

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

Civil Writ Petition No.18223 of 2015

Date of decision: 31.8.2015

Principal, Government Senior Secondary School, Dhamar

... Petitioner

Versus

Smt.Krishna Devi and another

... Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr.J.S.Bedi, Addl., AG, Haryana
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. (Oral)

The only two facts on which the State could have succeeded before the Labour Court in defence of the reference was to have established beyond doubt that the notices dated 8th January, 2011 and 22nd January, 2011 issued to Krishna Devi calling upon her to join duty were duly served on her. Had they succeeded in doing so, then it could have well been argued that Krishna Devi remained continuously absent from 1st January, 2011 onwards and had abandoned her job but this was not substantiated by evidence before the Labour Court. The State had pleaded that Nirmala Devi, Water Carrier also a Government employee have been deputed to deliver notices to Krishna Devi but she refused to accept the notices saying that she did not want to continue with the job. This is the report that Nirmala Devi

submitted to her superiors on service of the two notices. The Labour Court has discussed the issue at length and it would do best to reproduce the findings on the point in verbatim : -

“The work lady case is that the management-respondent had terminated her services. Whereas the management-respondent case is that the work lady remained continuously absent from duty w.e.f. 1.1.2011 till 23.3.2012. The onus to prove that the work lady had remained continuously absent from duty w.e.f. 1.1.2011 till 23.3.2012 is on the management-respondent. For discharging the aforesaid onus the management-respondent has relied on the notice Ex.MW2 dated 8.1.2011 and notice Ex.MW1 dated 22.1.2011 issued to the work lady. In the aforesaid notices it had been stated that the work lady who is absenting from duty should report to the duty immediately. On the aforesaid notices Nirmala Devi Water Carrier had made a report that for delivering the aforesaid notices she went to the house of work lady but the work lady refused to take the notices and had stated that she does not want to do the job. The best witness who could have proved that work lady refused to accept the aforesaid notices was Nirmala Devi Water Carrier but the management-respondent has intentionally not examined her as a witness. The management-respondent by not examining Nirmala Devi as a necessary witness in the case in hand has taken away a valuable right of the work lady of assailing the report made by Nirmala Devi on the above notices Ex.MW1 and Ex.MW2. If the management-respondent had examined the Nirmala Devi as a necessary witness then the work lady would have cross examined her that she never went to deliver notices Ex.MW1 and Ex.MW2 to the work lady or that the work lady never refused to accept the aforesaid notices. Further there is no signature of Chowkidar, Numberdar, Sarpanch or Neighbourer of the work lady for authenticating the report of Nirmala Devi on above notices Ex.MW1 and MW2 that the work lady had refused to accept the aforesaid notices. Consequently the report of Nirmala Devi on the above notices Ex.MW1 and Ex.MW2

that the work lady refused to accept the aforesaid notices does not carry any authenticity. The authenticity of the above notices Ex.MW1 and MW2 is also clouded by the fact that these notices also do not bear any diary or dispatch number.”

Having regard to the findings of fact recorded by the Labour Court, a case of abandonment is not proved. In case, abandonment is not proved, then the termination was brought about in violation of Section 25-F of the Industrial Disputes Act, 1947. The Labour Court has awarded reinstatement with continuity of service with 50% back wages which is a just and equitable dispensation and does not deserve to be tinkered with. In view of the recent pronouncement of the Supreme Court in **Jasmer Singh v. State of Haryana and others**, Civil Appeal No.346 of 2015 decided on 13th January, 2015, no interference is called for in the narrow and limited jurisdiction under Article 226 of the Constitution of India provided to this Court while reviewing awards of the Tribunal as indicated by the Constitution Bench decision of the Supreme Court in **Syed Yakoob v. K.S. Radhakrishnan**, AIR 1964 SC 477. No substantial injustice has been caused to the petitioner for wrongful termination. No ground is made out for interference in the impugned award.

The petition stands dismissed.

(RAJIV NARAIN RAINA)
JUDGE

August 31, 2015
Paritosh Kumar