M/S. Sriram Industrial Enterprises Ltd vs Mahak Singh & Ors on 8 March, 2007

Equivalent citations: AIR 2007 SUPREME COURT 1370, 2007 AIR SCW 1712, 2007 (3) ALL LJ 253, 2007 (2) UPLBEC 1560, 2007 (4) SCC 94, 2007 (4) SCALE 237, (2007) 2 SCT 614, (2007) 2 ESC 328, (2007) 2 CURLR 744, (2007) 2 UPLBEC 1560, (2007) 3 SUPREME 553, (2007) 2 LAB LN 144, (2007) 4 SCALE 237

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Bench: Ar. Lakshmanan, Altamas Kabir

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           CASE NO.:
Special Leave Petition (civil)  16456-16460 of 2005

PETITIONER:
M/S. SRIRAM INDUSTRIAL ENTERPRISES LTD

RESPONDENT:
MAHAK SINGH & ORS

DATE OF JUDGMENT: 08/03/2007

BENCH:
Dr.AR. Lakshmanan & Altamas Kabir

JUDGMENT:
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J U D G M E N T ALTAMAS KABIR, J.

Five different writ petitions were filed by the different respondents in these special leave petitions before the High Court of Judicature at Allahabad against the awards made by the Industrial Tribunal on 20th June, 1998. The said writ petitions having been allowed by a common judgment dated 15th April, 2005, the petitioner herein, which was the common respondent in all the writ petitions, has filed these special leave petitions questioning the judgment and order of the Allahabad High Court.

The writ petitioners/respondents herein claimed to have been appointed by the petitioner between the years 1987-1991 and it is their case that they worked continuously from the date of their appointment till they were retrenched in the years 1994 and 1995 respectively. The specific case made out by the respondents is that although they have worked continuously from the date of their appointment for more than 240 days in a calendar year, they have been illegally retrenched from service in violation of the provisions of Section 6 N of the U.P. Industrial Disputes Act, 1947 (for

short 'the U.P. Act').

The respondents raised a dispute relating to their retrenchment which was ultimately referred by the State Government to the Tribunal under Section 4 K of the aforesaid Act to determine as to whether the termination of the services of the workmen by the employer was just and/or illegal. Pursuant to the said References, five separate Adjudication Cases, being Nos. 134,139,132, 129 and 127 of 1995 were registered by the Presiding Officer, Industrial Tribunal (V), U.P. In support of their contention that they had been illegally retrenched, the respondents submitted that not only had they worked continuously from the date of their appointment till their services were terminated, but that they had been allowed grade number and provident fund number and other service benefits. It is also the case of the respondents that as they had demanded other benefits to which they were entitled, their services were terminated without any notice and compensation being given to them. They accordingly claimed reinstatement in service with all back wages. The case of the petitioner herein is that since the sugar industry is a seasonal industry, most of the work force are engaged as casual and temporary hands during the operational season and that this state of affairs is common to the entire sugar industry. It was also the case of the petitioner that the real dispute was not with regard to the termination of the services of the workmen, but with regard to their claim for regularisation of their services. It was also the case of the petitioner that the services of the workmen had never been terminated since none of them had worked for 240 days in the last 12 calendar months immediately preceding their alleged date of termination.

As recorded by the Tribunal, the respondents had produced bonus slips, wage slips, deduction of provident fund slips and attendance cards for various months and other documents available to them. They had also requested the petitioner herein to produce certain documents which were in its custody and included the Attendance Register, payment of bonus record and various other documents relating to the engagement of the respondents as workmen under it. Admittedly, on behalf of the petitioner herein, only the extract of the attendance record of the last 12 calendar months of the workmen immediately preceding the date of their retrenchment had been produced from which it was evident that none of the workmen had worked for more than 240 days during the said period. The Tribunal also noted that the petitioner had failed to assign any cogent reason for not producing the Attendance Registers of the previous years and allowed the workmen to lead secondary evidence in support of their case.

The Tribunal did not lay any importance to the non- production of the documents asked for on the ground that the petitioner did not keep such record relating to the temporary hands and relied on the documents that had been produced to come to a finding that the workmen had not put in 240 days of service in a calendar year preceding the termination of their services.

Being aggrieved by the awards passed by the Tribunal, the workmen filed separate writ petitions praying for quashing of the impugned awards and declaring their retrenchment to be illegal, together with a prayer to reinstate them in service with full back wages and continuity of service. Drawing an adverse inference against the petitioner herein for non-production of the documents in its possession and holding that the petitioner had failed to discharge the onus and disprove the workmens' claim, the High Court held that under the circumstances the Tribunal should have drawn

an adverse presumption under Section 114 Illustration

(g) of the Indian Evidence Act, 1872 against the petitioner. Taking further note of the expression "continuous service"

under Section 2 (g) of the U.P. Act, the High Court found that the termination of service of the workmen was in violation of Section 6 N of the aforesaid Act. Basing its decision on its aforesaid findings, the High Court quashed the awards passed in the adjudication cases referred to above and directed the petitioner herein to reinstate the workmen/respondents herein with continuity of service and half back wages with effect from 1995, being the date of their illegal retrenchment. These special leave petitions have been filed against the common judgment of the High Court by which the five writ petitions were disposed of with the above-mentioned directions.

