

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

Civil Writ Petition No.23181 of 2012

Date of decision: 18.8.2015

M/s Modelama Exports Limited

... Petitioner

Versus

Presiding Officer and another

... Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr.Rohit Rana, Advocate, for
Mr.Kunal Dawar, Advocate
for the petitioner.

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

RAJIV NARAIN RAINA, J.

The petitioner has approached this Court under Articles 226 and 227 of the Constitution of India against the award dated 25th July, 2012 passed by the learned Presiding Officer, Labour Court-II, Gurgaon. The workman has been reinstated with continuity of service but the wages have been restricted to 50% from the date of termination till his reinstatement in the job.

2. The Labour Court has found on facts that the workman completed 240 days of continuous service in the preceding calendar year before retrenchment. The workman has been appointed as a Mendor in the petitioner factory on 7th November, 2002. His services were terminated on

without making payment of retrenchment compensation, notice pay of wages in lieu of notice. There is admitted case of violation of the provisions of Section 25-F of the Industrial Disputes Act, 1947. The management pleaded that the workman absented himself from duty after 1st July, 2004. A dispute arose before the Labour Court whether the workman was appointed as Mendor on 7th November, 2002 or 1st April, 2003 as asserted by the management. The workman proved on record pay slip for the month of December, 2003 Ex.P2 and ESI Identity Card Ex.P5 which bear the stamps of date of appointment as 1st April, 2003. The appointment letter dated 1st April, 2003 Ex.R2 was placed on record which showed the date of appointment and salary. There is a dispute also on the date of termination. The workman asserted 1st August, 2004 but the management countered with 10th July, 2004. There was also correspondence on record showing that the management wrote letters and sent them by registered post to the workman regarding his absence from duty with effect from 10th July, 2004 with a direct to join duties within 3 days. The management produced a copy of the apology tendered by the workman regarding his absence vide Ex.R5. There was a letter dated 3rd October, 2003 issued to the workman by the management regarding absence from duty with effect from 10.6.2003 with a direction to join duties within 3 days. The question was whether these documents were genuine and served upon the workman. This has been resolved by the Labour Court in favour of the workman. The address of the workman may be correct but service of their letters is another matter. The workman did not admit that he had received letter dated 23rd November, 2004. Moreover, it was issued months after the alleged date from where the

management says that the workman started absenting himself from duty. The Court *a quo* also read the cross-examination of the workman appearing as PW1 and his admission that letter Ex.P7 was written by him.

Learned Labour Court recorded in para. 16 and 17 as follows : -

“The perusal of record shows that in the month of October, 2003 he absented from duty and respondent issued letter dated 13.10.2003 Ex.R-5 to him regarding his absence and the workman tendered his apology letter Ex.P-7, thereby, alleging that he received a telephonic call that his father-in-law has expired and as such he absented for the next day without any intimation and he apologized for the same. This letter in no way supports the version given by the respondent. It is also pertinent to mention that the stand of the respondent is that the workman absented from the duty w.e.f. 10.7.2004. But letter dated 13.10.2003 Ex.R-5 and apology letter Ex.R-4 & Ex.P-7 are with regard to the absence of the workman w.e.f. 6.10.2003.

17. There is no evidence that letter dated 23.11.2004 Ex.P-6 & Ex.R-3 was received by the workman and acknowledgment card was received back to the respondent or that if the letter was not received by the workman, the envelop was received back undelivered with any remark of the postal authorities. All these things are very much essential to be proved by the respondent to prove that the letter sent to the workman was actually received by the workman. The respondent miserably failed to do to. This makes the case of the respondent very doubtful. The writing of these letters by the employer to the workman is nothing but to justify their action which they have badly failed to show that the workman himself abandoned the services. The workman is knocking the door of the Labour Authorities again and again to be taken back in the service. If it was a case of absenteeism on behalf of the workman, he should not have made all these efforts throughout.”

3. I have no reason to disagree with the above line of reasoning based on appreciation of evidence which is in the domain of the Labour Court and if exercised properly, no interference is called for in the writ jurisdiction. The apology letter could not be linked to future event. In any case, absence was for one day in 2003 whereas the admitted case is that the employment came to an end either on 10th July, 2004 or 1st August, 2004.

4. While the management took the defence of abandonment of service by the workman, it did not produce attendance register, muster roll etc. and adduce them on evidence and prove them on record to show that the workman was actually absented himself from 10th July, 2004. This clearly created a doubt in the mind of the Labour Court and an adverse inference has been drawn when best evidence was not produced by the management. When the theory of abandonment of service is discarded, then one has to contend with violation of the mandatory provisions of Section 25-F of the Industrial Disputes Act, 1947. If the defence is false, no equity can be exercised in favour of the management.

The writ petition stands dismissed.

(RAJIV NARAIN RAINA)
JUDGE

August 18, 2015
Paritosh Kumar