

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

Date of decision: 17.01.2017

CWP No.27 of 1994

Public Health Department (G.W.) Branch Chief Engineer, Patiala & another

...Petitioners

Vs.

Presiding Officer, Labour Court, Patiala & others

...Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Anil Sharma, Addl. AG, Punjab, for the petitioners.

Mr. M.K.Dogra, Advocate, for respondent No.2.

RAJIV NARAIN RAINA, J. (ORAL)

Respondent No.2 – workman [Ashok Kumar (deceased) now represented through LRs] died during the pendency of these proceedings on January 14, 2016. He had put in 2 years and 4 months of service as a Beldar on daily wages in the petitioning Department. He was appointed on May 06, 1986 as daily wage worker under a Scheme called ‘Providing Sewerage Scheme, Nangal’ and according to the workman his services were terminated on June 30, 1988.

It was the stand of the Department before the Labour Court that there was no termination involved in the reference and on the other hand the workman did not turn up for duty and absented himself from work from which absence the management seeks to draw an inference that he voluntarily abandoned his job. It was the pleaded by way of defence in the

written statement filed before the Labour Court that the unit in which the workman had been employed stood wound up.

The Labour Court has reasoned in its award that mere absence of the workman does not mean that he has abandoned his services. The proposition of law may not be incorrect, but it is well settled that plea of abandonment of service is a question of intention which is a state of mind and goes to accompanying facts and circumstances for an answer with the inference drawn from a bundle of facts. It was the workman's case that no letter was written by the Management to him to join duties after he did not report for duty from July 1, 1988 onwards. The Labour Court has made much of this to bring relief to the workman. In the case of a Beldar, the employer is not under a bounden obligation to write letters asking the workman to join duty otherwise he would face disciplinary action. There is no question of disciplinary action or charge-sheet against a Beldar on daily wages, who is not protected by the procedure laid down in the Punjab Civil Services (Punishment & Appeal) Rules, 1970.

It cannot be lost sight of that the Labour Court has recorded in the impugned award that in rebuttal to the stand of the department, the workman did not adduce any defence evidence. If a case of abandonment is established, then obviously Section 25-F of the Industrial Disputes Act, 1947 (for short 'the Act') would not come into the picture. Respondent No.2 raised a dispute by serving a demand notice on December 11, 1989 (Annex P-1), which is about 1½ years of the termination/abandonment and long enough to suggest loss of interest in work especially in a department of government which is the most sought after employment. This delay indicates that the case can be classified as one of abandonment of service, as it is not close at heels from the last day of reported absence i.e. from July 1, 1988.

The Labour Court has not accepted the case of abandonment and has, therefore, reinstated the workman on the ground that mandatory provisions of Section 25-F of the Act were not complied with. The only discernible reason in the award for discarding the plea of abandonment is that the petitioner Management failed to write a letter to the workman reminding him to rejoin his duties. This is a fallacious argument built on an incorrect reasoning and premise. As said earlier, the department was not under any bounden duty or legal obligation to send letters to the workman, who is a daily wager, to resume his duty. Such letters usually precede disciplinary action.

It is trite to say that a daily wager's services end at the end of the day when the contract ends to be revived the following day. If a letter is not sent out by a government department to a daily wager it is not a violation of the principles of natural justice. This is the fundamental flaw of reasoning in the award, which would be difficult to uphold especially when the Presiding Officer, Labour Court, Patiala itself in its award dated May 17, 1993 records a positive finding that the workman knowingly avoided to appear in the witness-box to substantiate his case and even shied away to prove he was gainfully employed elsewhere during the absence. For want of proof the gainful employment in the interregnum, the Labour Court has denied back-wages and awarded major relief of reinstatement with continuity of service. Since the reasoning assigned to disprove abandonment and bring the case within Section 25-F of the Act is not the correct judicial approach by elimination, I would, therefore, accept the plea of the Management that this is a case of abandonment of service. An employer has no role in abandonment as it is a unilateral act of the employee.

In Vijay S. Sathaye Vs. Indian Airlines Ltd, (2013) 10 SCC 253, the Supreme Court has held that in a case of abandonment, the employer need not pass any orders of termination, dismissal etc. and if they are passed that is to be read in abundant caution, though this is not a case of termination or dismissal. The bonds of service come to an end automatically in a case of abandonment without requiring any order to be passed by the employer.

For the afore-stated reasons, I find substantial merit in this petition worthy of acceptance and the same is hereby allowed. The impugned award of the Labour Court is set aside. The LR's of the deceased workman are held not entitled to any relief.

17.01.2017
Vimal

[RAJIV NARAIN RAINA]
JUDGE

<i>Whether speaking/reasoned:</i>	<i>Yes</i>
<i>Whether Reportable:</i>	<i>No</i>