The case made out by the petitioner herein before the Tribunal and the High Court was reiterated by Mr. Ashok Desai, learned senior advocate, appearing for the petitioner. The main thrust of his submission was that since the respondents had not completed 240 days of service in the year preceding the date of alleged termination, the High Court had erroneously reversed the findings of the Tribunal on such score. Mr. Desai reiterated the contention of the petitioner that work in the sugar industry was of a seasonal nature and most of the work force was engaged as casual labour on a temporary basis, which was generally confined to six to seven months in a year. Mr. Desai submitted that the Tribunal had correctly assessed the situation and the High Court by drawing an adverse presumption for non-production of the Attendance Register of prior years, had erroneously arrived at the conclusion that the respondents-workmen had, in fact, worked for more than 240 days in a calendar year prior to termination of their services. Mr.Desai submitted that it is settled law that the onus of proof of having worked for 240 days within a calendar year is on the employee. According to Mr. Desai, the employee was required to discharge the burden of proving that he had actually worked for 240 days in a calendar year, but the High Court had wrongly shifted the onus on the employer in contravention of the law as laid down by this Court in Range Forest Officer vs. S.T. Hadimani, reported in (2002) 3 SCC

25. In the said case, this Court while considering a similar issue observed as follows:-

"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."

Mr. Desai also referred to the decision of this Court in the case of Municipal Corporation, Faridabad vs. Siri Niwas, reported in (2004) 8 SCC 195. In the said case, the respondent's case relating to his termination from service had been referred to the Labour Court. His case before the Tribunal was that he had completed working for 240 days in a year and the order of retrenchment was, therefore, illegal as conditions precedent for passing such an order as contained in Section 25F of the Industrial Disputes Act, 1947, (for short 'the Central Act') had not been complied with. Section 25F of the Central Act is reproduced hereinbelow:-

> Conditions precedent to retrenchment of workmen.
>
> "25F. No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until
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> (a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;
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> (b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months; and
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> (c) notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette."

The contention of the appellant in the said case however was that the respondent had worked only for 136 days during the preceding 12 months on daily wages and had no lien over the said job. In that background, this Court held that the burden of proof was on the respondent-workman to show that he had worked for 240 days in the preceding 12 months prior to his retrenchment.

The same view was expressed by this Court in Surendranagar District Panchayat vs. Dahyabhai Amarsinh, reported in (2005) 8 SCC 750, wherein this Court while referring to the decisions of this Court in the case of Range Forest Officer (supra) and Municipal Corporation, Faridabad (supra) and two other decisions in the case of Rajasthan State Ganganagar S. Mills Ltd. vs. State of Rajasthan and Anr., reported in (2004) 8 SCC 161 and M.P. Electricity Board vs. Hariram, reported in (2004) 8 SCC 246, reiterated that the burden of proof lies on the workman to show that he had worked continuously for 240 days in the preceding one year prior to his retrenchment and it is for the workman to adduce evidence apart from examining himself to prove the fact that he had been employed for the said period by the employer.

Various other decisions were also referred to by Mr. Desai on the aforesaid point which are in consonance with the decision of this Court in Range Forest Officer (supra). Mr. Desai also contended that drawing an adverse presumption for non-production of evidence is not applicable in

all cases where other circumstances may exist on the basis whereof such intentional non-production may even be found to be justifiable on reasonable grounds. In the instant case, Mr. Desai submitted that since in paragraph 11 of the respondent's written statement before the Industrial Tribunal the pleading was restricted to the fact that he had worked for more than 240 days in the year preceding the date of termination, the appellant had thought it fit to produce the Attendance Register for the said period only, namely, for the period comprising the year preceding the date of termination of the services of the respondents. In fact, it was the case of the appellant before the Tribunal, as also the High Court, that the Appellant-company did not maintain the records in respect of temporary posts. He urged that since the workmen had produced various documents in support of their claim that they had worked continuously for more than 240 days they should also have proof of their having worked for 240 days in any preceding year which could have been produced before the Tribunal in order to prove that they had actually worked for 240 days continuously during 12 calendar months in any year prior to termination of their services. Mr. Desai submitted that the respondents had failed to discharge their onus of proving the aforesaid fact and the Tribunal had rightly rejected their contention.

