HIGH COURT OF ANDHRA PRADESH

TUESDAY ,THE SECOND DAY OF AUGUST

TWO THOUSAND AND TWENTY TWO

PRSENT

THE HONOURABLE SRI JUSTICE RAVI NATH TILHARI

WRIT PETITION NO: 3527 OF 2013

Between:

1. TTD.,REP.BY EXECUTIVE OFFICER, CHITTOOR DIST., & ANR. represented by its Executive Officer, Tirupati. Chittoor District.
2. The Health Officer, Tirumala Tirupati Devasthanams, Tirumala. Chittoor District.

...PETITIONER(S)

AND:

1. K. VIJAYA, CHITTOOR DIST. R/o 20-28, Kothaillu, Punganur, Chittoor District.

...RESPONDENTS

Counsel for the Petitioner(s): V,R.N PRASHANTH SC FOR TTD

Counsel for the Respondents: K JAYA KUMAR

The Court made the following: ORDER

***HON'BLE SRI JUSTICE RAVI NATH TILHARI**

+WRIT PETITION No.3527 of 2013

% 02.08.2022

Tirumala Tirupati
Devasthanams, rep. by its
Executive Officer, Tirupati,
Chittoor and another

....Petitioners.

And:

K. Vijaya

....Respondent

! Counsel for the petitioners : Sri V.R.N. Prasanth

^ Counsel for the respondent : None appeared

< Gist:
> Head Note:

? Cases referred:
[1] (2004)8 SCC 195
[2] (2005) 5 SCC 100
[3](2007) 13 SCC 343
[4] (2002) 10 SCC 167
[5](2002) 3 SCC 25]
[6] (2004) 8 SCC 246]
[7](2002 (3) SCC 25)
[8] (2001) 9 SCC 713
[9] (2002 (8) SCC 400)
[10] (2004 (8) SCC 161)
[11] (2002 (3) SCC 25)
[12]2021(3) SCC 108
[13] (2014) 16 SCC 130
[14] (2002) 3 SCC 25
[15] (2004) 8 SCC 246
[16] (2004) 8 SCC 161
[17] 11 (2014) 16 SCC 130
[18] (2006) 1 SCC 106
[19] (1999) 6 SCC 82
[20] (2001) 6 SCC 222

HON'BLE SRI JUSTICE RAVI NATH TILHARI

WRIT PETITION No.3527 of 2013

02.08.2022

Between:

Tirumala Tirupati Devasthanams,
rep. by its Executive Officer,
Tirupati, Chittoor and another

....Petitioners.

And:

K. Vijaya

....Respondent

DATE OF JUDGMENT PRONOUNCED:02.08.2022.

SUBMITTED FOR APPROVAL:

THE HON'BLE SRI JUSTICE RAVI NATH TILHARI

1. Whether Reporters of Local newspapers may be allowed to see the Judgments? Yes/No
2. Whether the copies of judgment may be Marked to Law Reporters/Journals Yes/No
3. Whether Your Lordships wish to see the fair Copy of the Judgment? Yes/No

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RAVI NATH TILHARI, J

HON'BLE SRI JUSTICE RAVI NATH TILHARI

WRIT PETITION No.3527 of 2013

JUDGMENT:

1. Sri V.R.N. Prasanth, learned standing counsel for Tirumala Tirupati Devasthanams (TTD) for the petitioners was heard on 18.07.2022. None appeared for the respondent to argue the matter nor there was any request made. On 13.07.2022 also none appeared for the respondent. The writ petition pertains to the year 2013. The judgment was reserved.

