SUPREME COURT OF INDIA

Krishna Bhagya Jala Nigam Limited

Vs

Mohammed Rafi

Civil Appeal No. 3639 of 2006

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

24.08.2006

JUDGMENT

ARIJIT PASAYAT, J.

Leave granted.

2. Challenge in this appeal is to the judgment rendered by a Division Bench of the Karnataka High Court, Bangalore allowing the writ appeal filed by the respondent (hereinafter referred to as the 'workman') and restoring the Award made by the Labour Court.

3. Background facts in a nutshell are as follows:

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 subsection (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 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 the writ petition 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 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 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 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 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. 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 ha-d 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".

6. The said decision was followed in Essen Deinki v. Rajiv Kumar 4.

7. In Rajasthan State Ganganagar S. Mills Ltd. v. State of Rajasthan and another , the position was gain 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."

8. 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. Hariram5 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 involved in the Us. 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".

9. In Manager, Reserve Bank of India, Bangalore v. S. Mani and others = 2005 (4) SCJ 792 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 Co-operative Sugar Mills Ltd. v. Sowaran Singh[2005 (7) SupreiHe 165 = 2005 (7) SCJ 807 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".

10.The position was examined in detail in Surendranagar District Panchayat v. Dehyabhai Amarsingh[2005 (7) Supreme 307 = 2005 (8) SCJ 169 and the view expressed in Range Forest Officer, Siri Niwas, M.R Electricity Board cases (supra) was reiterated.

11.In R.M. Yellatti v. The Asst. Executive Engineer[JT 2005 (9) SC 340 = 2005 (8) SCJ 443, 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 -or 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 o 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".

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

13. Above being the position, impugned order of the High Court cannot be maintained and is set aside.

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

J