Mr. Desai reiterated the fact that in one case, the respondent had worked for only 162.5 days in the 12 months preceding the date of termination of his services. Mr. Desai also stated that the respondent had not worked at all in the months of April, May, July, September and December, 1994 which fact had not been denied on behalf of the respondents. Mr. Desai contended that most of the documents asked to be produced on behalf of the respondents were irrelevant to the fact at issue since even the Tribunal had framed an issue as to whether the concerned workman had worked for more than 240 days during the last one year of service. It is on such basis that the Attendance Register for the preceding year had been produced on the basis whereof the Tribunal came to the finding that the respondent had not put in more than 240 days of service on 1st February, 1995. Mr. Desai urged further that the mere statement on affidavit of a workman that he had worked for 240 days continuously does not constitute sufficient proof in the absence of other evidence. The said principle was referred to in the Range Forest Officer (supra) case wherein it was held that filing of an affidavit is only the statement made by the workman in his own favour which could not be regarded as sufficient evidence for any Court or Tribunal to arrive at a conclusion that the workman had, in fact, worked for 240 days in a year. It was submitted that the same principle was reiterated by this Court in the case of RBI vs. S. Mani, reported in (2005) 5 SCC 100.

Mr. Desai submitted that while the Tribunal had correctly assessed the legal position, the High Court had wrongly shifted the burden of proving that the workman had worked for 240 days or more in a calendar year on the employer. It was submitted that having proceeded on such erroneous basis, the High Court had arrived at a wrong conclusion, in the absence of any other material evidence, that the respondents had, in fact, worked for more than 240 days in a calendar year preceding the date of termination of their services and such finding was, therefore, liable to be set aside.

Mr. Viswanathan, learned advocate, who appeared for the workmen submitted that while the High Court had not disturbed the findings of fact, it had only corrected the jurisdictional error of the Labour Court which failed to consider the difference in the definition of "continuous service"

mentioned in Section 25B 2(a) of the Central Act and in Section 2 (g) of the U.P. Act. He pointed out that in the definition given in the U.P. Act, the word "preceding" has not been used. Consequently, it was urged that Section 2 (g) of the U.P. Act does not require a workman to prove that he had worked for 240 days continuously only during the preceding period of 12 months prior to termination of his services. The workman was, therefore, entitled to show that he had worked for 240 days continuously in a calendar year for any year prior to termination of his services. Mr. Viswanathan submitted that the said period was not confined under the U.P. Act only to the year preceding the date of termination. In support of his submissions Mr. Viswanathan relied on the decision of this Court in U.P. Drugs and Pharmaceuticals Company Ltd. vs. Ramanuj Yadav and Ors. reported in (2003) 8 SCC 334, where the said position has been examined and explained.

Regarding Mr. Desai's submissions that this Court had consistently laid down that it is for the workmen to prove that they had worked for 240 days in a calendar year, Mr. Viswanathan submitted that this Court had in the case of R.M. Yellatty vs. Assistant Executive Engineer, reported in (2006) 1 SCC 106, observed as under:-

> "Analysing 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 aforesaid 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 up 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 earners, there will be no letter of appointment of termination. There will also be no receipt of proof of payment. Thus in most cases, the workman (the claimant) can only call upon the employer to produce before the court the nominal muster roll for the given period, the letter of appointment of termination, if any, the wage register, the attendance register, etc. Drawing of adverse inference ultimately would depend thereafter on the 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 laid down that mere non-
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> 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 concurrent findings of fact recorded by the Labour Court unless they are perverse. This exercise will depend upon the facts of each case."

Mr. Viswanathan submitted that in these cases, the workmen had discharged their initial onus by producing whatever documents were in their custody. The onus had thereafter shifted to the

petitioner when the workmen asked for production of Attendance Registers and the Muster Rolls from 1991 onwards. On the failure of the petitioner to produce the said documents, the High Court had rightly drawn an adverse presumption.

Mr. Viswanathan then urged that in appropriate cases, the High Court in Writ Jurisdiction could interfere with the findings of fact of the courts below as had been held by this Court in the case of Trambak Rubber Industries Ltd. vs. Nashik Workers Union And Ors., reported in (2003) 6 SCC

416. In any event, the powers of judicial review of the High Court under Article 227 are very wide and it empowered the High Court to ensure that the courts and tribunals, inferior to the High Court, discharged their duties and obligations. Mr. Viswanathan urged that the workmen had produced whatever documents were in their possession, such as, attendance cards, wage slips, bonus slips, provident fund deduction slips from 1991 onwards and since other relevant documents such as attendance registers and muster rolls were with the petitioners, the workmen filed an application for summoning the said documents which were, not however, produced by the petitioner on account whereof the High Court was compelled to draw an adverse presumption in terms of Section 114, Illustration (g) of the Evidence Act.