2. The petitioners have filed this writ petition under Article 226 of the Constitution of India for the following reliefs:

> "....it is prayed that this Hon'ble Court may be pleased to call for the records from the Industrial Tribunal-cum-Labour Court, Ananthapur in I.D.No.218 of 2010 and issue an appropriate Writ, Order of Direction, particularly one in the nature of Writ of Certiorari and quash the Award passed by the Chairman-cum-Presiding Officer, Industrial Tribunal-cum-Labour Court, Anantapur in I.D.No.218 of 2010, dated 06.07.2012, published vide G.O.Rt.No.1029, dated 28.08.2012, holding the same as illegal, unjust, contrary to law, arbitrary, perverse and without jurisdiction, and pass such other order or further orders as this Hon'ble Court may deem fit and proper in the circumstances of the case."

3. Ms.K. Vijaya the respondent herein filed an application under Section 2-A(2) of the Industrial Disputes Act, 1947 (for short, "the I.D Act") alleging that her services were orally terminated by T.T.D, the petitioners herein on 01.09.1988 amounting to retrenchment but without following the procedure under Sections 25(F), (G), 78 and 79 of the I.D.Act. She prayed for reinstatement with continuity of service, the back wages and other attendant benefits. It was registered as I.D.No.218 of 2010 before the Chairman-cum-Presiding Officer, Industrial Tribunal-cum-Labour Court, Anantapur (in short, the Tribunal). The same was allowed in part vide the impugned award dated 06.07.2012, setting aside the oral termination dated 01.09.1988 and

directing the petitioners to reinstate her into service with continuity of service. The back wages and attendant benefits were however denied on the principle of no work no pay.

4. Challenging the award dated 06.07.2012 the present writ petition has been filed to the extent it is against the petitioners.

5. It was the case of the respondent in I.D.No.218 of 2010 that she was appointed as Scavenger/Sanitary Worker from 01.01.1974 by T.T.D and was discharging her duties continuously to the utmost satisfaction of her superiors. She had worked for more than 240 days in a period of 12 calendar months to be counted backward from the date of termination. Though she was entitled for regularization of her services from the date of joining but her services were orally terminated w.e.f 01.09.1988 without giving one month notice or wages in lieu of the notice period.

6. The respondent and others filed W.P.No.4220 of 1990 along with W.P.M.P.No.5408 of 1990 therein, upon which this court issued interim order dated 29.03.1990 directing the T.T.D to consider her case, if there was any vacancy. Later on, writ petition was disposed of finally with direction that "if the petitioner succeeded in making out their claims by production of proofs or verification by the respondent their claims will be considered along with others, who are sponsored for regular employment". The cases were examined and the services of the persons, who worked continuously during the period from 01.01.1979 to 31.03.1988 and continued to be on the rolls of the T.T.D, were absorbed and regularized in terms of the G.O.Ms.No.296 dated 19.04.1988. The case of the respondent was rejected vide proceedings Roc.No.B7/15547/1990 dated 23.02.1993 as she herself stayed away from T.T.D on her own and did not fall under the purview of the

G.O.Ms.No.296, which provided for absorption and regularization of those workmen only.

7. The respondent filed another W.P.No.21698 of 2007 along with four other workmen for a direction to consider their cases for appointments as paid voluntaries or any suitable employment and to regularize their services, which writ petition was dismissed by this Court as withdrawn leaving liberty to the petitioners to work out their remedy as available under law.

8. The respondent thereafter filed I.D.No.218 of 2010 before the Tribunal for the prayer as mentioned above.

9. The case of the petitioners T.T.D in brief is that the respondent did not fulfill the conditions in G.O.Ms.No.296 as she did not continuously work from 01.01.1979 to 31.08.1988 for 240 continuous days in a calendar year, immediately preceding the date of alleged termination dated 01.09.1988. She was engaged whenever there was heavy influx of pilgrims during summer and 'Brahmotsavam', on daily wage basis as Sweeper/Scavenger in short spells to cope with the increased sanitation and on cessation of such occasions her services were dispensed with. She was not entitled for any notice or for wages in lieu of notice period. Her claim was highly belated and a stale claim, even if, the date of termination is taken as 01.09.1988. The I.D case was filed in the year 2010 after about twenty two (22) years. The order dated 23.02.1993 was also never challenged.

