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**Court : Delhi**

**Decided On : Nov-25-2004**

**Reported in : [2005(106)FLR648]**

**Judge : Swatanter Kumar, J.**

**Acts : [Industrial Disputes Act, 1947](#) - Sections 2, 2J, 10(1), 17A, 25F and 39**

**Appeal No. : WPC 6010/2002**

**Appellant : Sports Authority of India**

**Respondent : Sports Authority of India, Kamgar Union and ors.**

**Advocate for Def. : A.K. Bajpai and ; Puneet Gupta, Adv.**

**Advocate for Pet/Ap. : Inderjeet Singh, Adv**

**Disposition : Petition dismissed**

**Judgement :**

**Swatanter Kumar, J.**

1. S/Shri Deepak Raj, Mangal Singh and Ramender Tiwari were engaged as Groundsman on casual/daily rate basis during the period of November 1986 to

April 1987. After October 1990 their engagement was not continued because of non-availability of work. These workmen raised an industrial dispute which was referred to the labour court by Delhi Administration vide its order of reference dated 27.7.1992. Having permitted the parties to complete their pleadings and lead evidence in support thereof vide its award Shri K.S. Mohi, Presiding Officer, Labour Court, Delhi vide award dated 24.12.2001 answered the reference in favor of the workers and consequently allowed re-instatement of all the three workers with full back wages and continued of service. The award was published by the Labour Commissioner on 22.7.2002 and it became enforceable in terms of Section 17A of the [Industrial Disputes Act, 1947](#) (hereinafter referred to as the "Act") on 21.8.2002.

2. The Sports Authority of India challenges the validity of the award amongst the others but mainly on the grounds - (a) Sports Authority of India is not an industry within the definition of Section 2(a) of the Act; (b) the labour court has fallen in error of law in computing the 240 days by adding Saturdays and Sundays to the advantage of the workmen and thus the entire award is vitiated; and (c) lastly the labour court has not appreciated the evidence on record in its correct perspective. The labour court has incorrectly concluded of facts that provisions of Section 25F of the Act has not been adhered to by the management. According to the petitioner the said provisions are not attracted at all in the present case and as such the award suffered from an error of law apparent on the face of the record.

3. The Sports Authority of India has placed on record its Memorandum of Association. It is a registered society situated in the Union Territory of Delhi with the object stated in the memorandum. The principles of the society as reflected in the said Memorandum and Rules of the Authority clearly show that the entire control of this Authority is vested in the persons in Government service and are ex-officio members of the society by virtue of their status. Furthermore, its activities also indicate in discharge of its responsibilities and fulfillment of its objects, this society employs large number of persons in different cadre and positions. It is not a welfare society which is working for no profit and for no return. It is neither a research nor a charitable institution dealing with such projects. On the basis of its contents, functions it can hardly be said that this Authority is not an industry within

the purview of Section 2J of the Act.

4. In fact, learned counsel appearing for the petitioner in view of the law enunciated by the Supreme Court in Bangalore Water Supply and Sewerage Board, Etc., Etc. Vs . A. Rajappa and others, Etc., Etc. : (1978)ILLJ349SC and Management of Horticulture Department of Delhi Administration Vs . Trilok Chand and Another : (2000)ILLJ614Del , fairly did not press this argument. Consequently, I have no hesitation in affirming the view taken by the Presiding Officer, Labour Court that the petitioner Authority is a industry within the meaning of Section 2J of the Act.

5. Serious controversy was raised before this Court that the workmen are not entitled to the benefit of the provisions of the Act as they have not completed 240 days immediately preceding the alleged date of their termination of service. In fact, according to the counsel for the petitioner, they were daily rated workers and were not employed on monthly basis. The workman was being paid for 26 days for actual work and even if the period referred to in the award is admitted to be correct still the workmen would not have completed 240 days in 12 calendar months immediately preceding the reference/termination of service. On the other hand the learned counsel appearing for the respondent workmen contended that the workmen had actually worked for 240 days and in any case they would be entitled to counting of Saturdays and/or Sundays as a period of work in view of the judgments of the Supreme Court.

6. Certainly there was some doubt with regard to the status of the daily rated workers for grant of a relief under these provisions including regularisation under the provisions of the Industrial Law including regularisation. In the case of Himanshu Kumar Vidhyarthi and Ors. v. State of Bihar and Ors. 1997 (76) FLR 237, this view was expressed with regard to the claims for regularisation in the Government policies. However, as correctly noticed by the labour court this view was not followed by the Supreme Court in Rattan Singh Vs . Union of India and Another : (1997)11SCC396 and other judgments of the Supreme Court subsequently.

