt. Panchayat and Another

Vs

Gangaben Laljibhai and Others

Appeal (Civil) 6383 of 2005

(Arijit Pasayat and L. S. Panta, JJ)

03.07.2006

JUDGMENT

ARIJIT PASAYAT, J.

Appellants challenge correctness of the judgment rendered by a Division Bench of the Gujarat High Court dismissing the Letters Patent Appeal filed by the appellants. By the impugned judgment the Division Bench upheld the decision of learned Single Judge.

Background facts in a nutshell are as follows :

State of Gujarat had made a reference to the Labour Court, Surendra Nagar under Section 10 of the Industrial Disputes Act, 1947 (in short the 'Act')basically on the question whether the alleged termination of the services of the respondents was valid. Claim of the respondents was that they had worked for various period beyond 240 days in each of the years right from the beginning and therefore, the discharge from service of the respondents by oral intimation was not valid. Appellants refuted the stand by stating that the nature of the work was purely on daily wages basis depending upon both on work and funds. They specifically pleaded that none of the respondents had completed 240 days in any of the years right from the beginning. As work was not available they were orally asked not to come for work, and there was thus no retrenchment or termination.

There was no appearance on behalf of respondent in spite of notice.

The labour court noted that the details pertaining to attendance of the respondent have been produced, and zerox copies of the salary register and muster roll have also produced. The labour court came to hold that the workman's plea in each case that he had worked for various periods for more than 240 days in a year was established and there was non-compliance of the provisions of Section 25-F of the Industrial Disputes Act, 1947 (in short the 'Act') and as such termination was illegal. They were awarded back wages. The writ petitions filed were dismissed and so was the Letters Patent Appeal as indicated above.

It is to be noted that the Labour Court and the High Court proceeded on the basis as if the burden of proving that the concerned employee has not worked for 240 days in the preceding year immediate to the date of termination lies on the employer.

The view expressed by the High Court is clearly untenable.

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 , it was held as follows:

"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 17. 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 said decision was followed in Essen Deinki v. Rajiv Kumar 4.

In Rajasthan State Ganganagar S. Mills Ltd. v. State of Rajasthan and Anr. , the position was again reiterated in paragraph 6 as follows:

"It was the case of the workman that he had worked for 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 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 . No proof of receipt of salary 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."

In Municipal Corporation, Faridabad v. Siri Niwas , 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 the 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 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 2004 (7) JT 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."

In Manager, Reserve Bank of India, Bangalore v. S. Mani and Ors. 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 (8) SCC 25 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 Range Forest Officer v. S.T. Hadimani the onus is on the workman."

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

In a recent judgment in R.M. Yellatti v. The Asst. Executive Engineer , the decisions referred to above were noted and it was held as follows:

"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 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 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 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 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 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."

The above position was again reiterated in a recent judgment in ONGC Ltd. and Another v. Shyamal Chandra Bhowmik 2006 (1) SCC 337.

It was held in all these cases that the burden of proof lies on the workman to show that he had worked continuously for 240 days for the preceding one year and it is for the workman to adduce evidence apart from examining himself to prove the factum of being in employment of the employer.

In the instant case the labour court and the High Court also lost sight of the fact that the zerox copies of the appellant's attendance and salary registers were produced. The respondents have not adduced any evidence except making oral statement that they had worked for more than 240 days.

Above being the position the Award of the Labour Court and impugned judgment of the learned Single Judge as affirmed by the Division Bench are set aside.

The appeal is allowed. There shall be no order as to costs. In case any of the respondents has been reinstatement pursuant to the order of the Labour Court/High Court, salary and other emoluments paid to him shall not be recovered.