



*Amulya M. Bhat*  
*Associate*

## **BURDEN OF PROOF OF A WORKMAN'S SERVICE PERIOD**

The Rajasthan High Court (**HC**), in *Giriraj vs Regional Forest Officer and Anr* case,<sup>1</sup> held that the burden lies on the workman to prove that their service period was 240 days or more to be entitled for protection under the Industrial Disputes Act, 1947 (**ID Act**). No adverse inference can be drawn against the employer for failure to produce records against the workman's service period.

### **A. Brief Facts:**

Giriraj Suman (**Suman**) was appointed as watchman in the Department of Regional Forest Officer (**Department**) from March 11, 1997, till March 31, 1998. The Department terminated his services on April 1, 1998.

Suman approached the Labour Court (**LC**) to challenge his termination, which observed that he had only rendered his services for a period of 131 days. Hence his termination would not amount to violation of the relevant provisions for retrenchment of the Industrial Disputes Act, 1947 (**ID Act**).<sup>2</sup> The LC further observed that since Suman was hired on contractual basis, he would fall within the exception to 'retrenchment'.<sup>3</sup>

Aggrieved, Suman filed writ petition before the HC challenging the LC's decision and contending that his termination was illegal. He further contended that an adverse inference must be drawn against his employer for non-production of documents to prove that his service period was not 240 days.

### **B. HC's Judgement & Analysis:**

The HC:

- Held, relying on the *Range Forest Officer* case<sup>4</sup> and the *R.M. Yellati* case,<sup>5</sup> where it was observed that it is for the workman to prove that he had worked for 240 days in the year preceding his termination, that Suman had not “*produced any supportive evidence or record to prove his working for 240 days in a year, which too has been countered by the respondents, hence, the Labour Court has not committed any illegality and perversity in recording findings*”

---

<sup>1</sup> *Giriraj vs Regional Forest Officer and Anr*, S.B. Civil Writ Petition No. 1243/2016 (**Judgement**). A copy of the Judgement can be accessed [here](#).

<sup>2</sup> Sections 25F (*Conditions precedent to retrenchment of workmen*), 25G (*Procedure for retrenchment*) and 25H (*Re-employment of retrenched workmen*) of the ID Act.

<sup>3</sup> Section 2(oo) of the ID Act (*Retrenchment*).

<sup>4</sup> *Range Forest Officer Vs. S.T. Hadimani*, (2002) 3 SCC 25.

<sup>5</sup> *R.M. Yellati Vs. Asstt. Executive Engineer*, (2006) 1 SCC 106.

*that factum of rendering work for 240 days in a calendar year is not established, rather petitioner worked out for 131 days.”<sup>6</sup>*

- Observed that no other supportive evidence or effort to obtain records from the Department was shown by Suman to prove that his termination was illegal. Hence, in such circumstances, drawing an adverse inference against the Department for non-production of the records cannot be accepted.<sup>7</sup>
- Relying on *Estralla Rubber* case,<sup>8</sup> wherein it was held that “*It is also well settled that the High Court while acting under this Article [226] cannot exercise its power as an appellate court or substitute its own judgment in place of that of the subordinate court to correct an error, which is not apparent on the face of the record...*”<sup>9</sup> observed that the HC cannot interfere with the LC’s decision.

Therefore, the HC dismissed the writ petition.

\*\*\*\*\*

This *Counselence Connect* contains information in a nutshell on a recent change in law.

This is not legal advice and must not be treated so. For any clarifications, please contact us at: [info@counselence.com](mailto:info@counselence.com). Past issues of *Counselence Connect* are available at the ‘Newsletters’ page of our website ([www.counselence.com](http://www.counselence.com)).

---

<sup>6</sup> Paragraph 8 of the Judgement.

<sup>7</sup> Paragraph 12 of the Judgement.

<sup>8</sup> *Estralla Rubber v. Dass Estate (P) Ltd.*, (2001) 8 SCC 97.

<sup>9</sup> *Ibid*, Paragraph 6.