Chief Engineer, Ranjit Sagar Dam & Anr vs Sham Lal on 3 July, 2006

Equivalent citations: AIR 2006 SUPREME COURT 2682, 2006 (9) SCC 124, 2006 AIR SCW 3574, 2006 LAB. I. C. 3048, 2006 (5) AIR KANT HCR 263, 2006 (2) UPLBEC 2015, 2006 (8) SRJ 81, 2006 (8) SLT 348, 2006 (6) SCALE 388, (2006) 2 CURLJ(CCR) 205, 2006 LAB LR 881, (2006) 3 SCT 468, (2006) 5 SCJ 457, (2006) 3 LABLJ 326, (2006) 3 LAB LN 751, (2006) 3 PAT LJR 376, (2006) 4 RAJ LW 3171, (2006) 4 SERVLR 708, (2006) 2 UPLBEC 2015, (2006) 5 SUPREME 142, (2006) 6 SCALE 388, (2006) 110 FACLR 552

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Bench: Arijit Pasayat, Lokeshwar Singh Panta

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           CASE NO.:
Appeal (civil)  3253 of 2005

PETITIONER:
Chief Engineer, Ranjit Sagar Dam & Anr.

RESPONDENT:
Sham Lal

DATE OF JUDGMENT: 03/07/2006

BENCH:
ARIJIT PASAYAT & LOKESHWAR SINGH PANTA

JUDGMENT:
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J U D G M E N T ARIJIT PASAYAT, J.

Challenge in this appeal is to the judgment rendered by a learned Single Judge of the Punjab and Haryana High Court dismissing the writ petition filed by the appellants. By the impugned order learned Single Judge upheld the order passed by the Presiding Officer, Labour Court, Gurdaspur who held that the burden lies on the employer to prove that the workman had not worked for 240 days or more in the year immediately preceding the termination. The alleged date of termination is 13.11.1990. According to the respondent, he joined in November, 1989 whereas according to the appellant he joined in August, 1999. Demand for making the reference was made on 15.12.1999 i.e. after a long period of about 9 years. The workman was held to be entitled to full back wages from the date of demand notice i.e. from 25.2.1993 till his actual reinstatement as the termination of the services of the workmen with effect from 13.11.1990 was held to be illegal.

In support of the appeal learned counsel for the appellants submitted that the High Court has clearly lost sight of the fact that the claim was highly belated. No finding was even recorded by the Labour Court on this plea which was specifically raised. Further the labour court had wrongly held that it was for the employer to prove that the concerned workman had not worked for 240 days or more in the year immediately preceding the date of termination.

There is no appearance on behalf of the respondent.

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:

> "2. 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.
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> 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."

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

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:

> "It 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."

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:

> "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 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:
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> "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."

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's view that the burden was on the employer was held to be erroneous. In Batala Cooperative Sugar Mills Ltd. v. Sowaran Singh (2005 (7) Supreme 165) it was held as follows:

> "So 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."

The position was also 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.

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:

> "Analyzing 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."

The above position was again reiterated in a recent judgment in ONGC Ltd. and Another v. Shyamal Chandra Bhowmik (2006 (1) SCC 337).

So far as delay in seeking the reference is concerned, no formula of universal application can be laid down. It would depend on facts of each individual case.

However, certain observations made by this Court need to be noted. In Nedungadi Bank Ltd. v. K.P. Madhavankutty and Ors. (2000 (2) SCC 455) it was noted at paragraph 6 as follows:

> "6. Law does not prescribe any time-limit for the appropriate Government to exercise its powers under Section 10 of the Act. It is not that this power can be exercised at any point of time and to revive matters which had since been settled. Power is to be exercised reasonably and in a rational manner. There appears to us to be no rational basis on which the Central Government has exercised powers in this case after a lapse of about seven years of the order dismissing the respondent from service. At the time reference was made no industrial dispute existed or could be even said to have been apprehended. A dispute which is stale could not be the subject-matter of reference under Section 10 of the Act. As to when a dispute can be said to be stale would depend on the facts and circumstances of each case. When the matter has become final, it appears to us to be rather incongruous that the reference be made under Section 10 of the Act in the circumstances like the present one. In fact it could be said that there was no dispute pending at the time when the reference in question was made. The only ground advanced by the respondent was that two other employees who were dismissed from service were reinstated. Under what circumstances they were dismissed and subsequently reinstated is nowhere mentioned. Demand raised by the respondent for raising an industrial dispute was ex-facie bad and incompetent."

In S.M. Nilajkar and Ors. v. Telecom District Manager, Karnataka (2003 (4) SCC 27) the position was reiterated as follows: (at para 17) "17. It was submitted on behalf of the respondent that on account of delay in raising the dispute by the appellants the High Court was justified in denying relief to the appellants. We cannot agree. It is true, as held in M/s. Shalimar Works Ltd. v. Their Workmen (supra) (AIR 1959 SC 1217), that merely because the Industrial Disputes Act does not provide for a limitation for raising the dispute it does not mean that the dispute can be raised at any time and without regard to the delay and reasons therefor. There is no limitation prescribed for reference of disputes to an industrial tribunal, even so it is only reasonable that the disputes should be referred as soon as possible after they have arisen and after conciliation proceedings have failed particularly so when disputes relate to discharge of workmen wholesale. A delay of 4 years in raising the dispute after even reemployment of the most of the old workmen was held to be fatal in M/s. Shalimar Works Limited v. Their Workmen (supra) (AIR 1959 SC 1217), In Nedungadi Bank Ltd. v. K.P. Madhavankutty and others (supra) AIR 2000 SC 839, a delay of 7 years was held to be fatal and disentitled to workmen to any relief. In Ratan Chandra Sammanta and others v.

Union of India and others (supra) (1993 AIR SCW 2214, it was held that a casual labourer retrenched by the employer deprives himself of remedy available in law by delay itself, lapse of time results in losing the remedy and the right as well. The delay would certainly be fatal if it has resulted in material evidence relevant to adjudication being lost and rendered not available. However, we do

not think that the delay in the case at hand has been so culpable as to disentitle the appellants for any relief. Although the High Court has opined that there was a delay of 7 to 9 years in raising the dispute before the Tribunal but we find the High Court factually not correct. The employment of the appellants was terminated sometime in 1985-86 or 1986-87. Pursuant to the judgment in Daily Rated Casual Employees Under P&T Department v. Union of India (supra) (AIR 1987 SC 2342), the department was formulating a scheme to accommodate casual labourers and the appellants were justified in awaiting the outcome thereof. On 16-1-1990 they were refused to be accommodated in the scheme. On 28-12-1990 they initiated the proceedings under the Industrial Disputes Act followed by conciliation proceedings and then the dispute was referred to the Industrial Tribunal cum-Labour Court. We do not think that the appellants deserve to be non suited on the ground of delay."

The above position was highlighted recently in Employers in relation to the Management of Sudamdih Colliery of M/s Bharat Coking Coal Ltd. v. Their Workmen represented by Rashtriya Colliery Mazdoor Sangh (2006 (1) Supreme 282).

Above being the position, impugned judgment of the High Court is indefensible and is set aside.

The appeal is allowed without any order as to costs. In case the respondent has been reinstated pursuant to the order of the Labour Court or the High Court, salary and other emoluments paid to him shall not be recovered.