

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

CWP No.2020 of 2012 (O&M)
Date of Decision: 11.8.2015

Dilbag Singh

...Petitioner

vs.

Presiding Officer and others

...Respondents

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

Present: - Mr. R.S. Sangwan, Advocate for the petitioner.

Mr. Jasmeet Singh Bedi, Addl. AG, Haryana.

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

RAJIV NARAIN RAINA, J. (ORAL)

1. Taking a broad and holistic view of the entire evidence recorded before the Labour Court, as reflected in the award dated August 4, 2011 (P-1) and the fact that the petitioner worked as a Beldar-cum-Gardner from July 1988 up to March 1997, I do not find this case can be indexed in the cases of abandonment of service with no intention of the respondent workman to return to work, which facile inference, the Labour Court has drawn from the fact that a demand was served upon the Management on May 18, 1999 that is after about two years of the alleged retrenchment. It is well settled that abandonment is a question of intention gathered from the accompanying and surrounding facts and circumstances of the case of which delay in raising

the dispute may be one of the manifestations but is not the first and the last. However, I do not find any evidence produced by the respondent employer, the Forest Department, Haryana in this case that any offer was made to call the workman back to work or to have informed the workman soon after March 1997 that if he did not return to work, the consequence of his inactions to seize the offer may go against him and lead to a plausible inference of abandonment of job relieving the employer of the duty cast by Section 25 F of the Industrial Disputes Act, 1947. Indisputably, in the present case the mandatory provisions of Section 25 F of the Act have not been complied with. The Forest Department is expected to act as a responsible and model employer and is not to be regarded as an adversary in its approach to litigation in labour matters only to win cases by putting down a lowly workman of the rank and file of the petitioner, labouring under hard conditions in its nurseries on the mat somehow or the other.

2. Mr. J. S. Bedi, learned Additional Advocate General, Haryana appearing for the State may be right when he urges that an inference of intention to abandon work can be drawn from the fact of delay in raising dispute as reasoned in the award. But then I would rather lean on the recital of the workman and hold that there was no conclusive evidence to support the conclusion that the petitioner's case can fit into one of abandonment of service.

3. Labour legislations are meant for the welfare of the working class and workmen when faced with hardship and prospective of litigation go by whatever advice is available to them to seek remedies provided by law.

Therefore, the gap of two years time in raising the demand for justice may be

sufficient to decline back wages or monetary relief for that period but it is not enough on its own to decline the reference. But that does not mean that the petitioner should have been non-suited and left without any relief after serving for about 8 or 9 years.

4. There was at least oral evidence of the workman recorded in the witness box to support his version in the demand notice that he did not abandon his job but the official in charge of the nursery on the spot turned him away and stopped marking his attendance on the muster rolls. So far as the muster rolls are concerned they remain within the exclusive custody and knowledge of the Forest Department and it is for them to produce the same as the workman on whom the initial burden and onus lies may not be in a position to access to muster rolls. This Court has had occasion to deal with muster rolls and their non-production, depending on employer's convenience, in many cases and would not place absolute faith and reliance on them as if they are the gospel truth. Marking attendance is largely left in the hands of junior functionaries of the department who may be driven by questionable considerations other than law and which never show up in evidence. I would therefore, prefer to treat the case as a case of compensation but not reinstatement. For quantifying the fair and just amount of compensation, the period of two years deserves to be excluded which leaves about six odd years in hand to be considered and the compensation packages granted in the judgments of the Supreme Court in **BSNL vs. Man Singh and another**, (2012) 1 SCC 558, **Assistant Engineer, Rajasthan Development Corporation and another vs. Gitam Singh**, (2013) 5 SCC 136 and in **BSNL vs. Bhurumal**, (2014) 7 SCC 177 where compensation amounts have ranged

from Rs. 50,000 to Rs. 3 lacs for service periods of a mere 240 days to about three years. But this case involves admitted continuous service of 8 to 9 years which is also a factor which negates the theory of abandonment and dilutes it to a considerable extent sufficient to safely conclude that a case for compensation is made out. I am therefore of the view that the ends of justice will be met if compensation of Rs 2.5 lacs in lieu of reinstatement is paid to the respondent workman to set the dispute at rest. Ultimately, Mr Sangwan during the course of arguments was not averse to the contemplated dispensation.

5. As a result of the above discussion the petition is allowed, the award of the Labour Court dated August 4, 2011 is found not sustainable in declining relief in *toto* and is therefore set aside. It is directed that the petitioner be paid an amount of Rs. 2.50 lacs lump sum as adequate compensation in lieu of reinstatement in full and final settlement of the claim. The same shall be paid within a period of two months from the date of receipt of certified copy of this order.

(RAJIV NARAIN RAINA)
JUDGE

11.8.2015
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