HIGH COURT OF GUJARAT

DEPUTY EXECUTIVE ENGINEER GUJARAT WATER SUPPLY & SEWEAGE
Versus
SULTANKHAN MAHOBATKHAN BALOCH CARE OF MAHENDRA KADIYA

Date of Decision: 12 July 2007

Citation: 2007 LawSuit(Guj) 1580

Hon'ble Judges: R S Garg

Eq. Citations: 2008 1 LLJ 400, 2008 116 FLR 25, 2007 LabIC 4248, **2007 3 GCD 2035**

Case Type: Special Civil Application

Case No: 3937 of 2001

Subject: Labour and Industrial

Acts Referred:
Industrial Disputes Act, 1947 Sec 2G, Sec 25B

Final Decision: Petition allowed

Advocates: R C Jani, K R Brahmbhatt

Cases Referred in (+): 3

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[1] Heard Mr.R.C. Jani, learned counsel for the petitioner and Mr.K.R. Brahmbhatt, learned counsel for the respondent.

[2] The petitioner establishment, being aggrieved by the award dtd.30/11/2000 passed by the Labour Court, Amreli in Reference No.127 of 1993 (Bhavnagar), Reference No.161 of 1988 (Rajkot) and latest Reference No.66 of 1998 (Amreli), is before this Court with submissions that the Labour Court erred in holding that the workman had worked for more than 240 days, therefore, his removal amounted to illegal retrenchment and that the court below was absolutely unjustified in making such an observation.

[3] Learned counsel for the petitioner submits that in view of judgement of the Supreme Court in the matter of Range Forest Officer Vs. S.T. Hadimani, 2002 (3) SCC 25, initial burden being on workman to prove that he had worked for 240 days and as

he has failed to discharge the burden, the court below was not justified in drawing a presumption against the petitioner.

[4] Mr.Brahmbhatt, learned counsel for the respondent workman, placing his strong reliance upon the judgement of the Supreme Court in the matter of Sriram Industrial Enterprises Limited Vs. Mahak Singh and others (2007) 4 SCC 94 submitted that if the best evidence is withheld by the establishment, then, the Court would be justified in presuming that if such evidence was produced by the person withholding it. The evidence would have gone against such person. The court would be justified in drawing presumption against the person who possesses the evidence but refuses to produce it.

[5] In the present case, the petitioner submitted that he has joined the services w.e.f. 1/4/1987 and worked upto 30/4/1988. He was, thereafter, orally removed from services and despite his request, work was not given to him. In support of his contention, he has produced a certificate issued by the competent officer which showed that he had worked for the period between 1/4/1987 and 30/8/1987 and the total working days were 112.

[6] It is to be noted that the workman did not make any application to the Court for summoning the records which were possessed by the present petitioner establishment. He did not call for the Record Keeper, nor did he make request to the Court that the non-applicant ?ㄴ present petitioner be asked to produce complete records of one year so that he could prove that he had worked for 240 days. It is further to be noted that the present petitioner in his written statement has clearly stated that the workman did not work upto 30/4/1988. True it is that the present petitioner did not produce the original records, but at the same time, it also cannot be lost sight of that the present workman to discharge the initial burden, did not summon the records.

[7] Sec.25-B of the Industrial Disputes Act provides that for the purposes of the Chapter where the 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, if he has worked for 240 days during the period of 12 calender months preceding the date with reference to which calculation is to be made. A simple reading of the section would mean that to get the relief, the workman is required to prove that within a period of 12 calender months preceding the date of his removal / illegal retrenchment, he has worked for 240 days.

[8] Sec.25-B of the Industrial Disputes Act defines continuous service. If sec.25-B as understood by the Courts and as explained by the Supreme Court, is taken in its true legal sense, then, there is no escape from the result that to get the relief, one has to prove that either he was in the regular service or he was in the continuous service.

[9] In the matter of Range Forest Officer (supra), the Supreme Court has observed that the initial burden is upon the workman to prove that he had worked form 240 days and his self serving statement and ipse-dixit would not help his case and cause.

