

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

CWP No.14023 of 2013 (O&M)

Date of Decision: 25.09.2017

Avtar Singh

....Petitioner

vs.

State of Punjab and others

....Respondents

CORAM: HON'BLE MR. JUSTICE TEJINDER SINGH DHINDSA

Present: Mr. D.R. Sharma, Advocate
for the petitioner.

Mr. T.P.S. Chawla, DAG, Punjab.

TEJINDER SINGH DHINDSA, J. (Oral)

Petitioner seeks a writ of mandamus for directing the respondent-authorities under the Irrigation Department, State of Punjab, to accept his joining report dated 17.07.2012 (Annexure P-12) on the post of Assistant Revenue Clerk. Further prayer is for the period from 01.02.2004 to 17.07.2012 to be treated as leave of the kind due.

Counsel representing the petitioner submits that on account of certain compelling family circumstances beyond the control of the petitioner, he had not reported for duty w.e.f. 01.02.2004. Rather a resignation letter dated 01.02.2004 (Annexure P-1) had been forwarded. As no final decision had been taken and neither was any disciplinary action initiated, petitioner was vested

with a right to join back on duty. Counsel argues that the petitioner is ready and willing to face any disciplinary action that may be contemplated by the employer on account of absence from duty from 01.02.2004 till 17.07.2012.

Per contra, learned State counsel had opposed the prayer in the petition by stating that the petitioner has virtually abandoned service. During the course of hearing, even a copy of the notice published in The Times of India dated 27.04.2005 was produced and the same was taken on record at **Mark 'A'**. Copy was also furnished to Mr. D.R. Sharma, counsel representing the petitioner. State counsel contends that in spite of the public notice having been issued way back in the year 2005, petitioner had chosen not to report back on duty and under such circumstances, the petitioner does not deserve any indulgence.

Counsel for the parties have been heard and the case paper book has been perused.

The Supreme Court of India in **Vijay S.Sathaye vs. Indian Airlines Limited and others 2014 (1) SCT 659**, had observed that absence from duty of an employee for the initial period may be a mis-conduct but when absence is over a prolonged period of time, it amounts to voluntary abandonment of service and in such eventuality, the bonds of service come to an end automatically without the requirement of any order to be passed by the employer.

In *State of Haryana vs. Om Prakash and another (1998)*

8 SCC 733, the Apex Court held that for the purpose of termination, there has to be positive action on the part of the employer while abandonment of service is a consequence of unilateral action on behalf of the employee and the employer has no role in it. It was further held that such act cannot be termed as “**retrenchment**” from service.

Adverting back to the facts of the present case, it has gone un-disputed that the petitioner while serving as Assistant Revenue Clerk under Devigarh Circle, Irrigation Branch, Patiala, was on earned leave from 28.06.2000 to 26.11.2000, on half pay leave from 27.11.2000 to 13.08.2001 and on without pay leave from 14.08.2001 to 31.01.2004. Thereafter, a notice for resignation dated 01.02.2004 had been received in the office of the respondent-authorities but the same had not been accepted. Finally, vide public notice dated 27.04.2005 in the Times of India (taken on record as **Mark 'A'**) petitioner had been called upon to present himself in the office within a period of 15 days and filling which action was contemplated under the **Punjab Civil Service Rule 8 (Punishment & Appeal rules 1970)**.

Apparently, no specific order has been passed by the employer against the petitioner. Be that as it may, petitioner has absented continuously w.e.f. 01.02.2004. He is stated to have submitted joining report on 17.07.2012. Such willful absence from

duty for a period of eight years virtually amounts to abandonment of service as per dictum laid down in **Vijay S.Sathaye's case (supra).**

In the considered view of this Court, petitioner cannot be permitted to draw any mileage from the fact that the employer till date has not initiated any disciplinary proceedings. On a specific query having been put, Mr. D.R. Sharma, learned counsel, states that the petitioner is even currently abroad but would be ready and willing to join back if the prayer in the writ petition is accepted. It clearly shows that the petitioner was looking for greener pastures and having absented over a period of eight long years, is now having a change of mind. Under such circumstances, this Court does not find any justifiable basis to warrant interference. Petitioner is held to have abandoned service by his own conduct.

For the reasons stated above, the writ petition sans merit and is dismissed.

Dismissed.

(TEJINDER SINGH DHINDSA)
JUDGE

25.09.2017

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Whether speaking/reasoned : **Yes/No**
Whether reportable : **Yes/No**