

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Civil Writ Petition No.21234 of 2014
Date of Decision: April 28, 2015

Ram Sewak

...Petitioner

Versus

The Senior Medical Officer, Primary Health Centre, Seeto Guno, District
Ferozepur & others

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL, JUDGE

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not?
3. Whether the judgment should be reported in the Digest?

Present: Mr.Puneet Kumar Bansal, Advocate,
for the petitioner.

Mr.Inder Pal Goyat, Addl.A.G., Punjab,
for the State.

AMIT RAWAL, J. (Oral)

The challenge in the present writ petition is to the award dated 28.4.2014 (Annexure P-1), whereby the reference qua the alleged termination of the petitioner has been rejected.

Mr.Puneet Kumar Bansal, learned counsel appearing for the petitioner argued that the petitioner had worked w.e.f. 22.9.1979 to 18.2.1994 as Chowkidar and he has submitted his application for going on earned leave from 19.2.1994 till 19.3.1994, but the petitioner was not communicated about the acceptance and rejection of the same. When he reported back for today on 21.3.1994 (as 20.3.1994 was Sunday), he was

not allowed to join duty. Thereafter, the petitioner raised a demand notice on 15.4.1994. The Labour Court has not appreciated the aforementioned facts and, therefore, committed an illegality and perversity in rendering a finding against the petitioner.

Mr.Inder Pal Goyat, learned Addl.A.G., Punjab appearing for the State has argued that at the time of conciliation proceedings, the Management gave an option to the petitioner to join the duties, but he did not join. However, since the conciliation proceedings failed, the matter was referred to the Labour Court. Before the Labour Court, the Management was proceeded ex-parte.

I have heard the learned counsel for the parties and appraised the paper book.

The Labour Court has swayed away from the letter (Ex.W2) dated 21.4.2009, which has been produced by the respondents before the Conciliation Officer, where, there is a reference that the leave of the petitioner had been rejected on 26.2.1994. The letter dated 21.4.2009, which has been shown to the Court, is silent how the workman was intimated about the rejection of his leave and it has only surfaced for the first time during the conciliation proceedings. Had the Management actually rejected the leave of the workman, the Management would have communicated by registered letter at the available address of the workman, so that the workman would have come to know about the outcome of his application, but the said procedure has not been followed by the Management. The Management has not proved that any notice or charge sheet was served upon the petitioner through registered post but appears to have caused a

publication in the Newspaper `Daily Ajit` dated 22.4.1997. Cause of action for publishing a notice in the Newspaper would have arisen only when the workman had refused to claim the notice/charge sheet sent by registered post. The Management has chosen not to contest the reference. Had the Management appeared before the Labour Court, they could have sought the indulgence of the Labour Court by making prayer in the writ petition for holding an enquiry, but, however, in the absence of any contest, the documents and the pleas raised by the workman have gone un rebutted. Since it has not been proved on record that the workman was communicated the rejection of the leave application, the Labour Court has committed an illegality and perversity in arriving at a finding that the workman had actually willfully remained absent and, thus, abandoned the job. The finding of the Labour Court is not only erroneous, but fallacious.

In view of what has been observed above, the award of the Labour Court is hereby set-aside. The workman is entitled to reinstatement with continuity of service. Since the workman has pleaded in the claim petition that he was not gainfully employed during the period of termination, therefore, I deem it appropriate to award full back wages to the petitioner.

With the aforementioned observations, the writ petition is allowed.

April 28, 2015
ramesh

(AMIT RAWAL)
JUDGE