

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

Civil Writ Petition No.727 of 2012

Date of Decision: May 20, 2015

Madan Singh

...Petitioner

Versus

**The Presiding Officer, Industrial Tribunal-cum-Labour Court, Panipat &
another.**

...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: Ms.Nancy Gupta, Advocate,
for Mr.R.S.Malik, Advocate,
for the petitioner.

Mr.Yashpal Thakur, Advocate,
for Mr.Adarsh Jain, Advocate,
for respondent No.2.

AMIT RAWAL, J. (Oral)

The workman has approached this Court challenging the award dated 30.11.2010 (Annexure P-4), whereby the reference qua his alleged termination has been declined.

Ms.Nancy Gupta Advocate for Mr.R.S.Malik Advocate appearing on behalf of the petitioner submits that the award of the Labour Court is not based on oral and documentary evidence brought on record,

much less, has even not looked into a very important fact that the petitioner had raised the demand on 4.6.2001 and the Management had sent two notices though two in the month of May, 2001 and another in June, 2001 and, therefore, the Management did not act in accordance with the provisions of Section 25-F of the Industrial Disputes Act, 1947 (for short “the Act”) and, thus, there was no occasion for the petitioner to have abandoned the job as he continuously worked for 13 years and he had gone to his native village after taking leave on 6.4.2001 to look after his family, where he seriously fell ill. On 23.4.2001 when he reported back on duty with the medical record, he was not allowed to join duty and no termination order has been served, therefore, the finding rendered by the Labour Court that the petitioner had abandoned the job is illegal, wrong, much less, arbitrary and perverse.

Learned counsel for the petitioner further submits that no show cause notice, much less, any charge sheet has been served from the date of alleged termination, which was on 23.4.2001, till serving of the demand notice and, therefore, there was violation of provisions of Section 25-F of the Act and the petitioner is entitled to reinstatement into service and full back wages.

Mr.Yashpal Thakur Advocate for Mr.Adarsh Jain Advocate appearing for respondent No.2 submits that the award of the Labour Court is legal, just and fair. It has been based on appreciation of oral and documentary evidence brought on record, much less, on appreciation of law and, thus, there is no illegality and perversity in the findings recorded by the Labour Court.

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

It is a matter of record that the Management had produced on record three show cause notices served on the petitioner, two in the month of May, 2001 and one in June, 2001. The Labour Court having noticed the aforementioned fact ought to have held an enquiry as to whether petitioner's services were terminated or abandoned the job on his own. No such exercise/enquiry has been done by the Labour Court and the Labour Court has proceeded to decide the reference without noticing this fact.

In the judgment rendered by the Hon'ble Supreme Court in D.K.Yadav Versus M/s. J.M.A. Industries Ltd., 1993(3) S.C.T. 537 a duty is cast on the Management to serve a show cause notice, much less, charge sheet on the workman by sending the notice at the last available address and in case the workman replies to the show cause notice and joins the enquiry, then he would have been at liberty to challenge the findings rendered by the Enquiry Officer and in his absence the Enquiry Officer would also be at liberty to hold an *ex-parte* enquiry.

Since the Labour Court did not undertake the task of holding the enquiry and proceeded to decide the reference, I deem it appropriate to set-aside the award of the Labour Court and remit the matter back to the Labour Court with a direction to hold an enquiry with regard to the alleged termination by giving an opportunity of hearing to the petitioner and the Management by treating it as a preliminary issue and thereafter determine the lis between the parties as to whether the termination of the petitioner was illegal or not.

As an interim measure, the Management is directed to pay a compensation of ₹50,000/- to the workman.

With the above observations, the writ petition is disposed of.

May 20, 2015
ramesh

(AMIT RAWAL)
JUDGE