[10] In the matter of Sriram Industrial Enterprise Ltd. (Supra), the Apex Court was not considering the provisions of Central Act, but was considering the provisions of U.P. Industrial Disputes Act, 1947. Their Lordships quoted sec.25-B of the U.P. Industrial Disputes Act and found that for the purposes of the said Chapter where the workman was not in continuous service within the meaning of clause-I for a period of one year or six months, he shall be deemed to be in continuous service under an employer if worked for 240 days in any other case. The Apex Court referring to the judgement of the Supreme Court in other matter observed that exclusion of the word 'preceding' from Sec.2-G of U.P. Industrial Disputes Act indicated that a workman in order to prove that he was in continuous service may prove that he had worked continuously for a period of 240 days in any calender year during his period of service. Their Lordships observed that exclusion of the word 'preceding' would make much of the difference and in an industrial dispute in State of U.P, one is not required to prove that he has worked for 240 days in 12 calender months preceding the date of the illegal retrenchment, but he was entitled to reliefs if he proved that he had worked for 240 days in any calender year. In the present matter, basic burden was upon the workman, he did not discharge the basic burden.

[11] True it is that in para 34 of the judgement in the matter of Sriram Industrial Enterprise Ltd. (Supra), the Apex Court had observed that the view expressed by the Apex Court on the question of burden of proof in Range Forest Officer (supra) was watered down by subsequent decision in the case of R. M. Yellatti Vs. Asstt.Executive Engineer (2006) 1 SCC 106. The judgement of the Supreme Court wherein it is stated that the fact of the earlier judgement was watered down, was in fact in relation to the U.P. Act and not otherwise.

[12] It is also to be seen that in the matter of Sriram Industrial Enterprise Ltd. (Supra), the workman called for and had summoned the records, but the establishment produced records of 12 months preceding the date of the retrenchment and on that basis, the High Court observed that non-production of the records for the earlier years would be bad, because, the workman could prove that he had worked for 240 days in any calender months.

[13] A judgement would not be of universal application if it is considering some different provisions of law. The judgement in the matter of Sriram Industrial Enterprise Ltd. (Supra), was in relation to U.P. Act and indulgence of Their Lordships of the

Supreme Court was not craved to decide the question that what would be the effect of the word 'preceding 12 calender months.'

[14] Taking into consideration the totality of the circumstances, I must hold that the court below was unjustified in presuming on the strength of the certificate which was for four months only and non-production of the records by the respondent that the present respondent had worked for 240 days and would be deemed to be in continuous service.

[15] Considering overall aspects of the matter, I quash and set aside the impugned award, but instead of dismissing the Reference, would remand the matter back to the learned Labour Court to provide an appropriate opportunity to the parties to produce the complete records which may prove or disprove one's case or other's case.

[16] It is also to be noted that the present matter was disposed of long back much before the judgement in the matter of Range Forest Officer was pronounced by the Supreme Court. It is also to be noted that before the said judgement of the Apex Court, general principles of Civil Law were applied and the Courts were drawing adverse inference against the person who was possessing the records, but was not producing the records.

[17] In view of the discussion aforesaid, I hereby direct the parties to appear before the Labour Court on 22/8/2007. It shall be the duty of the parties to produce a copy of this order enabling the Labour Court to know as to what it is required to do.

[18] If the respondent workman makes an application for summoning the records / service records from the possession of the present petitioner establishment, then, such application shall be allowed by the Labour Court and the establishment would be asked to produce the original records / service records. If such records are produced, then, the workman would be given liberty to get those documents exhibited. In case, despite the summons to the establishment, records are not produced, then, the Labour Court would be free to draw adverse inference, subject to genuineness of the reason for non-production of the records. The establishment would also be entitled to lead further evidence in the matter.

[19] After giving due opportunity to lead evidence and hearing the parties, the Labour Court shall decide the matter finally in accordance with law and observations made aforesaid within a period of six months. It shall be obliged to bind itself by the limits fixed by this Court.

[20] The petition is accordingly allowed. Rule is made to the extent indicated above. Interim relief, if any, is vacated. No costs.