

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.20883 of 2011

Date of Decision: 22.09.2015

Mohd. Daud

... Petitioner

Versus

The Presiding Officer, Industrial
Tribunal-cum-Labour Court,
Panipat and another

... Respondents

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Vikram Punia, Advocate,
for the petitioner.

Ms. Harpriya Khaneka, Advocate,
for respondent No.2.

1. To be referred to the Reporters or not?
2. Whether the judgment should be reported in the Digest?

RAJIV NARAIN RAINA, J.

1. The Presiding Officer, Labour Court, Panipat has declined the relief to the workman, the petitioner before this Court, by the award dated December 13, 2010. The reference as to the justification or otherwise of the termination has been declined and answered accordingly. The learned labour court has returned a finding that the petitioner abandoned his job. He impugns the award and prays that it may be set aside and reinstatement with continuity of service with back wages deserves to be awarded to him.

2. The facts in brief are that there was industrial unrest in the factory run by the management located at Sonapat. The workers went on strike for increase in wages. The workers struck work and folded up the production line. The management retaliated and declared a lock out. The

Haryana Government prohibited the strike by an order dated September 25, 1998 which made the strike illegal in terms of section 24 of the Industrial Disputes Act, 1947 ("the Act"). It is the say of the management that while the strike was continuing and the agitating workers, including the petitioner, did not turn up for duty for some time they published a notice in the local newspaper calling upon the workers to join duty failing which strict action would be taken against them. The newspaper cutting dated October 13, 1998 was exhibited on record. The petitioner says that the newspaper was a nondescript which lacked circulation and neither he nor the striking co-workers could have no knowledge of it.

3. The sole question which arises for consideration in this petition is to test the correctness of the finding recorded by the learned labour court as to whether the petitioner had indeed abandoned his job. The fact remains that the notice of demand for justice was issued on February 12, 2001 by the workman which can be the only point of time from where it can be held that an industrial dispute had arisen between the parties.

4. Heard Mr. Vikram Punia and Ms. Harpriya Khaneka at some length and perused the file with their valuable assistance.

5. The reasons which have persuaded me to dismiss the petition lie in the proven facts of the case. Looking at the time span between October 13, 1998, the date last worked, and February 12, 2001 when the demand notice was served on the management it can safely be presumed that for a two and half years after exit from service the workman did not care to assert his right to reinstatement and consequential relief and this duration is the best indicator of his intention as gathered from facts that he

did not long to return to work and resume his duties which dislocation is fatal to the cause of action. Therefore, the breach of section 25-F of the Act plays no significant role in the scheme of the Act when applied to the case in hand as the employer was not expected to make a private investigation or a fishing inquiry of the whereabouts of the worker to know his mind by seeking him out and asking him the crucial question whether he at all wishes to continue with the job. In this scenario the vanishing act of the workman incapacitated the management of due compliances of the law and for an inordinately long lapse of time for which they cannot be punished by any logical rationale.

6. The intention to abandon service can easily be gathered from the facts as presented in this case and it would therefore not be safe to reverse the findings recorded by the learned labour court on abandonment after appreciating the evidence adduced by the parties and weighing the preponderance of probabilities in the evidence on record. There was adequate material on record to reach the conclusion arrived at in the impugned award. There is hardly any plausible explanation furnished by the workman for the delay in serving demand notice after two and a half years of slumber. If the burden of proof of the plea of voluntary abandonment of service was on the management, they have largely remained successful in the totality of circumstances.

7. Though it is true that there is no limitation prescribed in invoking the jurisdiction of the industrial adjudicator since an existing or an apprehended dispute can be 'at any time' and that well accepted principle that delay in service of demand notice can at best resound in moulding relief

and denying back wages for the period of absence before the demand notice was served. But we need not go far afield in a case of proven abandonment of service.

8. The question of moulding the relief would not arise in the present case as the severance was not on account of the fault of the employer but by the willful act of the workman of his desire not to continue with the employment and I find no justified reason to interfere in the award. The legality or illegality of the strike or lock out was not put to the throes of determination by the learned labour court on an industrial reference by the appropriate government as to their justification or otherwise. The adjudication which has taken place was limited to the justification of the termination and in this process the learned labour court in order to arrive at the truth remains within its authority to opine on the objection of the management that it was not a case of termination of service but one of abandonment of the job and therefore the workman has only himself to blame and the management ought not to be accused of not complying with the provisions of section 25F of the Act. Moreover, the scope of determination would include in the present reference whether the workman has voluntarily abandonment his services and relinquished his rights, if any, by waiver and acquiescence against which the rule of estoppel applies. In this view of the matter the finding of abandonment is affirmed.

9 There is no palpable error apparent on the face of the record which might appear to vitiate the award. The impugned award is not visited by vice of a fundamental flaw of law or fact, perversity or irrationality and the kind. For the reasons recorded above the reasons in the award in support

of the conclusions are endorsed and interference in the petition is not possible and is rather refrained from only to take a different view on the evidence. Examined from all conceivable angles, a writ of certiorari should not issue to undo the correctly reasoned award.

10. Hence, the petition is ordered to stand dismissed.

(RAJIV NARAIN RAINA)
JUDGE

22.09.2015
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