CASE NO.:
Appeal (civil) 1851 of 2002

PETITIONER:
Municipal Corporation, Faridabad

RESPONDENT:
Siri Niwas

DATE OF JUDGMENT: 06/09/2004

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

JUDGMENT:
J U D G M E N T
With C.A. No. 4563 of 2002

S.B. SINHA, J:

Both these appeals involving similar questions of fact and law were taken up for hearing together and are being disposed of by this common judgment.

The factual matrix of the matter, however, is being noticed from Civil Appeal No.1851 of 2002.

The Appellant is in appeal before us being aggrieved by and dissatisfied with the judgment and order dated 3.5.2001 passed by the learned Single Judge of the Punjab and Haryana High Court in CWP No.624 of 2000 whereby and whereunder the writ petition filed by the respondent herein, questioning an Award dated 13.8.1999 passed by the Industrial Tribunal, Faridabad, was allowed.

The basic fact of the matter is not much in dispute. The respondent herein allegedly worked with the Appellant herein from 5.8.1994 to 31.12.1994 as Tubewell Operator. He allegedly further worked from 1.1.1995 to 16.5.1995 at Sector 37, Old Zone II. His services were terminated on or about 17.5.1995 whereupon an industrial dispute was raised.

The Government of Haryana made a reference before the Presiding Officer, Industrial Tribunal-cum-Labour Court I, vide Haryana Government Endst. No.32410-15 dated 7.10.1995, in exercise of the power conferred by Clause (c) of Sub-Section (1) of Section 10 of the Industrial Disputes Act, 1947 in the following terms:

"Whether there is justification in the termination of the services of Sh. Shri Niwas and if not, to what relief he is entitled to."

The case of the respondent before the Tribunal was that as he had completed working for 240 days in a year, the purported order of the retrenchment is illegal as conditions precedent therefor as contained in Section 25F of the Industrial Disputes Act, 1947 were not complied with. The contention of the Appellant herein, on the other hand, was that the said respondent had worked only for 136 days during the preceding twelve months on daily wages and had no lien over the said job.

The Tribunal upon considering all the materials placed on records by the parties to the dispute came to the conclusion that the total number of working days of the workman was 184 days and, thus, he having not completed 240 days of working in a year was not entitled to any relief. The

learned Tribunal noticed that neither the Management nor the workman cared to produce the muster rolls with effect from August, 1994 which was their joint liability. It was further observed that the workman even did not summon the same although the Management had not produced the muster rolls.

The respondent being aggrieved by and dissatisfied with the said Award filed a writ petition before the Punjab and Haryana High Court which was marked at CWP No.624 of 2000. Before the High Court the respondent produced certain documents which do not appear to have been taken on records.
The High Court opined :

"\005Be that as it may, respondent in their written statement has accepted the fact that the petitioner was kept on 1.1.1995 and he worked upto 16.9.1995. This span of working period as mentioned by the respondent is of course more than 240 days. The question is whether the petitioner has actually worked for this period or not."

The High Court, however, was of the view that as the Appellant herein did not produce the relevant documents before the Industrial Tribunal, an adverse inference should be drawn against it, as it was in possession of the best evidence and, thus, it was not necessary for the first respondent herein to call upon the Appellant to do so. The High Court furthermore was of the view that the burden of proof may not be upon the Appellant but in case of non-production of the documents, an adverse inference could be drawn against him. Only on that basis the writ petition was allowed holding that it could be presumed that the respondent had worked for 240 days. Consequently the respondent was directed to be reinstated in service with 75% back wages from the date of demand.

Mr. Praveen Kumar Rai, the learned counsel appearing on behalf of the Appellant, would submit that the High Court committed a serious error of law insofar as it allowed the writ petition filed by the respondent herein only on the basis of an adverse inference drawn by it by non-production of the muster rolls.

Mr. D. K. Thakur, learned counsel appeared on behalf of the respondent, on the other hand, would support the judgment of the High Court.

The provisions of the Indian Evidence Act per se are not applicable in an industrial adjudication. The general principles of it are, however applicable. It is also imperative for the Industrial Tribunal to see that the principles of natural justice are complied with. The burden of proof was on the respondent herein to show that he had worked for 240 days in preceding twelve months prior to his alleged retrenchment. In terms of Section 25-F of the Industrial Disputes Act, 1947, an order retrenching a workman would not be effective unless the conditions precedent therefor are satisfied. Section 25-F postulates the following conditions to be fulfilled by employer for effecting a valid retrenchment :

(i) one month’s notice in writing indicating the reasons for retrenchment or wages in lieu thereof;

(ii) payment of compensation equivalent to fifteen days, average pay for every completed year of continuous service or any part thereof in excess of six months.

