

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

2318

CWP No. 8898 of 1994 (O&M)

Date of decision:30.11.2016

Kali Ram

.... Petitioner

Versus

Presiding Officer and another

.... Respondents

CORAM: Hon'ble Mr. Justice P.B. Bajanthri

Present: Ms. Abha Rathore, Advocate for the petitioner.

Mr. P.K.Mutneja, Advocate for respondent No.2.

P.B. Bajanthri, J. (Oral)

In the instant writ petition, the petitioner has questioned the validity of the Award passed by the Labour Court dated 13.01.1994.

2. The petitioner was appointed as an X-ray Technician on 01.12.1984. Thereafter, from 03.11.1988 he was not allowed to work. Petitioner issued demand notice on 01.08.1989.

3. On the other hand, learned counsel for the respondents submitted that the petitioner was appointed on 15.12.1985 and he was appointed as an X-ray Technician for training and he has worked up to 30.10.1988. Thereafter, he remained absent and demand notice was issued only on 01.08.1989. In this background, the petitioner raised an industrial dispute. Thus, the labour Court decided the reference No.384 of 1992 on 13.01.1994.

4. Learned counsel for the petitioner submitted that the petitioner's services has been terminated without notice or enquiry. Learned counsel for the petitioner relies on evidence adduced by MW1 in particularly cross examination to point out that no written notice has given to the petitioner so also no charge sheet was issued and MW1-Ram Lal's statement is oral statement.

5. It was further submitted that services of an employee cannot be terminated without issuing notice or conducting enquiry. In support of his contention he relied on decision of Apex Court titled as ***D.K.Yadav versus J.M.A.Industries Ltd.*** reported in 1993(3) SCC 259. In view of the decision of the Apex court the award dated 13.1.1994 is liable to be set aside.

6. Per contra, learned counsel for the respondents submitted that the petitioner abandoned the services. Therefore, question of ordering termination do not arise and demand notice was issued after lapse of 9 months from the date of remaining absent. Therefore, the petitioner has not made out a case. Thus, rightly, the tribunal declined to grant claim made by the petitioner. Learned counsel for the respondents relied on Supreme Court decision titled as ***Vijay S. Sathaye versus Indian Airlines Ltd.*** reported in (2013)10 SCC 253 while pointing out that an employee who remained absent for a long time automatically relationship between the employees and employer ceases and it is deemed that employee has abandoned his or her services. In the present case, the petitioner after lapse of 9 months issued demand notice. Therefore, it is to be deemed that petitioner has abandoned the services.

7. Heard learned counsel for the parties.

8. Admittedly, the petitioner was appointed in the respondent-hospital as an X-ray Technician in the year 1984-85. He has worked up to 30.10.1988. Version of the petitioner is that he was not permitted to discharge the duties of the post held by him w.e.f. 03.11.1988. If it is so, no material has been produced by the petitioner to substantiate that the petitioner was not allowed to discharge the duties of the post by issuing communication to the respondent-hospital. At the same time, the respondent-hospital have not issued any notice in writing asking the petitioner to report back to duty, if he remained unauthorized absent or absented himself w.e.f. 30.10.1988 as contended by the respondents. In between 30.10.1988 till 01.08.1989 there is no correspondence between the petitioner and the 2nd respondent in respect of service condition of the petitioner. Therefore, there are lapse on the part of the petitioner as well as 2nd respondent-Hospital. The contention of the respondents that the petitioner abandoned the service would be taken into consideration only as and when there is some action and reaction by the respondent-hospital as and when the petitioner remained unauthorized absent for more than few days. Till receipt of demand notice the respondent hospital slept over the matter. Therefore, the contention of the respondents that the petitioner has abandoned the services is not acceptable. In other words, 2nd respondent should have issued show cause notice to join service etc.

9. Having regard to the conduct of both the petitioner and 2nd respondent insofar as persuing the issue relating to taking back to duty or abandoned the service is concerned, there are lapses. Therefore, the Award of the Labour Court dated 13.01.1994 is modified to the extent that the petitioner is entitled to compensation. The respondents have paid a sum of

Rs.1 lac during the pendency of this petition. They are further directed to pay compensation of Rs.2 Lacs in addition to one lac which has been paid already. The said compensation shall be paid by them within a period of 4 months from today failing which the petitioner is entitled to claim interest @ 9% per annum from today.

10. At this stage, learned counsel for the respondents insisted to record that as and when the petitioner remained absent from duty MW1 and MW2 have went to the petitioner's village asking him to come back. It has come on record however, dates and events of the said issue have not come on record. Therefore, it is presumed that it is an after thought. Hence, the above facts would not assist the 2nd respondent's case.

30.11.2016

pooja saini

(P.B.BAJANTHRI)
JUDGE

Whether speaking/reasons Yes/No

Whether Reportable: Yes/No