CASE NO.:
Appeal (civil) 4468 of 2005

PETITIONER:
Ranip Nagar Palika

RESPONDENT:
Babuji Gabhaji Thakore and Ors

DATE OF JUDGMENT: 23/11/2007

BENCH:
Dr. ARIJIT PASAYAT & P. SATHASIVAM

JUDGMENT:
J U D G M E N T

Dr. ARIJIT PASAYAT, J.

1. In the present appeal challenge is to the order passed by a Division Bench of the Gujarat High Court dismissing the Letters Patent Appeal filed by the appellant. In the Letters Patent Appeal challenge was to the order passed by a learned Single Judge who had dismissed the writ petition filed by the appellant.

2. A brief reference to the factual aspects would suffice.

3. Claim was made by the respondents to the effect that their services were terminated without following the procedure prescribed under Section 25-F of the Industrial Disputes Act, 1947 (in short the \021Act\022). It was their case that they were employed on regular basis and, therefore, the termination of service is illegal. In the claim petition they had averred that they were working since 1991 and had worked continuously till there was termination of service by an oral order on 16.5.1994. Appellant took the stand that the respondents were engaged as daily rated helpers. Their appointments were not in terms of the recruitment rules and workers were called for rendering services as and when required. It was therefore said that the claim regarding continuance of service was mis-conceived. The respondents only worked for a few days. In fact after November, 1993 there was no engagement made as their services were not required. The Labour Court, Ahmedabad by order dated 9.7.1999 directed re-instatement with continuity of service and 50% back wages. The order was assailed before the High Court. It was contended that the respondents were working as daily wagers and they had not rendered regular service. A learned Single judge of the High Court dismissed the writ petition holding that each of the respondents had completed 240 days of service and, therefore, the order of the Labour Court was justified. As noted above, writ appeal was dismissed.

4. Learned counsel for the appellant submitted that there was no pleading that the respondents had completed 240 days of service. In fact their claim in the claim petition was that they had rendered continuous service without indicating any particulars. In any event, there was no finding recorded by the Labour Court that they had completed 240 days of service. Learned Single Judge therefore was not justified in holding that the Labour Court had concluded that the concerned

workmen had completed 240 days of service. It was further submitted that all relevant records were produced before the Labour Court which were lightly brushed aside and conclusions were arrived at on conjectures by holding that the claim of the present respondents was to be accepted.

5. It was further submitted that the onus is on the person who claims to have rendered more than 240 days of service to establish it. The Labour Court and the High Court erroneously held that it was for the employer to establish that the claimants-workmen had not completed 240 days of service

6. Learned counsel for the respondents on the other hand submitted that after analyzing the factual position in detail the Labour Court and the High Court have arrived at the correct conclusion.

7. 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:

\0232. 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 compassionate grounds on the same terms as he was allegedly engaged prior to his termination, within two months from today.\024

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

9. 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:

\023It 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 (2002 (3) SCC 25). 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.\024

10. 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 position was again reiterated in paragraph 11 as follows:

\023The 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 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."

11. 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\022s 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:

\023So 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 (2002 (3) SCC 25) the onus is on the workman.\024

12. 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 Niwas, M.P. Electricity Board cases (supra) was reiterated.

13. In R.M. Yellatti v. The Asst. Executive Engineer (2006 (1) SCC 106), the decisions referred to above were noted and it was held as follows:

\023Analyzing 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.\024

14. The above position was again reiterated in ONGC Ltd. and Another v. Shyamal Chandra Bhowmik (2006 (1) SCC 337) and Surendranagar Distt. Panchayat v. Gangaben Laljibhai and Ors. (2006 (9) SCC 132).

15. 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.

16. It is to be noted that the appellant had produced materials to show that the claim of the respondents that they had worked from 1991 was patently wrong. In fact, finding has been recorded that one of the respondents had worked since January, 1994 contrary to the claim of having worked from 1991. In view of the fact that the Labour Court and the High Court have not considered the matter in the proper perspective and the view expressed is contrary to the decision in several decisions referred to above, the orders of the Labour Court and the High Court cannot be sustained.

17. There was need for factual adjudication on the basis of the materials adduced by the parties. That apparently has not been done. We therefore set aside the orders of the Labour Court, learned Single Judge and Division Bench of the High Court and remit the matter to the Labour Court to consider the matter afresh. It has to specifically record a finding as to whether the claim of the workmen of continuance of service is acceptable. It has also to be decided as to whether the workmen had completed 240 days of service. That decision is vital to see whether Section 25-F of the Act has any relevance.

18. The appeal is allowed with no order as to costs.