10. The Tribunal, framed the following points for consideration:

> "Whether the petitioner worked in the respondent T.T Devasthanam, as Scavenger/Sanitary Worker for a period of 240 days in a calendar year? Whether the termination of the services of the petitioner without complying the provisions of the I.D Act is justified? To what relief the petitioner is entitled?"

11. The respondent examined herself as W.W.1 and marked Ex.W.1 to Ex.W.14. The petitioner examined Sri K.V Eswar Rao (M.W-1) but no documents were marked.

12. The Tribunal held that the respondent served for more than 240 days in a period of one year and the petitioner failed to maintain respondent's record and orally terminated her services w.e.f 01.09.1988 without complying the provisions of Section 25(F), (G) 78 & 79 of the I.D Act. The claim of the respondent could not be rejected on the ground of delay. The Tribunal thus held the respondent to be entitled for reinstatement and passed the award accordingly, however denying the back wages and other attendant benefits.

13. Sri V.R.N. Prasanth, learned counsel for the petitioners submitted that the respondent worked only for the period w.e.f 22.11.1976 up to 30.11.1977 (Ex.W.3), from 25.04.1979 during summer season, (Ex.W.1); and from 20.09.1979 upto 09.02.1980 (Ex.W.2) and not thereafter. The burden of proof was on the respondent to adduce evidence to prove her case of continuous working up to 31.08.1988 or for atleast 240 days in a calendar year immediately preceding 01.09.1988, the alleged date of termination. He submitted that the Tribunal, only considering that the respondent continuously worked for 240 days during the period w.e.f 22.11.1976 to 30.11.1977 (Ex.W.3) allowed the claim whereas 240 days are to be counted in a calendar year immediately preceding the date of termination. There was neither any evidence led nor any finding recorded by the Tribunal that the respondent continuously worked upto 31.08.1988. His submission is that the provisions of Sections 25(F) and (G) of the I.D. Act were not attracted at all.

14. Sri V.R. N. Prasanth next submitted that though the Limitation Act does not apply to the Industrial Disputes but filing of I.D case in the

year 2010 alleging termination dated 1.9.1988, after about 22 years, was a stale claim which the Tribunal ought not to have entertained.

15. Sri V.R.N. Prasanth placed reliance in the cases of **Municipal Corporation, Faridabad vs. Siri Niwas[1], Manager, Reserve Bank of India, Bangalore vs. S. Mani and others[2], Ranip Nagar Palika vs. Babuji Gabhaji Thakore and others[3],** and **Assistant Executive Engineer, Karnataka vs. Shivalinga[4]**, in support of his contentions.

16. I have considered the submissions advanced by the learned counsel for the petitioners and perused the material on record.

17. The point which arises for determination is:

> "Whether the award of the Tribunal is legal, valid and justified or deserves interference?"

18. The Court first proceed to consider the position in law on the points of retrenchment as regards 240 days of continuous working in a calendar year and the burden of proof.

19. Section 25F in The Industrial Disputes Act, 1947 reads as under:

> 25F. 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 the notice:
>
> (b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average pay [2] for every completed year of continuous service] or any part thereof in excess of six months; and
> (c) notice in the prescribed manner is served on the appropriate Government [3] or such authority as may be specified by the appropriate Government by notification in the Official Gazette.
> Compensation to workmen in case of transfer of undertakings.

20. "Section 25B in The Industrial Disputes Act, 1947 prvides for the definition of continuous service as under:

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[1] (2004)8 SCC 195
[2] (2005) 5 SCC 100
[3] (2007) 13 SCC 343
[4] (2002) 10 SCC 167

25B. Definition of continuous service.- For the purposes of this Chapter,--

(1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorised 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;

(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--

(i) one hundred and ninety days in the case of a workman employed below ground in a mine; and

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

(b) for a period of six months, if the workman, during a period of six calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than--

(i) ninety- five days, in the case of a workman employed below ground in a mine; and

(ii) one hundred and twenty days, in any other case. Explanation.-- For the purposes of clause (2), the number of days on which a workman has actually worked under an employer shall include the days on which--

(i) he has been laid- off under an agreement or as permitted by standing orders made under the Industrial Employment (Standing Orders) Act, 1946 (20 of 1946), or under this Act or under any other law applicable to the industrial establishment;

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

(iii) he has been absent due to temporary disablement caused by accident arising out of and in the course of his employment; and

(iv) in the case of a female, she has been on maternity leave; so, however, that the total period of such maternity leave does not exceed twelve weeks.

