

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No. 19239 of 2011 (O&M)
Date of decision: 13.07.2016

Balbir Kaur

...Petitioner

Vs.

Presiding Officer, Industrial Tribunal,
Amritsar and Others

...Respondents

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

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

Present: Mr. Gagneshwar Walia, Advocate for the petitioner.

Ms. Abha Rathore, Advocate for respondents No. 2 and 3.

P.B. BAJANTHRI, J.(ORAL)
CM No. 7667 of 2016

Application for placing on record written statement filed on behalf of respondents No. 2 and 3 is allowed.

CWP No. 19239 of 2011

In the instant writ petition, petitioner has questioned the award of the Labour Court dated 02.08.2011. The appellant-petitioner was appointed in the month of March 1985 on daily wages basis for the purpose of cleaning the utensils in canteen. She has served till 28.05.1998 as a canteen worker. Thereafter, the petitioner is stated to have remained absent. The respondents issued show cause notice so as to take the action against the petitioner for remaining absent. On 08.06.2001 the petitioner is stated to have issued a demand notice and thereafter, raised an industrial dispute.

Learned counsel for the petitioner submitted that the petitioner is an illiterate and low paid employee. She remained absent from 28.05.1998 onwards. However, she was not knowing the legal rights available to her for rejoining the service in the canteen as a worker, therefore, there is delay in issuing demand notice. It was further contended that Labour Court did not appreciate the fact that the petitioner has not been given an opportunity before holding that the petitioner has abandoned her service. Minimum requirement of issuance of notice has not been followed. Finding of Labour Court that the petitioner abandoned her service is incorrect. Abandonment of service would arise only, when an employee remained absent and the employer issued a show cause notice asking to report for duty and thereafter, if an employee ignores such notice then only a finding can be given that such an employee has abandoned the service. Therefore, Labour Court finding that the petitioner has abandoned her service, is wrong and award of Labour Court is liable to be set aside. Learned counsel for the petitioner in support of his contention that minimum requirement of issuance of notice is required before termination or treating that an employee has abandoned the service or his/her job. He relied upon decision **reported 2003(3) SCT 975 paras 4 to 7**. He further relied upon decision of **Division Bench of Gujarat High Court reported in 2005(6) SLR 805 paras 5 and 6** wherein it is held that when no notice was given to worker before presuming that workman had abandoned work in such circumstances termination of service without notice is to be set aside.

Per contra learned counsel for the respondents vehemently contended that since the petitioner remained absent from 28.05.1998 onwards and issued demand notice on 08.06.2001 that is beyond 3 years, therefore, presumption can be drawn that the petitioner has abandoned her job. To that extent the Labour

Court has rightly held that the petitioner has abandoned her service. It was further contended that in the writ jurisdiction, Writ Court cannot re-appreciate the evidence so as to determine whether an employee has abandoned the service or not when there is a finding of the Labour Court. Thus there is no infirmity in the award passed by the Labour Court. Learned counsel for the respondents relied upon the decision of 1990 LLJ Page 224 para 9 reads as follows:-

“9.The contention is wholly misconceived. The categorical finding recorded by the Labour Court is that the management had not passed any order of termination. If there is no order of termination passed by the employer, it is not understood as to how and why it is required to hold an enquiry. The petitioner had himself abandoned the job. He is wanting to take advantage of his own wrong. There is neither equity nor law in his favour”.

Learned counsel for the petitioner further relied upon the decision reported in **AIR 1964 477 para 7** regarding finding given by the Tribunal cannot be reviewed on interference with the evidence is permissible in writ petition. In the reported decision viz. **2001 (2) AIR Bombay Page 605** which is relating to interpretation **10 of S-10 p Industrial Employment (Standing Orders Act, 1946)** **AIR 1973 1227 para 27(4)**, it is held that if there is inquiry held by an employer and the inquiry is defective the tribunal is right to set aside. In view of these decisions petitioner is not entitled to notice or inquiry. No case is made out for interfering with the Labour Court award. Learned counsel for the respondents further contended that demand notice is not maintainable.

Heard, learned counsel for the parties.

The petitioner is an illiterate labourer working as a cleaner in the respondent canteen during period 1985 till 28.05.1998. No doubt there is delay of 3 years in issuing demand notice, however, delay will not wipe out the claim of the

petitioner since she has served 6 years as an ad hoc employee and 6½ years as a temporary employee. She is an illiterate person, and there being lack of knowledge of remedy regarding her job, there is delay of 3 years, which is condonable. Crux of the matter is whether the petitioner had abandoned the service or not. The Labour Court has given finding that the petitioner has abandoned her job based on the statement made by the petitioner as well as documents like Attendance Register. The Labour Court failed to appreciate that the petitioner has rendered 13 long years of service and she remained absent with effect from 28.05.1998. The respondents have not issued a notice asking her to report back to duty or to hold a domestic inquiry having regard to the fact that the petitioner status as a temporary employee in the canteen. There is no material to show that notice was issued to the petitioner asking her to report back to duty. In the absence of notice and thereafter, had the petitioner disobeyed the notice and remained absent, then one can draw a presumption that the petitioner has abandoned her job. Therefore, the Labour Court erred in holding that the petitioner had abandoned her job. Contentions of the respondents that the petitioner had abandoned her job since she remained absent from 28.05.1998 and it was evident from the Attendance Register, is not sufficient to hold that she had abandoned her job. Under writ jurisdiction, Writ Courts cannot give finding or sit on the finding given by the Labour Court qua appreciation of evidence. It is true that the evidence need not be gone into once there is finding by the Labour Court. In the present case question for consideration is not regarding appreciation of evidence or examination of evidence. Question for consideration is only to the extent that whether petitioner had abandoned her job or not with reference to the facts of the case. Admittedly the respondents have not issued show cause notice/letter asking the petitioner to report back to duty. Had

they issued show cause notice/letter asking her to report for the duty, thereafter, the petitioner had ignored or disobeyed the show cause notice/letter then one can draw presumption that petitioner had abandoned job. In the absence of show cause notice or letter asking an employee to report back to duty presumption cannot be drawn that employee had abandoned her job. The citations which are cited by the respondents are distinguishable for the reasons that in the first judgment it was a case of termination order.

In the present case, no order is passed for remaining absent. Therefore, the first citation is distinguishable. Even the other citations are also relating to termination of order wherein it is held that once the Tribunal is satisfied with the evidence, the same cannot be gone into under the writ jurisdiction.

Having regard to the facts that the petitioner remained absent from 28.05.1998 and thereafter, issued demand notice on 08.06.2001 and so also that the respondents did not issue show cause notice for remaining absent from 28.05.1998 to the petitioner, the petitioner cannot be reinstatement with back wages. It is sufficient to award compensation having regard to the fact that the petitioner had rendered 13 years of service as a canteen worker. Award dated is set aside. The petitioner is entitled to compensation of ₹ 3 lakhs. Supreme Court in the case of **Man Singh Vs. BSNL (2012) 1SCC 558** granted ₹ 2 lakhs for 4 years of service. The respondents are directed to release compensation within 3 months from today. In case the payment is not made within the aforesaid stipulated time, the amount shall carry interest at the rate of 9% interest per annum.

Petition is allowed to the aforesaid extent.

No order as to cost.

July 13, 2016

Poonam (II)

(P.B.BAJANTHRI)
JUDGE