7. This aspect of the matter needs to be examined in view of the fact that there is serious controversy between the parties as to whether the workman has completed 240 days as alleged by the workman. The Presiding Officer, Labour Court concluded that all the three workmen had actually worked for more than 240 days in one calendar year preceding their termination. While coming to this conclusion the Labour Court referred to a chart of working days admitted by the Management which showed that workmen Shri Deepak Raj had worked for 229 days excluding 33 days of holidays, Shri Ramender Tiwari for 238 days excluding 36 Sundays and Shri Mangal Singh worked for 227 days excluding 34 days (holidays). While referring to the law laid down by the Supreme Court in the case of *The Workman of American Express International Banking Corporation Vs . Management of American Express International Banking Corporation : (1985)ILLJ539SC* as well as in *H.D. Singh Vs . Reserve Bank of India and Ors. : (1986)ILLJ127SC* concluded that Sunday and other holidays has to be treated as days of actual work and as such the workman had completed 240 days of working. I do not find any error in this approach of the Labour Court, the number of days for which each of these workmen had actually worked also stands categorically admitted by the Management in Paragraph 4 of the writ petition. The working days were computed for the period from December 1989 to October 1990. In terms of the above judgments of the Supreme Court, Sunday and other holidays are to be counted as actual days of working, addition of these days would obviously result in total working days of the workmen to be more than even 240 days. Learned counsel appearing for the petitioner has not been able to show as to how this computation is wrong and requires any different approach. The workmen had discharged his primary onus and the charge was not disputed even before this Court. The Management if wanted to establish anything contrary it was obligatory upon them to produce such records including attendance register to establish the fact that the workmen have not completed 240 days in the year.

8. The learned counsel appearing for the petitioner while placing reliance upon the judgment of the Supreme Court in *Range Forest Officer Vs . ST Hadimani, : (2002)ILLJ 1053 SC* argued that there was no onus and onus to prove this fact or otherwise could not be placed upon the Management and it was for the workman to establish such averment by cogent evidence. The legal proposition contended

does not require any detailed discussion and in fact the Supreme Court in the case of State of Gujarat and Ors. Vs . Pratam singh Narsinh Parmar : (2001)ILLJ 1118 SC had stated the same law. The facts of the present case are entirely different. The workman in his claim petition has specifically averred that they have completed 240 days. Not only this, in the affidavit filed on behalf of the Management before the Labour Court, it was clearly admitted that the workman have been working with the Management from December 1989 to October 1990. This affidavit to a large extent supported the case of the workmen as their services were alleged to have been discontinued in October 1990 for want of work. In other words, for this continuous period of December 1989 to October 1990 the workmen were working with the respondents and they had completed 240 days at least upon addition of Sundays and Holidays. In these circumstances, the workmen had certainly discharged their onus and it had shifted towards the Management if they wanted to establish anything to the contrary. The Management even withheld the attendance register. Non production of material documents in power and possession of a party to the list would inevitably result in drawing of adverse inference against party. Production of best evidence is obligatory upon the parties de horse the specific onus on either of them. It is primarily for the reason that onus shifts on different stages upon different parties. It may be an evidence in examination-in-chief by way of evidence, evidence by the opposite side to meet the primary evidence led by the other side and then the right to rebuttal in the facts and circumstances of the case is the claim of normal rule of evidence which in its general principle is applicable to the proceedings before the Labour Court. Of course, the rule of evidence is not strictly applicable to the proceedings before the Labour Court. In these circumstances, I am of the view that the workmen had established on record that they have worked for more than 240 days in the year immediately preceding the date of termination of their service.

9. Lastly, it was contended that Sports Authority of India is a body under the control of Central Government and as such Govt. of Delhi had no jurisdiction to make a reference. The appropriate Government which could exercise the jurisdiction under Section 10(1)(c) of the Act, was the Central Government. It has already been discussed that the petitioner authority is an industry and is under the control of the Union. Full Bench of this Court in the case of Indian Tourism

Development Corporation, New Delhi v. Delhi Administration and Ors., 1982 (61) FJR 139 clearly enunciated the principle that Lt. Governor or Administration of Union Territory of Delhi would discharge functions and powers of the State Government under the [Industrial Disputes Act, 1947](#) and powers of the kind to make reference stood delegated to the State Government under Section 39 of the Notification. Even earlier to this, this view was followed by a Division Bench of this Court in the case of M/s. Lila Separator Pvt. Ltd. Vs . The Secretary (Labour), Delhi Administration, and Ors., . Reference can also be made to the judgment of this Court in the case of Apparel Export Promotion Council Vs . Presiding Officer, Industrial Tribunal No.1 and Ors., : (2002)IIILLJ511Del .

10. In view of the above considered view of this Court and the larger Bench which is binding upon me, I have no hesitation in rejecting the contention raised on behalf of the petitioner in regard to the invalidity of the reference on the ground of lack of jurisdiction of Delhi Administration to make such a reference.

11. For the reasons aforesaid I find no merit in this petition, the same is dismissed. However, the parties are left to bear their own costs.