21. Section 25-F therefore provides for the conditions precedent to retrenchment of workman, according to which 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 the workman has been given one month 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 that notice. Such protection is available to a workman who has been in

continuous service for not less than one year under an employer. Section 25B defines the continuous service and under Sub Section 2 a workman who is not in continuous service within the meaning of Clause-(1) for a period of one year, he shall be deemed to be in continuous service under an employer for a period of one year, if the workman during a period of 12 calendar months, preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than 240 days in a case other than the case under sub Clause-(1) of Section 25B.

22. In **Siri Niwas** (supra), the Hon'ble Apex Court held that 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 imperative for the Industrial Tribunal to see that the principles of natural justice are complied with. The burden of proof is on the workman to show that he has worked for 240 days in preceding twelve months prior to his alleged retrenchment. It was held that in terms of Sub Section (2) of Section 25 B, if a workmen during a period of 12 calendar months preceding the date with reference to which calculation is to be made has actually worked under the employer 240 days, he will be deemed to be in continuous service.

23. It is apt to reproduce para 14 of **Siri Niwas** (supra) as under:-

> "14. 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."

24. In **S. Mani** (supra), the Hon'ble Apex Court held that the Tribunal should first determine on the basis of cogent evidence that the workmen had completed 240 days of service in the year immediately preceding his termination. The initial burden of proof is on the workman to show that and mere filing of his own statement cannot be regarded as sufficient evidence

25. It is apt to refer paras 28 to 32 in **S. Mani** (supra) which are reproduced hereunder:

> "28. The initial burden of proof was on the workmen to show that they had completed 240 days of service. The Tribunal did not consider the question from that angle. It held that the burden of proof was upon the Appellant on the premise that they have failed to prove their plea of abandonment of service stating:
>
> > "It is admitted case of the parties that all the 1st parties under the references CR No. 1/92 to 11/92 have been appointed by the 2nd party as ticca mazdoors. As per the 1st parties, they had worked continuously from April, 1980 to December, 1982. But the 2nd party had denied the above said claim of continuous service of the 1st parties on the ground that the 1st parties has not been appointed as regular workmen but they were working only as temporary part time workers as ticca mazdoor and their services were required whenever necessary arose that too on the leave

vacancies of regular employees. But as strongly contended by the counsel for the 1st party, since the 2nd party had denied the above said claim of continuous period of service, it is for the 2nd party to prove through the records available with them as the relevant records could be available only with the 2nd party."

29. The Tribunal, therefore, accepted that the Appellant had denied the Respondents' claim as regard their continuous service.

30. In **Range Forest Officer Vs. S.T. Hadimani**[5], it was stated:

"3.....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".

In **Siri Niwas** (supra), this Court held:

"13. 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."

It was further observed:

"14..... 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."

[5] [(2002) 3 SCC 25]

32. Yet again in **M.P. Electricity Board Vs. Hariram**[6], it was opined:

> "10. We cannot but bear in mind the fact that the initial burden of establishing the factum of their continuous work for 240 days in a year rests with the respondent applicants."

26. In **S. Mani** (supra), the Hon'ble Apex Court further held that failure of the employer to prove its case of abandonment of service by the workmen, in law, cannot be taken to be a circumstance to hold that the workman has proved its case. The failure of the employer to prove the plea of abandonment is wholly irrelevant for considering as to whether the workman has completed 240 days of continuous service or not, preceding immediately the date of termination. A party to the *lis* may or may not succeed in its defence and a party to the *lis* may be filing representations or raising demands, but such circumstances cannot be treated as circumstances to prove the case.

