

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

**CWP No.15708 of 1996 (O&M)
Date of decision: 23.03.2017**

Punjab State Electricity, Patiala & ors.

... Petitioners

Vs.

Presiding Officer, Labour Court, Patiala & anr.

... Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. R.K.Sharma, Advocate
for the petitioners.

Ms. Divya Jerath, Advocate
for respondent No.2.

RAJIV NARAIN RAINA, J. (ORAL)

In the absence of any constructive explanation to the satisfaction of this Court from 06.06.1978 to 02.01.1989 for which period the workman filed claim application under Section 33 C (2) of the Industrial Act, 1947 for payment of arrears of salary as to what the petitioner was up to in his effort to earn a livelihood an inference could reasonably be drawn by the Labour Court, Patiala to decline the application. This is a classic case of abandonment of service. Instead of addressing the core issue the Labour Court concluded on the vagrant reasoning adopted to transfer the burden of proof on the petitioning Board accusing it of not having taken any action against the respondent lineman by way of disciplinary action to bring forced relief the workman.

The fact of the matter remains that the respondent was transferred from Kotkapura to Bathinda Circle II but he refrained from

joining at the place of posting and instead made up a concocted story justifying absence from work. The respondent/plaintiff was called upon to submit a Clearance Certificate for the period he remained posted in Kotkapura, District Faridkot so that the employee transferred in his place could accept joining the place of posting without inviting adverse action against himself for any loss of material he would not be responsible for shortage in case he was handed over charge. Then for no fault he could be responsible. There was a condition in the transfer order Ex.M4 that the official/employee shall not be permitted to join the new station of posting till such time he renders accounts of the material drawn by him at his previous place of posting within the reasonable time.

The labour Court thought much in favour of the respondent finding that when the petitioner transferred the respondent from Kot Kapura, to join at Bathinda Circle, which was his new place of posting and if the workman failed to join at his transferred place it could only be done by the authority at his place of posting, is an argument lacking in substance and thus worthy of rejection.

It is indisputably part of record that the respondent filed CWP No.6990 of 1993 claiming arrears of salary but did not pray for reinstatement and the claim can be treated as barred by principles of Order 2 Rule 2 CPC. The litigation ended with loss of relief prayed.

Notice of motion was issued and on appearance reply was put in by the Board. Stand was taken therein is that respondent was no longer in their service, meaning thereby, that the petitioner had voluntarily left his job. He was issued a show cause notice, which he did not respond to and the petitioner Board assumed that he had abandoned his service. At that

time, the respondent had rendered about 14 years of service, which duration of service is not qualifying period for pension.

The Labour Court thought despite long absence that if an employee is not expected to put financial burden on the employer, it should have at least taken action against the employee as per rules and regulations of the Board or through publication of warning notice in the newspaper regarding absence as it is the bounden duty of the employee to report for duty by joining.

In case the respondent was seriously aggrieved he should not have litigated only for arrears of salary but in the writ petition he prayed for back salary for only a short period and did not stake claim salary for the intervening years. He sat back happily and let time pass, perhaps in the fond hope that one day he might secure reinstatement, back wages and continuity of service and that was a mistaken belief to expect relief after having remained out of sight for 11 long years without coming forward or disclosing his whereabouts to the Board.

I would therefore, not accept the confused reasoning adopted in the award dated 20.05.1996 to lean in favour of the respondent-workman. If the management made innocuous mistakes in proceeding against the respondent-workman for misconduct then those steps taken would not go in favour of the workman or confer any right to challenge the decision making process merely on the technicalities of the law. It has come in evidence that the respondent is married with four school going children. He admitted in his testimony that his father runs a karyana shop and he assisted him during the period of idleness. This story the labour court has believed to deny back wages from 06.06.1978 till reinstatement as though the labour court was

doing service to the cause of justice.

I have no doubt in mind that this matter is covered on point of abandonment, both on facts and law, and valid inference drawn from the circumstances that the respondent waived his right to hold the job by an inordinately long passage of time. This belief is deducible and fortified by the ruling of the Supreme Court in ***Vijay S.Sathaye vs. Indian Airlines Ltd. & ors.***, (2013) 10 SCC 253 which in a case of abandonment thrashed out in detail with support of past precedent in the Supreme Court. It is not the rigid requirement of law that the management should be put mechanically through the throes of charge-sheet and disciplinary proceedings and subject itself to protracted domestic trial to establish the guilt of the workman missing for 11 years from the scene only to fulfill an empty formality. Eleven years of absence was sufficient time to presume the workman had lost interest in his job and given up his rights to retrieve his employment. Or was terrified at the thought of facing disciplinary enquiry both civil and criminal in case of shortage discovered. In such cases, even a charge sheet is not required to be served on the employee. The rules of natural justice would not be breached since they are addressed to the employee as a safeguard against arbitrary action and if claimant surrenders such personal rights then he cannot complain of breach of the principles of natural justice which should not be stretched to breaking point to serve a useless formality. The labour court has plainly overlooked this vital issue which renders the award as suffering from perversity, irregularity and ridden with fundamental flaws of misdirected reasoning.

Therefore, I find the impugned award of the labour Court suffering from unsound reasoning, perverse appreciation of evidence and a

wholesale misreading of it, with even the thought of willful abandonment not present in mind when that was the uppermost issue to be addressed and dealt with in the award. There was serious failure in discarding irrelevant considerations which it should have. The labour Court went astray, leading to misconceived and undeserved reinstatement to service. I have every reason to believe that the award is illegal and not sustainable in the eyes of law. It is so held in favour of the Board which committed no illegality against the workman.

Accordingly, the writ petition is allowed and the impugned award is set aside and the reference dismissed.

23.03.2017
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[RAJIV NARAIN RAINA]
JUDGE

1. Whether speaking/reasoned:
2. Whether Reportable:

Yes
No