CASE NO.:
Appeal (civil) 9668 of 2003

PETITIONER:
Surendranagar District Panchayat and Anr.

RESPONDENT:
Jethabhat Pitamberbhai

DATE OF JUDGMENT: 25/10/2005

BENCH:
S.N. Variava & P.P. Naolekar

JUDGMENT:
J U D G M E N T

P.P. Naolekar, J.

The State of Gujarat had referred the industrial dispute to the Labour Court, Surendranagar for adjudication as to whether Shri Jethabhai Pitambarbhai is to be reinstated at its original position with full payment of salary. The dispute arose as the appellant herein had terminated the services of the respondent. After notice the workman-respondent filed his claim contending therein that he had been in employment with appellant for last three years as a Daily Wager and was drawing an amount of Rs.22.70 per day; that on 1.4.1991, he was given an oral notice and was discharged from service. At the time of his discharge he was not given any written notice or payment in lieu thereof. His seniority had not been considered, and employees who were junior to him were continued in service whereas he was terminated. It was also alleged that after the termination of his service, fresh recruitments were made. In response, the employer had filed its reply and contended that the respondent was called for work, which depended upon the availability of the work and funds. The respondent had never completed 240 days in any of the year right from the beginning; that the services of the respondent was orally terminated due to non availability of work and there was no retrenchment or termination within the meaning of the Industrial Disputes Act 1947 (hereinafter to be referred to as the 'Act').

Both the parties led evidence. It is recorded by the Labour Court in Paragraph 4 of its Judgment that Exhibit 8 is the details pertaining to the attendance of applicant, which has been produced with application. The xerox copy of attendance register and muster register has been produced at Ex.10. On the basis of the oral evidence, the Labour Court came to the conclusion that the workman proved his case that he had worked with the employer for the last 10 years and the last wages drawn by him was Rs.22.50 and that he was discharged on 1.4.1991. That being the case, there was non compliance of the provisions of law and therefore set aside the termination order dated 1.4.1991 declaring it illegal. The workman was awarded 25% amount of his salary from 20.6.1996 onwards.

The Department had unsuccessfully challenged the order of reinstatement before the High Court. The High

Court held that the finding of the Labour Court that the employee had completed more than 240 days in a year on the basis of the deposition of the employee was not controverted by showing any reliable evidence, and the statement showing the year wise presence in the Attendance Register without proving it from the original record, couldnot be relied upon. The High Court held that the employee had completed more than 240 days in a year and that it was not open for it to go beyond the findings arrived at by the Labour Court.

From the tenor of the Judgment of the Labour Court and the High Court, it is apparent to us that the judgment has proceeded on the premises as if the burden of proof lies on the employer to prove that the employee had not worked with him for 240 days in the preceding year immediately the date of his termination. Even if we assume that the burden of proof lies on the employer, we find from the record that the employer has filed a Xerox copy of the Attendance Register and the Muster Roll which indicate that in the year 1984 the workman has worked for 38 days, in the year 1985-not a single day, in 1986- 72 days, in 1987-25 days, in 1988- not a single day, in 1989-92 days, in 1990- 82 days, and in 1991 not a single day. The Attendance Register and the muster roll clearly indicate that in none of the years from 1984 to 1991 the workman ever worked in the Department of his employer continuously for a year to constitute continuous service of one year. The claimant, apart from his oral evidence has not produced any proof in the form of receipt of salary or wages for 240 days or record of his appointment or engagement for that year to show that he has worked with the employer for 240 days to get the benefit under Section 25F of the Industrial Disputes Act. It is now well settled that it is for the claimant to lead evidence to show that he had in fact worked for 240 days in a year preceding his termination.

In Mohan Lal vs. Management of M/s. Bharat Electronics Ltd., (1981) 3 SCC 225, it is said by this Court that before a workman can claim retrenchment not being in consonance of Section 25F of the Industrial Disputes Act, he has to show that he has been in continuous service of not less than one year with the employer who had retrenched him from service.

In Range Forest Officer vs. S.T. Hadimani, (2002) 3 S.C.C. 25 - (At Page 26, Para 3), this Court held that "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."

More recently, in Rajasthan State Ganganagar

S. Mills Ltd. vs. State of Rajasthan & Another , (2004) 8 S.C.C. 161; Municipal Corporation, Faridabad vs. Siri Niwas, (2004) 8 S.C.C. 195 and M.P. Electricity Board vs. Hariram, (2004) 8 S.C.C. 246, this Court has reiterated the principal 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 alleged retrenchment and it is for the workman to adduce an evidence apart from examining himself to prove the factum of his being in employment of the employer.

On the face of the aforesaid authorities, the Labour Court and the High Court committed an error in placing the burden on the employer to prove that the workman had not worked for 240 days with the employer. The burden of proof having been on the workman, he has to adduce an evidence in support of his contention that he has complied with the requirement of Section 25B of the Industrial Disputes Act. In the present case, apart from examining himself in support of his contention the workman did not produce any material to prove the fact that he worked for 240 days. In fact the employer had produced before the Labour Court the Attendance Register of the workman and the muster roll clearly showing that the workman had not worked continuously in the preceding year with the employer or that he had worked with the employer for 240 days in the preceding 12 months prior to his alleged retrenchment. In the absence of evidence on record the Labour Court and the High Court have committed an error in law and fact in directing reinstatement of the respondent-workman. That being the case, the award of the Labour Court and the judgment of the High Court, are set aside. The appeal is allowed. However, in the circumstances of the case, there shall be no order as to costs. If the workman has been reinstated in pursuance of the order of the Labour Court, salary and other emoluments paid to him shall not be recovered.