Mr. Viswanathan submitted that while the Tribunal had failed to notice the difference in the definition of the expression "continuous service" in Section 6 N of the U.P. Act as against its definition in Section 25 B in the Central Act, the High Court had correctly interpreted the same in the judgment impugned in these proceedings.

Mr. Viswanathan submitted that no case had been made out on behalf of the petitioner to interfere with the findings of the High Court and the directions ultimately given therein to reinstate the respondents-workmen and to pay them half their back wages with effect from 1995 when their services were illegally terminated.

Having carefully considered the submissions made on behalf of the respective parties and the statutory provisions, we are of the view that a decision in this matter will depend on the understanding of the expression "continuous service"

> as used in Section 6 N read with Section 2 (g) of the U.P. Act as against its usage in Section 25 B (2) (a) (ii) of the Central Act. In order to appreciate the difference between the two provisions, Sections 6N and 2(g) of the U.P. Act and Section 25 B 2 (a) (ii) of the Central Act are reproduced hereinbelow:-
>
> "6-N. Conditions precedent to retrenchment of workmen.-- No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until
>
> (a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired or the workman has been paid in lieu of such notice wages for the period of notice:

Provided that no such notice shall be necessary if the retrenchment is under an agreement which specifies a date for the termination of service;

(b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay for every completed year of service or any part thereof in excess of six months, and

(c) notice in the prescribed manner is served on the State Government.

2g. 'Continuous service' means uninterrupted services, and includes service which may be interrupted merely on account of sickness or authorized leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman, and a workman, who during a period of twelve calendar months has actually worked in an industry for not less than two hundred and forty days shall be deemed to have completed one year of continuous service in the industry.

Explanation. In computing the number of days on which a workman has actually worked in an industry, the days on which

(i) he has been laid off under the agreement or as permitted by standing order made under the Industrial Employment (Standing Orders) Act, 1946, or under this Act or under any other law applicable to the industrial establishment, the largest number of days during which he has been so laid off being taken into account for the purposes of this clause,

(ii) he has been on leave with full wages, earned in the previous year, and

(iii) in the case of a female, she has been on maternity leave; so however that the total period of such maternity leave shall not exceed twelve weeks, shall be included;

Definition of continuous service.

25B. For the purposes of this Chapter,-

(2) Where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer

(a) for a period of one year, if the 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 for not less than

(ii) two hundred and forty days, in any other case;"

> As pointed out by Mr. Viswanthan, the exclusion of the word "preceding" from Section 2 (g) of the U.P. Act indicates that a workman in order to be in continuous service may have worked continuously for a period of 240 days in any calendar year during his period of service. In fact, such an interpretation has already been given by this Court in the case of U.P. Drugs and Pharmaceuticals Company Ltd. (supra). The case made out by the respondents before the Tribunal was also on the same lines in the Adjudication cases filed before the labour court, where the respondents had made out a case that they had never worked as temporary hands but had worked continuously from 26th February, 1991 to 31st January, 1995 without break.

In the light of the aforesaid case made out by the respondents, the Tribunal was persuaded on behalf of the petitioner herein to decide the case of the workmen on the basis of the materials produced by the petitioner for the year preceding the date of termination of their services from which it was shown that the workmen had not completed 240 days of continuous service in the said year.

The said approach, in our view, was erroneous in view of the decision of this Court in the case of U.P. Drugs and Pharmaceuticals Company Ltd. (supra). The petitioner had wrongly described the documents relating to attendance for the years 1991 onwards as far as the respondents are concerned, as being irrelevant and the Tribunal has also accepted the said reasoning. Consequently, instead of drawing an adverse presumption for non-production of the said records, the Tribunal accepted the contention of the petitioner that the workmen had not worked for more than 240 days in the year preceding the date of their termination nor had the workmen filed any proof to show otherwise.

In our view, the High Court adopted the correct approach while deciding the controversy between the parties upon a correct understanding of the law as contained in Section 6 N read with Section 2 (g) of the U.P. Act which is applicable to these petitions.

Having correctly interpreted the provisions of Section 6 N of the U.P. Act, the High Court rightly drew an adverse presumption for non-production of the Attendance Registers and the Muster Rolls for the years 1991 onwards. The best evidence having been withheld, the High Court was entitled to draw such adverse inference. The views expressed by this Court on the question of burden of proof in Range Forest Officer's case (supra) were watered down by the subsequent decision in R.M. Yellatty's case (supra) and in our view the workmen had discharged their initial onus by production of the documents in their possession.

On the question of judicial review, the submissions made by Mr. Viswanathan has force and we are inclined to accept the same.

In view of what has been indicated hereinabove, we are satisfied that no interference is called for with the judgment and directions given by the High Court which had been impugned in these petitions and the special leave petitions are accordingly dismissed. Interim order dated 16th August, 2005, stands vacated.

There will be no order as to costs.