

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No. 23720 of 2012

Date of decision: 08.07.2016

Ravinder Kumar

...Petitioner

Versus

The Presiding Officer and Another

...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. Amit Shukla, Advocate for the petitioner.

Mr. D.P. Sharma, Advocate for respondent No. 2.

P.B.BAJANTHRI, J.(ORAL)

In the instant writ petition, petitioner has questioned the award dated 15.03.2012 vide (Annexure P-4).

The petitioner who is stated to have joined service in the office of the second respondent, was appointed as receptionist in the month of December 2004. It is undisputed that the petitioner is covered under the ESI benefits and also member of the EPF. On 16.12.2007 the petitioner was not allowed to perform his duty with the second respondent management.

Feeling aggrieved by the same petitioner has approached Labour Inspector on 25.12.2008. On the instructions/directions of the Labour Inspector the second respondent Management permitted the petitioner to discharge the duties of post of the receptionist on 26.12.2008 during the day from 7.00 a.m. to 12.00 p.m. Thereafter, he was not allowed to discharge the duties of post of

receptionist. Petitioner issued a demand notice dated 28.01.2009. The respondents stated to have filed the reply denying the allegations made in demand notice. On 15.03.2012 the Labour Court dismissed the petitioner's claim (Annexure P-4) on the ground that the petitioner had abandoned the service.

Learned counsel for the petitioner submitted that the petitioner is covered under ESI Scheme and he was Member of the EPF. Second respondent management did not allow the petitioner to discharge the duties of the post of receptionist from 26.12.2008. Therefore, the petitioner did not abandon the service since 21.01.2009. Demand notice was issued and proceedings were held under the I.D. Act. The petitioner has been orally terminated without issuing notice or holding any inquiry. Therefore, the finding of the Labour Court that the petitioner has abandoned the service is not correct. Petitioner relied on the evidence of the AW-2 and AW-3 to support that the petitioner was very much on duty on 26.12.2008 and the same was refused by Managing Director according to the petitioner. According to AW-2 and AW-3. Petitioner has been refused to discharge the duties of the post of receptionist by the General Manager. Therefore, the Labour Court has not given finding in so far as the evidence adduced by AW-2 and AW-3 are concerned. The claim of the petitioner is to be allowed.

Per contra learned second respondent-Management vehemently disputed the fact that the petitioner joined service in the month of December 2004. He has joined service only on 05.07.2006. It was further contended that it is true that the petitioner was not allowed to work on 06.12.2008. On the instructions/directions of Labour Inspector on 25.12.2008, the petitioner was permitted to work w.e.f. 26.12.2008. However, the petitioner did not report back to duty and has abandoned the service. So, the question of termination does not

arise. The finding of the Labour Court is in order and with reference to the facts of the case that the petitioner has abandoned the service. Contention of the learned counsel for the petitioner is that the petitioner was stalled to perform his duties by Managing Director and Manager has refused is not tenable for the reasons, the petitioner has not reported before him for duty.

Heard learned counsel for the parties dispute is whether the petitioner has performed duty on 26.12.2008 or not. Petitioner's version that he reported to Managing Director who has refused to take him on duty. In this regard the Managing Director adduced the evidence that the petitioner did not approach him. Whereas the evidence of AW-2 and AW-3 are concerned, it is evident that the petitioner has reported before the General Manager seeking for discharging the duty of the post of receptionist. This has not been denied by the second respondent-Management before the Labour Court or the Labour Court has turned down their evidence that the petitioner has reported before the General Manager and the General Manager has refused.

Learned counsel for the respondent Management submitted that there is no post of General Manager in the second respondent. This is an after thought or ignorance of the evidence adduced by AW-2 and AW-3 in so far as reporting of petitioner before the General Manager/Managing Director is concerned to that extent the Labour Court has erred in not considering the evidence adduced AW-2 and AW-3. Therefore, the award dated 15.03.2012 is set aside. Having regard to facts and circumstances of the case that the petitioner has served for about 2 years and 7 months according to the second respondent counsel.

Question of reinstatement may not arise. Therefore, it is sufficient to award compensation of ₹ 2,00,000/-. The second respondent is directed to pay the

above mentioned compensation to the petitioner within a period of 3 months from today. If compensation is not paid within the time limit, petitioner is entitled to interest @ 9% per annum from 01.11.2016 onwards.

July 08, 2016

Poonam (II)

**(P.B. BAJANTHRI)
JUDGE**