27. It is apt to refer paragraphs 34 to 36 of **S. Mani** (supra) as under:

> "34. The Tribunal also relied upon some purported circumstantial evidence to hold that the workmen had completed 240 days of work in the following terms:
>
> "**That apart, the circumstantial evidence also would show that the plea of the abandonment had been taken by the 2nd party only for the sake of defence in this case and it is not a real one.** In order to explain the same when we perused the admitted documents Exs. M1 to M7 together with the admitted evidence of MW3 at para 5 of his deposition, we would see that from 3.3.87 till 11.4.90 either almost all the 1st parties before this Tribunal had continuously requested the management for their reinstatement alleging that they served in the 2nd party Bank continuously from April, 1980 to December, 1982. They also pleaded the same in their respective claim petitions before us. But the management as per Exs.M8 dated 8.5.1991 had not denied the alleged claim of continuous service of the 1st parties at their earliest opportunity. But, on the other hand, Ex.M8 would show that for absorption of the 1st parties the 2nd party had put some other conditions and demanded the 1st parties workmen for their signature if they agreed for those conditions. If that be the case, it could be seen that, at the earliest point of time, the 2nd party Bank had not denied the said claim of continue service made by 1st parties. Hence, the documents Exs.M1 to M8 would also disqualify the 2nd party from claiming said plea namely since because the 1st parties had worked temporarily that too only on leave vacancy they are not entitled for any benefits under the provisions of the I.D. Act."
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> It is difficult to accept the logic behind the said findings.
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> **35. Only because the Appellant failed to prove their plea of abandonment of service by the Respondents, the same in law cannot**

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[6] [(2004) 8 SCC 246]

be taken to be a circumstance that the Respondents have proved their case.

36. The circumstances relied upon, in our opinion, are wholly irrelevant for the purpose of considering as to whether the Respondents have completed 240 days of service or not. A party to the *lis* may or may not succeed in its defence. A party to the *lis* may be filing representations or raising demands, but filing of such representations or raising of demands cannot be treated as circumstances to prove their case."

28. In **Ranip Nagar Palika** (supra), the Hon'ble Apex Court reaffirmed that the burden of proof lies on the workman to show that he has worked continuously for 240 days in preceding one year and to adduce evidence in this respect, apart from examining himself to prove the factum of being in employment of the employer.

29. Paras 7 and 8 of **Ranip Nagar Palika** (supra) are reproduced as under:

"7. "7. 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**[7], 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.

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**[8]. **In our opinion the Tribunal was not right in placing the onus on the management without first determining on the basis of**

[7] (2002 (3) SCC 25)
[8] (2001) 9 SCC 713

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**[9].

8. In **Rajasthan State Ganganagar S. Mills Ltd. v. State of Rajasthan and Anr**[10]**,** the position was again reiterated in paragraph 6 as follows:

'6. 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**[11]. 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'."

[9] (2002 (8) SCC 400)
[10] (2004 (8) SCC 161)
[11] (2002 (3) SCC 25)

30. Recently, in **State Of Uttarakhand vs Sureshwati[12],** the Hon'ble Apex Court held that the onus was entirely upon the employee to prove that she had worked continuously for 240 days' in the twelve months preceding the date of her alleged termination. Paragraphs 25 and 26 of **Sureshwati** (supra) are being reproduced hereunder:

