

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No.1149 of 2011

Date of Decision:-21.11.2016.

Ravi Dutt Sharma

.....Petitioner

Versus

Punjab and Sind Bank and another

.....Respondents

CORAM: HON'BLE MR. JUSTICE P.B. BAJANTHRI

Present: Mr. Pawan Kumar Longia, Advocate for the petitioner.

Mr. J.S. Sathi, Advocate for respondent No.1.

P.B. BAJANTHRI, J. (Oral)

1.) In the instant writ petition, the petitioner has questioned the award passed by the Labour Court dated 17.2.2009 insofar as back wages only.

2.) The petitioner is stated to be appointed as a Daftri/Peon. He remained unauthorized absent from 1.7.1994 to 24.10.1994 for more than 90 days. He joined on 25.10.1994 and thereafter, once again he remained absent from 21.11.1994. On next day i.e. 22.11.1994, the respondents issued communication asking the petitioner to join for duty. Thereafter, there is no response. Consequently, on 22.11.1994 itself the petitioner's wife submitted leave application. The respondents proceeded to issue show cause notice on 2.1.1995 directing the petitioner to join for duty within a period of 30 days. Since, there is no response from the petitioner. Consequently, the respondents proceeded to pass an order to the extent that the petitioner is deemed to have taken voluntary retirement w.e.f. 2.2.1995

lapse of 5 years from the date of passing voluntary retirement. Reference was decided by the Labour Court. Labour Court allowed the reference directing the respondent and permitting the petitioner to resume the service within one month from the publication of the award. Insofar as consequential benefits are concerned, seniority and pay was protected however, it is made clear that he is not entitled for back wages. Thus, the petitioner is aggrieved by the denial of back wages and presented this petition. Learned counsel for the petitioner submitted that respondents declaring that the petitioner is deemed to be voluntarily retired we.f. 2.2.1995 dated 10.2.1995 has been set aside by the Labour Court. Consequently, he is entitled for back wages. In support of this, he relied on three decisions which are as follows:-

(i) 2016(2) SCT 503 (*Raj Kumar Vs. Director of Education and others*).

(ii) 2011 (3) SCT 68 (*Nirmal Singh Vs. Labour Court, Bhatinda and others*).

(iii) 2014 (3) AIR Bom.R 635 (*Syndicate Bank, Mumbai Vs. Vinod Kumar Amin*).

3.) On the other hand, learned counsel for the respondent-Bank submitted that respondent-Bank having regard to the conduct of the petitioner that he remained unauthorized absent read with inaction on the part of the petitioner from 1995 to 2000 i.e. he kept quiet and from the date of issuance of voluntary retirement till 26.2.2000 i.e. issuance of demand notice there is an inordinate delay in respect of the petitioner's claim. Therefore, Labour Court rightly rejected the back wages. It was further

the petitioner. Therefore, there is no error committed by the Labour Court so as to interfere.

4.) Heard learned counsel for the parties.

5.) Having regard to the dates and events of the present case whether the petitioner is entitled to back wages or not. Admittedly, the petitioner remained absent from 1.7.1994 to 10.2.1995 except few days he worked in the month of October and November, 1994. No doubt illegally he was declared to have taken voluntarily retired w.e.f. 2.2.1995 on 10.2.1995. At the same time, the petitioner's conduct in pursuing his right of grievance to not questioning the decision of retiring him voluntarily is taken into consideration that he remained silent from 10.2.1995 to 26.2.2000 i.e. till the issuance of demand notice on 26.2.2000. Therefore, the petitioner is not entitled for the back wages. Reliance of the above judgments are concerned all the three matters are relating to termination and there is no delay in those matters. For the purpose of entitlement of back wages one has to examine whether he was gainfully employed or not. That apart whether there is a delay on the part of the petitioner in seeking grievance before the appropriate forum or not. In the present case delay of 5 years shall be the hurdle for back wages. Therefore, the petitioner has not made out a case so as to interfere with the Labour Court award.

6.) Petition stands dismissed.

(P.B. BAJANTHRI)
JUDGE

November 21, 2016.

sandeep sethi

Whether speaking/reasoned:-

Yes / No

Whether Reportable:-

Yes / No.