CASE NO.:
Appeal (civil) 2240 of 2001

PETITIONER:
M.P. Electricity Board

RESPONDENT:
Hariram

DATE OF JUDGMENT: 27/09/2004

BENCH:
N.Santosh Hegde & S.B.Sinha

JUDGMENT:
J U D G M E N T

(With CA Nos. 2241/2001, 2242/2001 & 2243/2001)

SANTOSH HEGDE, J.

The appellant-M.P. Electricity Board in these appeals question the correctness of the judgment of the High Court of Judicature at Jabalpur whereby the High Court dismissed its writ petitions challenging the order of the Industrial Court, Bhopal Bench which in turn had directed to re-instate the respondents herein with 50% back wages.

Facts necessary for the disposal of these appeals are as follows:

The respondents herein were engaged by the appellant-Board on daily wages for the purpose of digging pits for erecting electric poles. It is the case of the appellant that on completion of the said project of drawing electric lines from point to point, the employment of the respondents was terminated and whenever a similar occasion arose for digging pits they were re-employed on daily wages. Hence their employment was not permanent in nature nor in any one of the cases the respondents had completed 240 days of continuous work in any given year. The said project jobs have come to an end in 1991 and respondents were never re-employed by the Board.

Being aggrieved by the said non-employment, the respondents herein filed applications under Section 31 read with Section 61 of the M.P.Industrial Relations Act (M.P.Act) in January, 1993 before the Labour Court, Bhopal seeking permanent employment under the Board, primarily on the ground that they have completed 240 working days in a year and their discontinuation of service amounted to retrenchment without following the legal requirements.

The appellant-Board denied the allegations made in the said application which had termed the non-employment as retrenchment of their service by contending that the question of retrenchment does not arise in the nature of employment because the service of the respondents were on work requirement basis. Before the Labour Court, an application was made by the respondents to produce the Muster Rolls for the period 1987 to 1992. That apart no other material was produced by the respondents to establish a fact that they had worked for 240 days continuously in any given year. Though some other applicants examined themselves before the Labour Court no other document was produced. While the appellant-Board examined three witnesses who are Engineers-In-Charge of the Project and produced the Muster Rolls for the period between 1986 to 1990 but

did not produce the Muster Rolls for the later period. The Labour Court after examining the entries in the Muster Rolls came to the conclusion that the respondents-applicants had not worked for 240 days continuously in any given year, hence, they cannot claim permanency nor could they term their non-employment as a retrenchment. On the said basis, it rejected the applications of the respondents.

Being aggrieved by the said rejection of their application, the respondents preferred an appeal before the Industrial Court at Bhopal Bench. The Industrial Court noticing the fact that though the application for production of the Muster Rolls was for the years 1987 to 1992, the appellant had only produced the Muster Rolls for the year ending 1990. Therefore, an adverse inference against the appellant was drawn and solely based on the said adverse inference it accepted the case of the respondents that they had worked for 240 days continuously in a given year, hence, proceeded to grant relief, as stated herein above.

A challenge to the said orders of the appellant were dismissed by the High Court after drawing an adverse inference based on the same grounds of non-production of all the Muster Rolls.

However, while considering the case of grant of back wages both the Industrial Court as well as the High Court came to the conclusion that the respondents had not worked continuously at any given point of time and were not engaged on all working days and their employment was punctuated by short periods when they had not been engaged. Hence, it confined the back wages to 50% only and with the above modification reinstatement of the respondents was ordered.

In these appeals, learned counsel appearing on behalf of the appellant-Board contended that the courts below could not have drawn any adverse inference against the Board for not having produced the Muster Rolls for the year 1990-1992 when it complied with the request of the respondent by producing the Muster Rolls for the year 1988-90. It is submitted that the said Muster Rolls which were produced before the court clearly indicated that the respondents had not worked continuously for 240 days in a year, at any point of time between 1988-90. It is argued that it is not the case of the respondents that between the year 1990-92 for which period the Muster Rolls were not produced they had worked for 240 days continuously only in those years. Their entire case was that between 1988 and 1992 they have been working in 240 days continuously in a year which having not been established atleast for the years 1988 and 1990 without there being a specific allegation that between 1990 and 1992 there was such continuous employment a mere non-production of the Muster Rolls for the said year could not have been made the basis of drawing an adverse inference by the courts below. It is also argued that the non-employment of a daily wager when there is no work would not amount to retrenchment. Learned counsel also submitted that the nature of work that was being done by the appellant was a work for a project and that project having come to an end, question of regularising the services of the respondents or making them permanent did not arise.

