

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

CIVIL APPEAL No(s). OF 2026
(Arising out of SLP (C) No(s). 14760-14762/2024)

MOHAMMAD SAGIR & OTHERS..... APPELLANT(S)

VERSUS

NAGAR NIGAM KANPUR RESPONDENT(S)

J U D G M E N T

MANOJ MISRA, J.

1. Leave granted.
2. These appeals impugn common judgment and order dated 28.11.2023 passed by the High Court of Judicature at Allahabad¹ whereby three connected writ petitions² filed by Nagar Nigam, Kanpur (respondent herein) against three separate awards³ of Labour Court were allowed and the awards were set aside.

1 The High Court

2 Writ (C) No. 39334 of 2022; 39381 of 2022 and 39979 of 2022.

3 Award dated 28.04.2022 passed by Labour Court (4), Kanpur, UP in Dispute No. 24 of 2019 between City Commissioner, Municipal Corporation, Moti Jheel, Kanpur vs. Mohammad Sagir; Award dated 28.04.2022 passed by Labour Court (4), Kanpur in Dispute No. 26 of 2019 between Municipal Commissioner, Municipal Corporation, Moti Jheel, Kanpur vs. Nisar Ahmad; and Award dated 28.04.2022 passed by Labour Court (4), Kanpur in Dispute No. 25 of 2019 between Municipal Commissioner, Municipal Corporation, Moti Jheel, Kanpur vs. Mohammad Jahir.

3. As these appeals raise common questions of law and fact and arise from a common judgment, they were heard analogously and are being decided by a common judgment.

4. We have heard learned counsel for the parties.

5. In short, the facts are as follows:

(i) Appellants 1 and 3, namely, Mohammad Sagir and Mohammad Zaheer, and the predecessor in interest of Appellant No.2, namely, Nisar Ahmad, were all employed as Switchmen by Nagar Nigam, Kanpur in the year 1993. They served till 2006. However, on 11.07.2006 their services were orally dispensed with. By claiming that they had worked for over 240 days in the preceding calendar year, and continuously for a period exceeding 12 years, and, therefore, their services cannot be dispensed with without following the retrenchment procedure, they raised industrial dispute(s), which were referred for adjudication to the Labour Court.

Based on those reference(s), Labour Court (4), Kanpur, UP, registered Dispute Nos. 24, 25 and 26 of 2019 for adjudication

(ii). *Vide* separate awards dated 28.04.2022, Labour Court held their termination of service bad in law as being in violation of the retrenchment procedure prescribed under Section 6N of the U.P. Industrial Disputes Act, 1947⁴. Consequently, the employer (i.e., Nagar Nigam, Kanpur - respondent) was directed to restore their services with back wages. As Nisar Ahmad had died in the meantime, the Labour Court directed payment of arrears to his wife, namely, Rizwana Parveen (Appellant No. 2).

6. Nagar Nigam, Kanpur (i.e., the respondent) contested the claim of the workmen (i.e., the appellants) by claiming that those workmen were engaged as substitutes and they hardly worked for 10 days a month, and they did not render 240 days of continuous

4 1947 Act

service in any calendar year, therefore, they were not entitled to the benefit of the prescribed retrenchment procedure.

7. The Labour Court did not accept Nagar Nigam's stand, *inter alia*, on the following grounds: (a) there was no specific denial that those workmen were engaged in the year 1993 as switchmen and their services were dispensed with in the year 2006; (b) the oral testimony and documentary evidence of workmen substantiated their claim of continuously serving Nagar Nigam over the years; (c) the claim of Nagar Nigam that those workmen rendered duties for barely 10 days in a month was not substantiated by production of records despite order summoning the records, therefore, an adverse inference was liable to be drawn against the employer.

8. Aggrieved by the award(s) of the Labour Court, Nagar Nigam filed writ petitions before the High Court. The grounds pressed before the High Court, *inter alia*, were that there was no cogent evidence led by any of the workmen regarding their engagement for more than 240 days in a given calendar year; and that few payment

slips, etc. produced by them did not establish continuous service of 240 days.

9. The High Court took the view that the burden to establish continuous service of 240 days in a calendar year lie squarely on the workmen and as the workmen had failed to discharge their burden by producing relevant records, the burden of proof cannot be shifted on the employer to prove that they have not rendered continuous service of 240 days in a calendar year. Based on the above, the awards were set aside.

9. Impugning the judgment of the High Court, the learned counsel for the petitioner submitted that the High Court had overlooked that there was no dispute that those workmen were rendering service since 1993 and their services were dispensed with in 2006. Such long continuation in service raises a presumption regarding existence of a regular vacancy as also that the job is perennial in nature. Besides, the workmen had led evidence to show that they were rendering service continuously. Moreover, an order was passed by the Labour Court requiring the employer to produce the

relevant records regarding payment made to the workmen, but those records were withheld. In such circumstances, adverse inference was rightly drawn by the Labour Court against the employer to hold that the workmen had succeeded in proving that they rendered continuous service of 240 days in a calendar year and were entitled to the benefit of Section 6N of the 1947 Act. In these circumstances, it was urged that the view taken by the High Court is erroneous in law and therefore, the impugned judgment be set aside. In addition, it was submitted that similarly situated workmen were granted similar relief by the Labour Court and some of those workmen have even succeeded in the High Court and Special Leave Petition (C) No. 14528/2019 filed by Nagar Nigam, Kanpur was dismissed by this Court *vide* order dated 26.07.2019. Thus, it would be travesty of justice if the present appellants who are similarly situated are subjected to a different order.

