

**IN THE HIGH COURT OF PUNJAB & HARYANA
AT CHANDIGARH**

**CWP No.17791 of 2011 (O&M)
Date of decision: 17.03.2015**

Ved Parkash

... Petitioner

Vs.

The Presiding Officer, Faridabad & another ... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

1. Whether reporters of local newspapers may be allowed to see judgment?
2. To be referred to reporters or not? Yes
3. Whether the judgment should be reported in the Digest?

Present:- Mr. Deepak Sonak, Advocate
for the petitioner.

Mr. O.P.Ahuja, Advocate and
Mr. Rajpal Singh, Advocate
for respondent No.2.

AMIT RAWAL J.

The workman has approached this Court for setting aside the Award dated 05.02.2010, whereby, the reference has been decided against the workman by raising plea that the Labour Court has committed illegality and perversity in not addressing the oral and documentary evidence brought on record to contend that the services of the petitioner had willfully and in violation of provisions of Industrial Disputes Act, 1947 (hereinafter referred to as 'the I.D.Act'), been terminated on 12.1.2003, whereas, petitioner had been working as Zince Operator in the factory since 10.01.1984.

Mr. Deepak Sonak, Advocate, learned counsel appearing on behalf of the petitioner submitted that the Labour Court has rendered a finding on conjectures and surmises by believing the plea of Management that petitioner is stated to have abandoned the job and his services were not terminated. He further submitted that when the matter was pending before the Conciliation Officer, WW2, the petitioner-workman was offered to assume for duty but the Management did not allow him to join duty. A copy of the report of the Conciliation Officer is annexed as Annexure P-4.

Mr. O.P. Ahuja, Advocate assisted by Mr. Rajpal Singh, Advocate appearing on behalf of respondent No.2 contended that it was a clear case of the abandonment of the service and not the case of the termination. The Management was willing to take back him into job but the workman refused to join duty and therefore, the claim of the workman has rightly been rejected by the Labour Court.

In support of his aforementioned arguments, Mr. Ahuja, learned counsel, relied upon the judgments of Jharkhand High Court in **Tinplate Company of India Limited vs. State of Bihar and others** 2003 LLR 171; **The Workmen represented by Bihar Engineering Kamgar Union, Refuge Market, Dhanbad vs. Presiding Officer, Labour Court Bokaro Steel City, Bokaro and another** 2003 LLR 922 and Bombay High Court in **R.K.Kitchen Equipment, Mumbai vs. Majid Yusuf Hurape and others** 2003 LLR 920, to contend, that where the workman has refused to join duties,

despite repeated offers by the Management and even ignored the advice of the Conciliation Officer to resume work and workman would not be entitled to full back wages.

I have heard learned counsel for the parties and appraised the impugned Award and judgments cited by learned counsel for the Management at bar and am of the view that findings of the Labour Court is not based on the record and erroneous and thus, vitiated in law. It would be apt to extract herein below the Conciliation Proceeding, annexed as Annexure P-4:-

“Management has stated that they have never terminated the services of the workman. The workman himself started remaining absent from duty from 13.1.2003 and his absence is marked. They further stated that their factory was started in the year 1988 and they get it registered under the shop Act on 2.8.89. They produced the record in which name of workman has been shown since 1988. During the Conciliation proceeding workman said that he can report for the duty. It is correct that his salary of 13 days has not been paid. Management has not denied that. In there company only 5-6 workers are working and ESI & PF is not applicable upon them. In this way, Management prayed for dismissal of demand notice by clearing all facts

Sd/-
Labour cum-Conciliation Officer,

Circle-2, Faridabad”

From the perusal of the Conciliation Proceeding, it is irresistibly concluded that the workman was offered to report back on duty yet the Management did not take him back. This aspect has vaguely been ignored by the Labour Court. Even the Management' witness MW-1, Naresh Kumar, in his cross-examination admitted that he has not brought the record upto 2003, much less, no notice was ever served to the petitioner for remaining absent from duty.

Had there been a case of absence from the duty, nothing prevented the Management to issue a show-cause notice and charge sheet to the workman at the given address of the workman. Though there was a gap of 25 days from alleged termination in raising of the reference but during aforementioned period, the Management did not take any effective steps to drop the registered letter at the address of the petitioner-workman. It is settled law that where the Management lacks in holding enquiry or charge sheet and the workman chooses not to participate in the proceeding and continue to remain absent, the Management after following the procedure, could have been justified in law to terminate services of workman, in accordance with provisions of Section 25-F of the I.D.Act, 1947.

The judgments cited by the Management deals with the proposition of law, where the workman had refused to resume duties on his reinstatement, despite being ordered, therefore, the back wages were denied. In the instant case, there is no order of

reinstatement, therefore, question of complying with order is not arise. During the course of hearing, learned counsel appearing on behalf of the Management submitted that Management is still willing to take back workman to duty.

In view of what has been observed above, Award dated 05.02.2010 is set aside and the workman is entitled to be taken back into service with continuity of service. As a measure of compensation, the Management is directed to pay a consolidated compensation of ₹1,00,000/- lac. to the workman by defraying expenses of back wages.

Accordingly, the writ petition is allowed in the aforementioned terms.

There shall be no order as to costs.

(AMIT RAWAL)
JUDGE

March 17th, 2015
savita