

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

Date of decision: 17.03.2017

CWP No.13927 of 2016

Deepak Kumar

...Petitioner

Vs.

Presiding Officer, Industrial Tribunal -cum-
Labour Court, Faridabad & another

...Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Nemo.

RAJIV NARAIN RAINA, J. (ORAL)

Advocates were on strike on 18.07.2016 which explains the reason for non-appearance. Despite non-appearance, the Coordinate Bench was pleased to issue notice of motion for 30.09.2016, when none appeared. As per office note, process fee has not been filed. Therefore, notice could not be issued to the respondents. On 30.09.2016, the case was adjourned by order of the Special Secretary to this day. Since no steps have been taken to deposit process fee to cause issuance of summons, the petition is liable to be dismissed for non-prosecution.

Nevertheless, I find from the Award that the petitioner was appointed as Clerk on D.C. rates by the Commanding Officer No.1, Haryana Naval Unit NCC, Tikona Park, NIT-2, Faridabad. He served from 16.02.2009 till 20.09.2013, when a regular Clerk, namely, Laxman Singh returned to join the post. The termination order is dated 20.09.2013. The petitioner was not a regular employee and the post was a public post governed by Rules of service. In a case covered by Rules and appointment to public post in Class-III service, then by necessary implication, the

provisions of Industrial Disputes Act, 1947 stand excluded. [See – **Himanshu Kumar Vidyarthi & others Vs. State of Bihar & others**, JT 1997 (4) S.C. 560. Also see the opinion of Hon’ble Justice M. Hameedullah Beg, CJI; in his separate order in **Banglore Water Supply and Sewerage Board Vs. R. Rajappa & others**, AIR 1978 SC 548 holding in paragraph 18: “Therefore, only those services which are governed by separate rules and constitutional provisions, such as Articles 310 and 311 should, strictly speaking, be excluded from the sphere of industry by necessary implication.]

In view of the above factual and legal position, I find no merit in this petition and would dismiss the same not only for non-prosecution, but on merits as well, for which this Court requires no assistance from counsel on the facts established on file and not disputed which the law can never be.

17.03.2017
Vimal

[RAJIV NARAIN RAINA]
JUDGE

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