10. *Per contra*, the learned counsel representing the Nagar Nigam, Kanpur submitted that the view taken by

the High Court cannot be faulted as there was no cogent documentary evidence on record to indicate that the workmen had completed 240 days of continuous service in any given calendar year as to be entitled to the benefit retrenchment procedure prescribed by Section 6N of the 1947 Act. Besides, there was no justification for the Labour Court to award back-wages without recording a finding that those workmen were not gainfully employed elsewhere in the interregnum.

11. We have accorded due consideration to the rival submissions and have perused the materials available on record. A perusal of the written statement filed on behalf of the employer (Nagar Nigam, Kanpur) would indicate that there was no specific denial about the fact that the concerned workmen were engaged as Switchmen in the year 1993 and that their services were dispensed with in July 2006. Nagar Nigam's claim in the written statement is that those workmen were engaged as substitutes, by way of temporary arrangement, to work for about 10 days in a month, or for a fix period, and were compensated on daily wage

basis. The aforesaid stand in the written statement was sought to be substantiated by examining an employee of Nagar Nigam as a witness who made a statement that his deposition is based on record. What is important is that the Labour Court on the application of the workmen had summoned the records from the employer, but those were not produced. On the other hand, workmen had led evidence to substantiate their claim of rendering continuous service over the years. In such circumstances, when the records were not produced, despite order of the labour court, even though the witness examined by the employer made a statement that what he was deposing is based on record, the Labour Court, in our view, was justified in drawing adverse inference against the employer. Therefore, the finding of the labour court *qua* rendering of continuous service of 240 days was not liable to be interfered with.

12. In ***Gauri Shanker vs. State of Rajasthan***⁵, this Court had relied on an earlier decision of this Court in

5 (2015) 12 SCC 754

Gopal Krishnaji Ketkar vs. Mohd. Haji Latif⁶ to observe that even if the burden of proof does not lie on a party, the Court may draw an adverse inference if the party withholds important documents in its possession which can throw light on the facts in issue. Based on the above legal position, it was observed:

“20... It is not in dispute that the workman was employed with the respondent Department in the year 1987 and on the basis of material evidence adduced by both the parties and in the absence of the non-production of muster rolls on the ground that they are not available, which contention of the respondent Department is rightly not accepted by the Labour Court and it has recorded the finding of fact holding that the workman has worked from 1-1-1987 to 1-4-1992.

21. The Labour Court in the absence of any material evidence on record in justification of the case of the respondent Department has rightly recorded the finding of fact and held that the order of termination passed against the workman is bad in law, the same being void ab initio it has passed an award for reinstatement of the workman in his post in exercise of its original jurisdiction under provision of Section 11 of the Act.

22. The Labour Court has rightly followed the normal rule of reinstatement of the workman in his original post as it has found that the order of termination is void ab initio in law for non-compliance with the mandatory provisions of the Act referred to supra.”

13. We are conscious of the law that the burden to prove that a workman had worked continuously for 240 days in the preceding one year prior to the alleged

6 AIR 1968 SC 1413

retrenchment lies on the workman. However, each case is to be decided on its own facts. In a case where engagement is for a substantial length of time, a presumption would arise that the work for which the workmen is engaged is of a perennial nature and there exists a vacant post. In the instant case, there is no dispute that workmen were initially engaged in the year 1993 and their services were dispensed with in the year 2006. It is difficult to accept that for that long period of time they were only working as substitutes for regular workers. In such circumstances, when they had led evidence regarding their continuous service and a direction was issued to the employer to produce the relevant records and, despite such direction, records were not produced, if the Labour Court had raised an adverse inference, the same could not have been faulted.

14. We are, therefore, of the view that the judgment and order passed by the High Court is liable to be set aside. However, merely because the retrenchment procedure was not followed may not automatically

entitle the workmen to be reinstated with full back wages.

15. In this case, though, we are of the view that the workmen were entitled to reinstatement as they had served for over a decade, however, whether they were entitled to full back-wages/ arrears or lesser amount, requires adjudication based on assessment whether they were gainfully employed elsewhere in the interregnum. Consequently, we deem it appropriate to remand the matter to the High Court to decide on the entitlement for back-wages. Insofar as direction in the award(s) to reinstate the said workmen is concerned, the same is upheld.

16. In consequence, these appeals are partly allowed. The impugned order of the High Court is set aside. The writ petitions of Nagar Nigam shall stand restored on the file of the High Court for a fresh decision only to the extent indicated above. The Labour Court award(s) to the extent they declared the dispensation of service of the concerned workmen as illegal, and the workmen entitled to reinstatement, are restored and affirmed.

17. Pending applications, if any, stands disposed of.

.....J.
(Manoj Misra)

.....J.
(Manmohan)

New Delhi;
March 16, 2026