For the said purpose it is necessary to notice the definition of ’Continuous Service’ as contained in Section 25-B of the Act. In terms of

sub-Section (2) of Section 25-B that if a workman during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer 240 days within a period of one year, he will be deemed to be in continuous service. By reason of the said provision, thus, a legal fiction is created. The retrenchment of the respondent took place on 17.5.1995. For the purpose of calculating as to whether he had worked for a period of 240 days within one year or not, it was, therefore, necessary for the Tribunal to arrive at a finding of fact that during the period between 5.8.1994 to 16.5.1995 he had worked for a period of more than 240 days. As noticed hereinbefore, the burden of proof was on the workman. From the Award it does not appear that the workman adduced any evidence whatsoever in support of his contention that he complied with the requirements of Section 25B of the Industrial Disputes Act. Apart from examining himself in support of his contention he did not produce or call for any document from the office of the Appellant herein including the muster rolls. It is improbable that a person working in a Local Authority would not be in possession of any documentary evidence to support his claim before the Tribunal. Apart from muster rolls he could have shown the terms and conditions of his offer of appointment and the remuneration received by him for working during the aforementioned period. He even did not examine any other witness in support of his case.

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.

No reason has been assigned by the High Court as to why the exercise of discretional jurisdiction of the Tribunal was bad in law. In a case of this nature, it is trite, the High Court exercising the power of judicial review, would not interfere with the discretion of a Tribunal unless the same is found to be illegal or irrational.

In Mahant Shri Srinivas Ramanuj Das vs Surajanarayan Das and Another [AIR 1967 SC 256] this court held :

"28.\005The Mahant has not come in the witness box. All the documents have not been produced. In fact it is the plaintiff alone who produced a number of documents but he had picked and chosen from among the documents in his possession. Some documents which could have thrown some light on the question under determination have not been produced. It is true that the defendant-respondent also did not call upon the plaintiff-appellant to produce the documents whose existence was admitted by one or the other witness of the plaintiff and that, therefore, strictly speaking, no inference adverse to the plaintiff can be drawn from his non-producing the list of documents. The Court may not be in a position to conclude from such omission that those documents would have directly established the case for the respondent. But it can take into consideration in weighing the evidence or any direct inferences from established facts that the documents might have favoured the respondent’s case."

Yet again in Smt. Indira Nehru Gandhi vs Shri Raj Narain (AIR 1975 SC 2299), law has been laid down by this Court in the following terms :

"The third and the last and a subsidiary submission on behalf of the election petitioner, on election expenses was that Shri Dal Bahadur Singh not having been produced by the original respondent, some sort of presumption arises against the original respondent. I do not think that it is possible to shift a burden of the petitioner on to the original respondent whose case never was that Shri Dal Bahadur Singh spent any money on her behalf. The case of M. Chyenna Reddy vs Ramchandra Rao, (1972) 40 Ele LR 390 at p. 415 (SC) was relied upon to submit that a presumption may arise against a successful candidate from the non-production of available evidence to support his version. Such a presumption, under Section 114 Evidence Act, it has to be remembered, is always optional and one of fact, depending upon the whole set of facts. It is not obligatory."

Further more a party in order to get benefit of the provisions contained in Section 114(f) of the Indian Evidence Act must place some evidence in support of his case. Here the Respondent failed to do so.

The High Court in support of its judgment has relied upon the decision of this Court in Gopal Krishnaji Ketkar vs Mohamed Haji Latif and Others [AIR 1968 SC 1413], wherein as regards the income from a Dargah the Court amongst other evidence took into consideration the fact that the Appellant in his evidence admitted that he had been enjoying the income of plot in question but did not produce any account to substantiate his contention. Despite admitting that "he had got record of the Dargah Income and that account was kept separately" the Appellant therein had not produced either on his own account or the account of the Dargah as to how the income from the said plot was dealt with. This Court in Gopal Krishnaji case (supra) did not lay down any law that in all situations the presumption in terms of Section 114(f) of the Indian Evidence Act must be drawn. The said decision, thus, has no application in the fact of the present case.

Curiously the respondent produced copies of some muster rolls before this court. If he was in possession of the said documents, it betrays one’s imagination as to why the same had not been produced before the Tribunal. As indicated hereinbefore, he filed some documents before the High Court but the same were not accepted. The High Court, therefore, proceeded to pass the impugned judgment only on the basis of the materials relied on by the parties before the Tribunal. The High Court, in our opinion, committed a manifest error in setting aside the award of the Tribunal only on the basis of adverse inference drawn against the Appellant for not producing the muster rolls.

For the foregoing reasons the impugned judgments are not sustainable in law and they are set aside accordingly.
These appeals are allowed. In the facts and circumstances of this case, there shall be no order as to costs.