> "25. On the basis of the evidence led before the Labour Court, we hold that the School has established that the Respondent had abandoned her service in 1997, and had never reported back for work.
>
> The Respondent has failed to discharge the onus to prove that she had worked for 240 days' in the preceding 12 months prior to her alleged termination on 8.3.2006. The onus was entirely upon the employee to prove that she had worked continuously for 240 days' in the twelve months preceding the date of her alleged termination on 8.3.2006, which she failed to discharge.
>
> 26. A Division Bench of this Court in Bhavnagar Municipal Corpn. v. Jadeja Govubha Chhanubha[13] held that :
>
> "7. It is fairly well-settled that for an order of termination of the services of a workman to be held illegal on account of non-payment of retrenchment compensation, it is essential for the workman to establish that he was in continuous service of the employer within the meaning of Section 25-B of the Industrial Disputes Act, 1947. For the respondent to succeed in that attempt he was required to show that he was in service for 240 days in terms of Section 25-B(2)(a)(ii). The burden to prove that he was in actual and continuous service of the employer for the said period lay squarely on the workman. The decisions of this Court in Range Forest Officer v. S.T. Hadimani[14], Municipal Corpn., Faridabad v. Siri Niwas (Supra), M.P. Electricity Board v. Hariram[15], Rajasthan State Ganganagar S. Mills Ltd. v. State of Rajasthan[16], Surendranagar District[17]. Panchayat v. Jethabhai Pitamberbhai (supra), and R.M. Yellatti v. Executive Engineer[18] unequivocally recognise the principle that the burden to prove that the workman had worked for 240 days is entirely upon him. So also the question whether an adverse inference could be drawn against the employer in case he did not produce the best evidence available with it, has been the subject-matter of pronouncements of this Court in Municipal Corpn., Faridabad v. Siri Niwas (supra) and M.P. Electricity Board v. Hariram [M.P. Electricity Board v. Hariram (supra), reiterated in RBI v. S. Mani18. This Court has held that only because some documents have not been produced by the management, an adverse inference cannot be drawn against it."

31. From the aforesaid judgments, it is well settled in law that **1)** the initial burden is on the workman to prove that he had completed 240 days in a calendar year immediately preceding the date of termination. **2)** mere filing of affidavit by the workman is not regarded as sufficient

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[12] 2021(3) SCC 108
[13] (2014) 16 SCC 130
[14] (2002) 3 SCC 25
[15] (2004) 8 SCC 246
[16] (2004) 8 SCC 161
[17] 11 (2014) 16 SCC 130
[18] (2006) 1 SCC 106

evidence. He is also required to file proof of receipts of salary or wages or the order or record of appointment or engagement, 3) the failure of the employer to prove its case that the workman abandoned the services is irrelevant for considering whether the workman has completed 240 days of continuous service or not, as a party to the *lis* may not succeed in its defence but that would not be a circumstance to prove the case of the workman of 240 days working in a calendar year immediately preceding the date of termination.

32. In the light of the above settled principles, when the Court considers the award of the Tribunal it is found that the evidence before the Tribunal led by the respondent workman to prove her working was Exs.W.1, W.2 and W.3 besides her statement. The Tribunal considered these Exhibits. It mentioned that Ex.W.3 is the service certificate dated 19.11.1985 issued by the Principal, S.P.W, Polytechnic, Tirupati wherein it was mentioned that the petitioner worked as N.M.R Scavenger in the polytechnic from 22.11.1976 to 30.11.1977. Ex.W.1 is the memo issued by the Deputy Chief Executive Officer, Tirupati dated 25.04.1979 wherein it was mentioned that the respondent and others who were already ousted were again appointed as Sweeper and Scavengers in the summer season in colleges of Tirupati. In Ex.W.1 the name of the respondent is mentioned which indicated that she was appointed by the petitioners again during summer vacations and earlier thereto she was ousted. Ex.W.2 is the certificate issued by the Peshkar, Local Temples, Sri PAT Tiruchanur, by which it was certified that the respondent worked from 20.09.1979 to 09.02.1980.

33. The Tribunal on consideration of these documents Ex.W.1 to W.3 returned the finding that since the respondent served the petitioner for more than 240 days in a period of one year, and as the petitioners failed

to maintain record of the respondent and orally terminated her services w.e.f 01.09.1988, there was failure to comply with the provisions of Section 25F and G of the I.D Act and the retrenchment was illegal.