Shri S.K.Gambhir, learned senior counsel appearing for the respondents per contra argued the very fact that the appellants though were in possession of the Muster Rolls between 1988 to 1992 did not produce the same inspite of being summoned must give rise to assumption that those documents if produced would prove the case of the respondents, hence, the Industrial Court as well as the High Court justly drew an adverse inference against the appellant. He submitted that these workmen being poor and illiterate people will not have any material in their possession to prove their continuous employment, hence, the burden of proving their continuity of their employment could not be thrust on them.

He submitted that even otherwise in law the impugned orders did not call for any interference.

Having heard the learned counsel for the parties and having perused the documents, we notice that the case of the appellant that these respondents were employed for the purpose of digging pits for erecting electric poles in the course of drawing electric wire from one point to another point is not disputed. It is an accepted finding of the courts below that the employment of the respondents have been discontinuous and intermittent during the period from 1982 till their employment was discontinued. We can take judicial notice of the fact that drawing of an electric line is in the nature of project work and once the polls are erected and the electric wire is drawn from the starting pole to the ending pole that work comes to an end. Therefore, it cannot be contended that the nature of work which was only to dig pits for the purpose of erecting poles could be construed as a permanent job. Of course, during the course of electrifying more places, job of this nature may be done by the Board continuously in different parts of the State but that does not deviate from the fact that drawing of electric line from one point to another at one part of the State would be a project and not a continuous job. Therefore, employment of people in that local area for the limited job cannot be construed as an employment for a continuous and regular work of the Board. This fact is also recorded in the Muster Rolls which shows that at regular intervals the services of the respondents were sought obviously for the reason that there was no continuous need for such work. A perusal of the Muster Rolls, a copy of which is produced along with the writ appeal which pertains to the respondents in the first appeal clearly indicates the above fact. If as an example, we take the case of the respondent in C.A.No.2240/01 we notice that he worked between 16.11.1987 to 15.12.1987 for 30 days. His next employment was from 16.12.1987 to 15.1.1988 for 26 days. Therefore, it could be said that during the period 16.11.1987 to 15.1.1988 this respondent worked continuously for 56 days. He was then not employed between 15.1.1988 till 16.2.1988. After the said break he was re-employed from 16.2.1988 to 15.9.1988 which is for a period of 106 days. Thereafter, he was not employed till 16.11.1988. From 16.11.1988 he was re-employed till 15.12.1988 for 30 days. Thus it is noticed that the employment during the period 1987 to 1988 was not continuous and his total employed days for one year if taken from 16.11.1987 till 16.11.1988, same comes to 136 days. Similar is the case if we have a look at a subsequent employment during the years 1989-1990, this clearly shows the fact that the employment of the respondent was on a job required basis and was not for any continuous services required by the Board. The appellant, therefore, cannot claim either permanency or regularisation since there is no such permanent post to which he could stake his claim nor could he claim the benefit of completion of 240 days of continuous work in a given year, because as stated above the figures do not show that the respondents whose particulars are referred to herein above or the other respondents for that matter have worked for 240 days. In such a factual background, in our opinion, the Industrial Court or the High Court could not have drawn an adverse inference for the non-production of the Muster Rolls for the year 1990 to 1992 in the absence of specific pleading by the respondents-applicants that atleast during that period they had worked for 240 days continuously in a given year. The application calling for the production of the documents was for the years 1987 to 1992. As stated above, between the period 1987 to 1990, as a matter of fact, till end of the year 1990 the respondents have not been able to establish the case of continuous work for 240 days. Considering these facts in our view drawing of an adverse inference for the non-production of the Muster Rolls for the years 1991-92, is wholly erroneous on the part of the Industrial Court and the High

Court. We cannot but bear in mind the fact that the initial burden of establishing the factum of their continuous work for 240 days in a year rests with the applicants-respondents.

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 re-instatement 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 vs. 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 in 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."

If we apply the principles laid down by this Court in the above stated case of Siri Niwas, it is clear that the Labour Court not having drawn any adverse inference, on facts and circumstances of this case the Industrial Court or the High Court could not have based an order of re-instatement solely on the basis of an adverse inference.

For the reasons stated above, these appeals succeed. The impugned orders of the High Court as well as the Industrial Court are set aside and that of the Labour Court is restored.

These appeals are allowed.