

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

376

**CWP-7912-1996 (O&M)
Date of decision: 18.09.2017**

Baldev Raj

....Petitioners

Versus

Labour Court, Ambala and others

.... Respondents

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

Present: Mr. Ajay Jain, Advocate for the petitioner.

Mr. Abhinandan Pandhi, Advocate for respondents No. 2 to 4.

P.B. BAJANTHRI, J. (ORAL)

In the instant writ petition, petitioner has assailed the award passed by the Labour court dated 29.12.1994 (Annexure P-1).

2. Petitioner has joined the respondent-organization on 29.10.1979 and worked up to 07.12.1984. Learned counsel for the petitioner submitted that petitioner's services were terminated on 07.12.1984. Thereafter, on 03.04.1989 demand notice was issued. The Labour court passed award on 29.12.1994. Thus aggrieved by the award passed by the Labour Court, he presented this petition.

3. Learned counsel for the petitioner submitted that petitioner's services have been terminated without holding any inquiry even though his appointment is not for a stipulated period. Therefore, before ordering

termination he is entitled for notice and holding of inquiry. It was further submitted that he has completed 240 days of service in a year. The same has not been taken note of by the Labour Court. Thus, labour court has erred in holding that petitioner did not pointed out with any material that he has worked for 240 days. Further labour court's finding that petitioner had abandoned the service is incorrect since no inquiry or no notice has been issued by the respondents. Consequently, labour court award is liable to be set aside. Learned counsel for the petitioner cited decision reported in **1994 (2) SLR 532** titled as ***Municipal Corporation of Delhi versus Sukhvir Singh***, point out that in the absence of any specific period of appointment the inference can be drawn to the extent that abandonment of employment certainly that could be ground for holding the inquiry and passing appropriate order.

4. Per contra, learned counsel for the respondents submitted that the petitioner has abandoned the services as is evident from the records. It has come on record that petitioner had left the job on his own with reference to statement of Baldev Lal, co-employee (Annexure P-7). It was further submitted that there is delay of nearly 5 years in raising the demand notice which is from 1984 to 1989. The same has been taken note of by the Labour Court. Consequently, refused to pass order in favour of the petitioner. Learned counsel for the respondents in support of his claim relied on decision reported in 2005 (2) ESC 243 titled as ***Chief Engineer (Construction) Versus Keshava Rao (D) by LRs*** in respect of voluntary abandonment. Further he relied on decision reported in 1998(8) SCC 733

titled as *State of Haryana Versus Om Parkash and another* relating to non-production of relevant material for the purpose of declaring that an employee has completed 240 days in a year.

5. Heard learned counsel for the parties.

6. From the last date of petitioner's employment on 07.12.1984 till 03.04.1989 the date on which demand notice was issued, petitioner has not produced any material to show to the extent that he was very much interested in continuing the services with the respondents. Therefore, one can draw inference that he had abandoned the service. Further delay of nearly 5 years from the date of termination to date of demand notice dated 03.04.1989 no explanation has been given. On the ground of delay and laches, petitioner is not entitled for any relief. Further it was contended that petitioner has rendered 5 years of service from 29.10.1979 to 07.12.1984. The respondents have placed muster roll before the labour court of the year 1984. Learned counsel for the petitioner contended that respondents failed to produce relevant material to show that petitioner worked from 1979 to 1984. On the last occasion respondents were directed to produce the same. However, due to length of time, learned counsel for the respondents submitted that no records are available in respect of the years from 1979 to 1983. The respondents did not raise issue before the labour court to the extent that petitioner has not worked for 240 days so also labour court has not given any finding. In view of these facts and circumstances, question for consideration in the present petition is whether the petitioner is entitled for reinstatement with back wages or compensation. The petitioner is not

entitled for reinstatement and continuity of service for the reasons that there is delay on his part to the extent of 5 years. Insofar as compensation is concerned, having regard to the conduct of the petitioner that he remained silent from 07.12.1984 to 03.04.1989 to the extent that there is no demand by him to the respondents that he is interested to work or is there any refusal for such demand by the respondents. Cited decisions by the counsel for the parties do not assist, since factual aspects are not indetical in all respects including issue of delay. Therefore, petitioner has not made out a case.

7. Accordingly, CWP stands dismissed.

18.09.2017

pooja saini

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

Whether speaking/reasons

Yes/No

Whether Reportable:

Yes/No