

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

Civil Writ Petition No.1664 of 2013

Date of decision: 14.9.2015

Ram Parkash

... Petitioner

Versus

Presiding Officer and others

... Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr.Ashish Grover, Advocate,
for the petitioner.

Dr.Puneet Kaur Sekhon, Addl., AG., Punjab.

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

RAJIV NARAIN RAINA, J. (Oral)

The petitioner had served for 13 years as a Coolie in the Forest Department, i.e., from 1988 to 2001 when the Forest Department and the Wild Life Department were merged by the State Government. It is said that a list of employees was prepared and after the exercise was carried out, the petitioner was transferred from Bathinda to Dialpura as was the alleged case stated by the department. When the dispute of retrenchment was referred to the Labour Court under Section 10 (1)(c) read with Section 2A of the Industrial Disputes Act, 1947 for adjudication, the State took the defence in the written statement in para. 3 as follows : -

“3. That the workman has concealed the true facts from this Hon'ble Court. In fact the Department of Wild Life

Wing was merged with the Forest Department by the Governor of Punjab vide office order No.34/9/2000/4749 dated 20.4.2000 by which the D.F.O. Becomes the controlling authority and Incharge for Bathinda Division. The same notification was endorsed to all the relevant offices vide No.34/9/2000/FT.IV/2656 dated 19.2.2001 Chandigarh for the compliance of the same with immediate effect. Photocopy of the same is attached.

In compliance of the above said order, the staff working in the office of Wild Life Inspector Bathinda reported to the office of D.F.O. Bathinda and comes under his control. But the workman did not report his presence in the office of DFO Bathinda along with other staff and was asked verbally by the Guard to join his duty at new place which he utterly refused and is continuously absent from his duty voluntarily. In this way he himself abandoned his job at his sweet will. But keeping in view the adamant attitude of the workmen for not joining his duty he was asked vide letter No.6195 dated 6.2.2000 to join his duty at Dialpura but he fails to join his duty. Thus he has abandoned his job.”

2. The date 6.2.2000 is apparently a typographical error in the aforesaid paragraph of the written statement presented in the writ petition as in para. 2 on facts, the correct date mentioned is 6.2.2002. The learned counsel has shown me a photocopy of the original letter confirming the date 6.2.2002. The pleaded position is that the petitioner was asked verbally by the Guard to join duty at the new place of posting but he refused to accept the offer and thereafter started absenting from duty voluntarily. The State treated the case as an abandonment of service. However, when the sole witness of the management MW Tejinder Singh, Range Officer, Bathinda holding additional charge of Deer Park, Bir Talab, Bathinda appeared in the stand on 13.10.2009 and thereafter recalled on 10.12.2009, he made a candid and truthful admission: -

“It is correct that in the case of workmen, no enquiry or notice was issued. Himself stated that workman was working on DC rates thus there was no requirement of conducting any enquiry. It is correct that no notice was issued to the employees for remaining absent nor any charge sheet was issued. It is correct that the workmen has worked continuously. I do not know that how letter Ex.M-3 was sent to the workmen. In this regard, I have no knowledge that whether the same was delivered to the workmen or not. It is wrong that letter Ex.M-3 was prepared later on when the case was filed by the workmen or it was not sent. I do not know that when the employee did not turn up whether any thing was written in this regard to the superior officer. It is wrong that we have intentionally got the workmen absented. We are ready to employ the workmen. But under Naranga Scheme. Self stated that the workmen should get his job card. We have to employ the workers. The work is already going on. While recruiting new employee, no letter was issued to the workmen. It is wrong that being employee of the department, I have given wrong statement. It is wrong that any person junior to the workmen has been regularized. But it is correct that juniors to the workmen are working. It is wrong that employee was not remained absent.”

3. It is apparent from the deposition that letter Ex.M3 dated 6.2.2002 was not proved by proper delivery to the workman. If there was no proper delivery, then the pleaded case of a verbal command is not trustworthy and the Labour Court has committed fundamental flaw in accepting the theory that letter dated 6.2.2002 was served on the workman and consequentially because he did not comply with its terms therefore a presumption can be drawn that it was a case of abandonment of services. It may be noted that though letter is dated 6.2.2002 but the retrenchment had taken place earlier on 5.2.2001. The conclusion drawn that the present was a case of abandonment of job is not a proper conclusion on the evidence

adduced on the file. When the basic foundation of service of notice/letter dated 6.2.2002 is not established beyond doubt, then a fair opportunity was not given to the petitioner to make a conscious choice whether to accept the transfer or refuse it. The burden to prove abandonment was on the management but they have failed to prove abandonment on the facts of this case. It is well embedded in law that question of abandonment is one of intention of the party which has to be gathered from contemporaneous facts and such facts as are available on the file do not suggest that a case of abandonment was made out in cast iron. Mere non-reporting for duty is not conclusive of intention to abandon work. Duration of the absence is relevant to measure abandonment together with accompanying circumstances and the cumulative bundle of facts presented and determined on a case to case basis rooted in the probative evidence adduced on file.

4. The Presiding Officer, Industrial Tribunal, Bathinda in the impugned award dated 9.5.2012 has fallen in grave error in misreading the evidence for which reasons the award cannot be sustained and it has to be set aside. The jurisdictional fact of compliance or non-compliance of the provisions of Section 25F of the I.D. Act were not even adverted to by the Labour Court which was obviously for the reason that it was fixated on the proposition that the case fell in the category of cases of abandonment of service when that view was entirely untrue on evidence especially the oral testimony of the management witness himself who was a responsible officer of the department. The finding on abandonment is shaky and warrants interference being entirely perverse and a clear misreading of the evidence which is an error that vitiates the impugned award. The flaw in the award is fundamental in nature and the error of reasoning is apparent on the face of

the record.

5. As a result of the foregoing discussion, there is sufficient merit found in the petition and the same is allowed. The impugned award is set aside and the petitioner is held entitled to reinstatement in service with full back wages and with continuity of service. This order be complied with within 6 weeks of the date of receipt of its certified copy and a compliance report be submitted before the Registrar General of this Court for his satisfaction. In case of non-compliance within the time stipulated the file be put up on the judicial side for orders.

(RAJIV NARAIN RAINA)
JUDGE

September 14, 2015
Paritosh Kumar