Sita Ram & Ors vs Moti Lal Nehru Farmers Training ... on 5 March, 2008

Equivalent citations: AIR 2008 SUPREME COURT 1955, 2008 AIR SCW 2256, 2008 LAB. I. C. 1778, 2008 (3) ALL LJ 560, 2008 (4) SRJ 149, (2008) 67 ALLINDCAS 247 (SC), 2008 (4) SCALE 77, 2008 (5) SCC 75, (2008) 117 FACLR 1191, (2008) 2 CURLR 763, (2008) 2 LAB LN 654, (2008) 4 MAD LJ 105, (2008) 2 SCT 660, (2008) 3 SERVLR 769, (2008) 4 SCALE 77, (2008) 2 ESC 198

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Bench: S.B. Sinha, V.S. Sirpurkar

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           CASE NO.:
Appeal (civil)  1769 of 2008

PETITIONER:
Sita Ram & Ors

RESPONDENT:
Moti Lal Nehru Farmers Training Institute

DATE OF JUDGMENT: 05/03/2008

BENCH:
S.B. SINHA & V.S. SIRPURKAR

JUDGMENT:
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J U D G M E N T CIVIL APPEAL NO 1769 OF 2008 (Arising out of SLP (C) No. 20378 of 2005) S.B. SINHA, J.

1. Leave granted.

2. Respondent is a research institute. It imparts training to farmers for facilitating improved agricultural production. For imparting training, fees is not charged from the trainees. The trainees are also provided free lodge and boarding. Respondent carries out its function under a deed of trust. It is a subsidiary to Indian Farmers Fertilizers Corporation. Its object is charitable. However, it is stated that the respondent institute also undertaking Poultry Farming, Pisciculture, Cow-Shelter, Dairy Farming, Plantation, Bee-keeping work etc. These jobs are undertaken by way of various projects. Daily wagers are appointed for the said purposes. The employment of daily wagers is a needbased one.

3. Appellants herein and in particular, some of them, claimed to have been working with the

respondent institute for a long time. Their services were not being taken from 28.12.1996. They raised an industrial dispute. The State of U.P. in exercise of its power under the U.P. Industrial Disputes Act, 1947 referred the dispute for adjudication before the Presiding Officer, Labour Court, U.P. Allahabad.

4. Before the learned Labour Court, both parties adduced their respective evidences. Some documents to show that the appellants have been working for a long time were called for from the respondents. Respondent produced only Attendance Register for December, 1996 and attendance sheet for the year 1997. Appellants examined themselves before the Labour Court. They brought on records various documents to show that even Provident Fund used to be deducted from their salary. They produced provident fund receipts for the years 1992-93 and 1994-95.

One Kamla Pati Dubey was examined on behalf of the respondent. He joined the respondent institution in the year 1988. A statement was made by him that the appellant had not worked for 240 days. He, however, in the cross-examination admitted that Muster Roll (Exhibit E-3) bears the signatures of gardener Sant Ram. He also admitted that bee farming used to be undertaken by the respondents.

The Labour Court, having regard to the fact that the respondent despite having been called upon to produce relevant records failed/neglected to do so, drew an adverse inference against it. It, furthermore, took into consideration the oral as also the documentary evidence adduced on behalf of the appellants to hold that they have worked for a period of more than 240 days. As the condition precedent for terminating the services of the appellants, as envisaged under Section 6N of the U.P. Industrial Disputes Act, 1947 had not been complied with, the said orders of termination of services were held to be bad in law. Appellants, therefore, directed to be reinstated with 25 per cent of the back wages by an Award dated 12.4.2002.

5. Respondent having aggrieved by and dissatisfied therewith filed a Writ Petition before the Allahabad High Court. By reason of the impugned judgment, the High Court set aside the award of the Labour Court inter alia opining that the burden of proof had wrongly been placed on the respondent, It was held;

> "It has consistently now been held by the court that the burden of proof is on the employee who claims relief. In spite of having been granted opportunity to discharge their burden of proof by secondary evidence, it was not discharged by them. It is admitted to the parties that the workmen were daily wagers. It is the nature of appointment that is of essence and not the mode of payment "

It was furthermore, observed that the Award was based on surmises and conjectures.

6. Appellants, are, thus before us.

A limited notice, as to why the respondent should not be asked to pay adequate compensation to the appellants, was issued by this Court.

7. Mr. R.R. Kumar, the learned counsel appearing on behalf of the appellant would submit that the High Court committed a serious error insofar as it failed to take into consideration that before the learned Labour Court, appellants have discharged their initial burden and as the respondents despite having been asked to produce the relevant records, failed to do so, the onus of proof was rightly shifted to them. It was urged that the provisions of Section 6-N of the U.P. Industrial Disputes Act, 1947 vis-`-vis Section 25F of the Industrial Disputes Act, are not in pari-materia inasmuch as in the former case, it was not necessary to work for 240 days in 12 calendar months preceding the date of alleged termination.

The High Court, it was contended, could not and did not consider the evidences adduced on behalf of the parties and wrongly exercised its jurisdiction under Article 226 of the Constitution of India. It was pointed out that the provident fund receipts being Exhibits W-1 to 24 had even not been controverted by the respondents.