34. Out of the documents Exs.W.1 to W.3 discussed by the Tribunal itself, only Ex.W.3 makes it that the respondent worked from 22.11.1976 to 30.11.1979 i.e 240 days in a period of one year. But the point is that the period of 240 days in a calendar year which required consideration must be with respect to the date of termination i.e 01.09.1988 as alleged by the respondent herein. The Tribunal was required to consider if immediately preceding the date of termination i.e 01.09.1988, during the period of one year i.e w.e.f 01.09.1987 upto 31.08.1988 the respondent had worked for 240 days. The evidence in the form of Exs.W.1 and W.2 upon which reliance has been placed by the Tribunal, as per the Award itself, do not prove that the workman continuously worked in one calendar year for 240 days, immediately preceding the date of termination. The working of the respondent for more than 240 days in a period of one year with effect from 22.11.1976 to 30.11.1977 cannot be legally considered to make the alleged termination bad when the date of termination as alleged is 01.09.1988 and the settled proposition of law is that the workman has to lead evidence to show that he had worked for 240 days in a year preceding the date of termination. There is no finding recorded by the Tribunal on the above aspect and the evidence as mentioned in the award and discussed by the Tribunal does not establish the case of the respondent for working 240 days in one year immediately preceding the date of termination.

35. In para 5 of the counter affidavit, the respondent has submitted that to prove her employment since 1979 she filed Ex.W.1 dated

25.04.1979, Ex.W.2 and Ex.W.3 dated 19.11.1985 which show that the respondent had worked as Scavenger in the Polytechnic from 22.11.1976 to 30.11.1977. So as per the own case of the respondent, the documents Exs.W.1 to Ex.W.3 are only the documents to show her working with T.T.D.

36. The Tribunal, further erred in shifting the burden on the petitioners employer in failing to maintain record of the respondent and consequently resting its finding in favour of the respondent on consideration of such factor as well. The illegality committed by the Tribunal is that unless the initial burden on the workman was discharged to prove working of 240 days in a year immediately preceding the date of termination, the burden of proof could not be shifted on the employer and his failure to produce the record or to maintain the record or to prove his defiance that the workman abandoned the service, could not have taken as relevant circumstances or weighing in favour of the workman in establishing her case.

37. The next submission of the learned counsel for the petitioners, is that there was long delay of twenty two (22) years in filing the claim which had become stale and ought not to have been entertained by the Tribunal.

38. On the above aspect, the Tribunal, placing reliance in the case of **Ajaib Singh vs. Sirhind Co-operative Marketing-cum-Processing Service Society Limited another**[19] held that the claim of the respondent could not be rejected on the ground of delay.

39. In **Ajaib Singh** (supra), the Hon'ble Apex Court laid down that the provisions of Article 137 of the Schedule to the Limitation Act are not applicable to the proceedings under the Industrial Disputes Act and

[19] (1999) 6 SCC 82

that the relief under the I.D Act cannot be denied to the workman merely on the ground of delay.

40. The case of **Ajaib Singh** (supra) and **Sapan Kumar Pandit vs. U.P.State Electricity Board and others[20],** came up for consideration before the Hon'ble Apex Court in **Shivalinga** (Supra) wherein it was contended that as there was no period of limitation prescribed under the I.D.Act to raise the dispute it was open to a party to approach the Court even belatedly. The Hon'ble Apex Court in **Shivalinga** (supra), held that in appropriate cases such steps could be taken as held in the aforesaid two decisions, where there is no dispute as to the relationship between the parties as employer and employee. In cases where there is a serious dispute, or doubt in such relationship and the records of the employee become relevant, the long delay would come in the way of maintenance of the same. In such a case to make them available to Lower Court or Industrial Tribunal to adjudicate the dispute appropriately, will be impossible. A situation of that nature would render the claim to have become stale.

