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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CWP No. 23704 of 2015 (O/M)

Date of decision : 10.5.2017

Manjit Singh (now deceased) through his legal heir through special power of attorney Shri Jagdish Lal

..... Petitioner (s)

Versus

State of Punjab and others

..... Respondent (s)

CORAM : HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Ms. Rajni Bala, Advocate, for,
Mr. R.K. Arora, Advocate, for the petitioner.

Mr. Anshul Gupta, Assistant Advocate General, Punjab.

1. Whether the Reporters of local newspaper may be allowed to see the judgment ?
2. To be referred to the Reporter or not.
3. Whether the judgment should be reported in the digest ?

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KULDIP SINGH J. (ORAL)

The petitioner, namely, Manjit Singh (now deceased) through his legal heir through special power of attorney, joined respondent-department as a Revenue Patwari on 9.9.1989 on compassionate ground. The petitioner claims that he applied for three years leave on 5.5.2010 for self employment, regarding which no response was received. However, respondents claim that no application for leave was ever received in their office and that the petitioner became absent from duty with effect from 1.7.2010 and left for foreign country i.e. United States of America. The petitioner claims that he should be deemed to have been voluntarily retired from service with effect from 30.6.2010 in terms of his application dated 1.10.2007. During the pendency of the present writ petition, the petitioner, who was living in California State of USA, died and now his widow

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has come on record and claims that the retiral benefits be released to her.

The State has taken the stand that the petitioner abandoned the job with effect from 1.7.2010 without any leave and left for foreign country. Since the petitioner abandoned the job, therefore, he is not entitled to any benefit.

I have heard the learned counsels for both the parties and have also carefully gone through the file.

The leave application, claimed by the petitioner, has been denied by the State. It is stated that the original application placed on file is undated. Therefore, his leave application, claimed in the present writ petition, cannot be believed. The fact remains that with effect from 1.7.2010, the petitioner abandoned his job and left for USA and thereafter, did not return back.

Now, the question would arise as to whether the petitioner can be treated voluntarily retired from service with effect from 1.7.2010 ? The learned State counsel has relied upon the authority in Vijay S. Sathaya Versus Indian Airlines Ltd and others, 2013 (3) CLR 612, where in case of abandonment, the Apex Court has observed as under :-

“9. It is a settled law that an employee cannot be termed as a slave, he has a right to abandon the service any time voluntarily by submitting his resignation and alternatively, not joining the duty and remaining absent for long. Absence from duty in the beginning may be a misconduct but when absence is for a very long period, it may amount to voluntarily abandonment of service and in that eventuality, the bonds of service come to an end automatically without requiring any order to be passed by the employer.”

Relying upon the said authority, it is stated that no order is

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required to be passed terminating the services. It has been further contended that the chargesheet was issued, but it could not be served as he was reported to be living in a foreign country and in the said foreign country, the petitioner died. Since it is a case of abandonment of job, leaving the department in lurch, therefore, from the date the petitioner abandoned the job, he cannot be treated to be voluntarily retired and deemed to have abandoned the job. However, the provident fund, which is the accumulated fund of the petitioner, is required to be refunded to him. No other retiral benefits are payable to the petitioner.

In view of the matter, the present writ petition is dismissed with a direction to the State to refund the amount of provident fund of the petitioner to his widow after completing necessary formalities.

(KULDIP SINGH)
JUDGE

10.5.2017
sjks

Whether speaking / reasoned : Yes

Whether Reportable : No