8. Mr. L.N. Rao, the learned senior counsel appearing on behalf of the respondent Institute, on the other hand urged that the Labour Court had wrongly placed the burden of proof on the respondent as the entire burden of proof to establish that they had worked for more than 240 days in a year was on the appellants and, thus, there was no requirement to produce the records. In any event, it was submitted, the Labour Court having not drawn any adverse inference against the respondent and having allowed the appellant to lead secondary evidence, the judgment of the High Court cannot be faulted with.

9. Indisputably, the services of the appellants were terminated as far back on 28.12.1996. The reference was made in the year 1998. It furthermore appears from the evidence of EW-1 that the respondent had stopped undertaking the job of bee farming.

10. Although a contention had been raised by the respondent that it is not an "industry" within the meaning of Section 2(k) of the U.P. Industrial Disputes Act, 1947, but the said point having been given up before the High Court, we need not deal therewith.

11. The question as to whether the burden of proof was on the employer or on the workman is no longer res-integra. It would be on the workman to prove that he had worked for two hundred and forty days in a year. However, where both parties have adduced evidences, in most of the cases, the question would be academic.

In DGM Oil & Natural Gas Corporation Ltd. and Another Vs. Ilias Abdulrehman [(2005) 2 SCC 183], it was held;

> "8. A perusal of the evidence adduced by the workman himself shows that he went in search of employment to different places and whenever there was a temporary employment available in different departments of the appellant Corporation, be it field work or the work in the Chemistry Department, he accepted the employment and worked in these departments not in one place alone but at different places like Baroda and Mehsana. It has come on record that the management did try to

> accommodate the appellant in a permanent job but could not do so because of lack of qualifications. In such circumstances we think that the Industrial Tribunal was justified in coming to the conclusion that the number of days of work put in by the respondent in broken periods, cannot be taken as a continuous employment for the purpose of Section 25-F of the Act, as has been held by this Court in the case of Indian Cable Co. Ltd. We are aware that the judgment of this Court in Indian Cable Co. Ltd. was rendered in the context of Section 25-G of the Act, still we are of the opinion that the law for the purpose of counting the days of work in different departments controlled by an apex corporation will be governed by the principles laid down in the judgment of Indian Cable Co. Ltd. and the Industrial Tribunal was justified in dismissing the reference."

See also Range Forest Officer Vs. S.T. Hadimani [(2002) 3 SCC 25, para 3), R.M. Yellatti Vs. Asstt. Executive Engineer [(2006) 1 SCC 106], State of Maharashtra Vs. Dattatraya Digamber Birajdar [2007 10 SCALE 442, para 6], Ganga Kisan Sahkari Chini Mills Ltd. Vs. Jaivir Singh [2007 11 SCALE 409, para 12]

12. Although at one point of time, the burden of proof used to be placed on the employer, in view of a catena of recent decisions, it must be held that the burden of proof is on the workman to show that he has completed 240 days in a year.

13. We are, however, not oblivious of the distinction between the provisions of the Industrial Disputes Act, 1947 and U.P. Industrial Disputes Act, 1947 inasmuch as whereas in the former, the workman has to prove that he has worked for more than 240 days in the preceding 12 months of the date of his termination, there is no such requirement in the case of latter.

14. Appellants have brought on records atleast some documentary evidences to show that they have been working at least for two years. Even provident fund had been deducted from their wages. Each of the appellant examined himself before the Labour Court. They had called for the requisite documents. The documents produced before the Labour Court were wholly irrelevant, as the services of the workman were terminated in December, 1996 itself. What was called for from them was the documents for the period during which the appellants claimed to have been working with the respondent.

15. It furthermore appears from the records that, the wages were being paid in a wage-sheet and no pay slip used to be issued therefor. Appellants, thus, were not expected to produce any pay slip. No exception therefore, can be taken to the findings of the Labour Court.

16. It is evident that the respondents have withheld the best evidence. The wage sheet, the provident fund records and other documents were in their possession. They were statutorily required to maintain some documents. It may be true that the learned Labour Court did not draw any adverse inference expressly, but whether such an adverse inference has been drawn or not must be considered upon reading the entire Award. The High Court, in our opinion, has wrongly opined that the award suffers from an error of law and was otherwise based on surmises and conjectures.

17. The question, which, however, falls for our consideration is as to whether the Labour Court was justified in awarding re-instatement of the appellants in service.

18. Keeping in view the period during which the services were rendered by the respondent; the fact that the respondent had stopped its operation of bee-farming, and the services of the appellants were terminated in December, 1996, we are of the opinion that it is not a fit case where the appellants could have been directed to be re-instated in service.

19. Indisputably, the Industrial Court, exercises a discretionary jurisdiction, but such discretion is required to be exercised judiciously. Relevant factors therefor, were required to be taken into consideration; the nature of appointment, the period of appointment, the availability of the job etc. should weigh with the court for determination of such an issue.

20. This Court in a large number of decisions opined that payment of adequate amount of compensation in place of a direction to be re-instated in service in cases of this nature would subserve the ends of justice. {See Jaipur Development Authority Vs. Ramsahai and Anr. [(2006) 11 SCC 684], Madhya Pradesh Administration Vs. Tribhuban [2007 (5) SCALE 397] and Uttranchal Forest Development Corporation Vs. M.C. Joshi [2007 (3) SCALE 545]. }

21. Having regard to the facts and circumstances of this case, we are of the opinion that payment of a sum of Rs. 1,00,000/- to each of the appellant, would meet the ends of justice. This appeal is allowed to the aforementioned extent. In the facts and circumstances of this case, there shall be no order as to costs.