

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT
CHANDIGARH

RSA No.4193 of 2013 (O&M)

Date of Decision.03.09.2015

Ram Partap

.....Appellant

Versus

The Haryana State Agricultural Marketing Board and another

.....Respondents

Present: Mr. R. Kartikeya, Advocate for
Mr. Ram Swaroop, Advocate
for the appellant.

CORAM:HON'BLE MR. JUSTICE K. KANNAN

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?

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K. KANNAN J. (ORAL)

1. Delay of 163 days in refiling the appeal is condoned.
2. The second appeal is at the instance of the plaintiff who lost before two Courts below making a claim for pension for having put in more than 16 years in service. He had taken leave for three months some time in the year 1990 and on the completion of the leave period instead of joining, he was reported to have sent a letter of resignation on 29.08.1990. The letter was not immediately acted upon in the sense that the department did not either reject the leave or call upon him to join but as a matter of fact, the plaintiff treated himself as being in service and offered to rejoin in the year 2007. It would appear that the plaintiff was not permitted to rejoin and he filed a suit seeking for a claim to rejoin and for benefits. The suit was allowed to be withdrawn since his age of superannuation had arrived in the normal course if he

had continued in service in 2009 and filed a suit only to treat him as a person having served with more than 10 years which was qualifying number of years of service. The plaintiff's argument was that the respondents had not taken any departmental action for his absence and therefore, he must be deemed to be in service or at least he could not be tainted as suffered any disqualification for claiming pension.

3. The two Courts have held that even if the department had not taken any disciplinary action, the act of the plaintiff sending letter of resignation and staying away from service from the year 1990 and continuing it till he initiated his own suit in 2008 constituted an abandonment from service and a person who had abandoned the service was disqualified from claiming pension as per the relevant Rules. I find that the two Courts below have taken a correct view in matter that irrespective of the fact that the department did not take action for absence, the plaintiff's own conduct only made possible an inference of abandonment in service and if there was a disqualification on such a ground, it was correctly applied against the plaintiff to deny the benefits.

4. I find no substantial question of law for consideration in the second appeal and dismiss the same.

(K. KANNAN)
JUDGE

September 03, 2015
Pankaj*