41. It is apt to refer para 6 of **Shivalinga** (supra) as under:

> "6. Learned counsel for the appellant strongly relied on the reasoning of the labour court and contended that the view of the High Court would not advance the cause of justice. Learned counsel for the respondent relied upon two decisions of this Court in Ajaib Singh v. The Sirhind Co-operative Marketing-cum-Processing Service Society Ltd. & Anr. (JT 1999 (3) SC 38 = 1999 AIR SCW 1051) and in Sapan Kumar Pandit v. U.P. State Electricity Board & Ors. (JT 2001 (5) SC 592 = 2001 (6) SCC 222) to contend that there is no period of limitation prescribed under the Industrial Disputes Act, to raise the dispute and it is open to a party to approach the court even belatedly and the labour court or the industrial tribunal can properly mould the relief by refusing or awarding part payment of back wages. It is no doubt true that in appropriate cases as held by this Court in aforesaid two decisions, such steps could be taken by the labour court or the industrial tribunal as the case may be, where there is no such dispute as to relationship between the parties as employer and

[20] (2001) 6 SCC 222

> employee. In cases where there is a serious dispute or doubt in such relationship and records of the employer become relevant, the long delay would come in the way of maintenance of the same. In such circumstances, to make them available to a labour court or the industrial tribunal to adjudicate the dispute appropriately will be impossible. A situation of that nature would render the claim to have become stale. That is exactly the situation arising in this case. In that view of the matter, we think two decisions relied upon by the learned counsel, have no application to the case on hand. Proceeding on the facts of the case, we think the High Court is wrong in having interfered with the award made by the tribunal. The order made by the High Court in writ proceedings, therefore, shall stand set aside and the award made by the labour court shall stand restored. The appeal is allowed accordingly."

42. Here also, there is a serious dispute about the relationship of employer and employee on the date of alleged termination i.e dated 01.09.1988. The law as laid down in **Shivalinga** (supra) becomes applicable. The claim of the respondent was a stale claim when filed in the year 2010, after about 22 years of alleged termination dated 01.09.1988.

43. In **Presiding Officer Labour Court** (supra), the High court of Judicature at Allahabad held, with respect to the limitation for making reference under Section 19(1) of the I.D.Act, that the words "at any time" does not mean, after a time when the claim has become stale. It has to be shown by the workman that there is a dispute in presentie and for this he has to demonstrate that even if considerable period has lapsed and there are laches and delays such delay has not resulted into making the industrial dispute cease to exist. Therefore, if the workman is able to give satisfactory explanation for the laches and delays and demonstrate that the circumstances disclose that issue is still alive, delay would not come in his way because the law of limitation has no application. On the other hand, if because of such delay, dispute no

longer remains alive and is to be treated as "dead", then it would be non-existent dispute which cannot be referred.

44. The respondent herein filed the Industrial Dispute by moving an application under Section 2-A(2) of the I.D Act. Though it is not a case of making reference, but the principle of law as above will apply with equal force, that if the workman approaches the Tribunal after a long delay he will have to demonstrate that the claim is still alive and he will have to satisfy, by furnishing the specific explanation of the laches even if the Limitation Act does not apply.

45. In the writ petition vide interim order dated 06.02.2013 operation of the impugned award was suspended. Consequently, learned counsel for the petitioners submits that the award under challenge was not implemented and the respondent herein was not reinstated.

46. The point for determination as framed in para No.17 above is answered by holding that the impugned award of the Tribunal dated 06.07.2010 is illegal which cannot be sustained and deserves interference.

47. For the aforesaid reasons, the writ petition is allowed. The impugned award dated 06.07.2010, passed by the Tribunal in I.D.No.218 of 2010 is hereby quashed. No order as to costs.

Consequently, the Miscellaneous Petitions, if any, shall also stand closed.

RAVI NATH TILHARI, J

Date:02.08.2022,
Note:
L.R copy to be marked.
Issue CC in one week.
B/o.
Gk

HON'BLE SRI JUSTICE RAVI NATH TILHARI

WRIT PETITION No.3527 of 2013

02.08.2022

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