

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

CWP-1167-1999

Date of Decision:13.03.2018

Virender Singh

... Petitioner

Vs.

The Presiding Officer and another

... Respondents

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

Present : Mr. Siddharth Gupta, Advocate
for the petitioner.

Mr. A.P. Bhandari, Advocate
for respondent No.2.

P.B. BAJANTHRI J. (Oral)

In the instant petition, petitioner has challenged the award passed by the Labour Court dated 10.03.1997 (Annexure P-2).

2. Petitioner is stated to have been appointed on 1.1.1993 which is disputed by the respondents that very respondent-industry was commenced in the year 1993 and petitioner was appointed on 1.11.1993. Petitioner's grievance is that his services have been terminated on 11.1.1995 for which he raised a demand notice on 14.02.1995. Termination is without issuing notice of retrenchment and no inquiry was held. Thus, Labour Court has erred in passing the award against the petitioner. Consequently, petitioner being aggrieved by the award passed by the Labour Court presented this petition.

3. Learned counsel for the petitioner submitted that petitioner has rendered service from 1.11.1993 to 11.1.1995 when he reported for duty on 11.1.1995 he was not allowed to discharge the duties of the post held by him like Helper. Consequently, he raised demand notice on 14.2.1995. It was oral termination without retrenchment notice and no inquiry was held

for remaining absent. He further relied on the decision of the Supreme Court in the case of **D.K. Yadav v. M/s J.M.A. Industries Limited**, 1993 (3) S.C.T. 537 in support of holding of enquiry where an employee remained unauthorized absent.

4. Per contra, learned counsel for respondent No.2 while resisting the petitioner's contention submitted that it is not a case of termination. It is a case of abandonment of service. There is no order of termination dated 11.1.1995 as contended by the learned counsel for the petitioner. It was submitted that petitioner was asked to report back to duty by means of communication dated 31.01.1995 (Annexure R-1) and further due to no response from the petitioner, one more communication was issued on 8.2.1995 in which respondents have also stated that if the petitioner is not interested to continue in job, he is allowed to take the financial benefits as calculated and mentioned in the letters dated 8.2.1995 (Annexure R-2). It is undisputed that petitioner has received both the letters dated 31.1.1995 and 8.2.1995. However, in the demand notice receipt of the letter as well as intention of the respondent has not been addressed. Therefore, with ulterior motive petitioner has issued a demand notice. In view of the letters dated 31.1.1995 and 8.2.1995 read with the demand notice, it is evident that petitioner had abandoned the service and it is not a case of termination. Therefore, question of holding of inquiry or retrenchment notice do not arise in the present case. Consequently, contentions of the petitioner are liable to be rejected.

5. Heard learned counsel for the parties.

6. Crux of the matter in the present petition is whether petitioner had abandoned the service or his services have been terminated?

Perusal of the communications dated 31.01.1995 and 08.02.1995 (Ex. M-5 and M-8) (Annexures R-1 and R-2) read with the demand notice, it is sufficient to come to the conclusion that petitioner had abandoned the service for the reasons that in the demand notice dated 14.02.1995, there is not even a whisper of letters dated 31.1.1995 and 8.2.1995. Even the petitioner had not made out any effort after receipt of the aforesaid communications to counter the same stating that such a communications are after thought as he has made necessary efforts to report for duty during the intervening period from 11.1.1995 to 8.2.1995. One has to draw inference that petitioner had abandoned the services. In view of these facts and circumstances, question of holding inquiry and issuance of retrenchment notice do not arise and the decision in the case of D.K. Yadav' case (supra) relied upon by the learned counsel for the petitioner is not relevant for the purpose of deciding the present petition. Hence, petitioner has not made out a case so as to interfere with the award passed by the Labour Court dated 10.03.1997 (Annexure P-2).

8. Accordingly, the present petition is dismissed.

13.03.2018
rajeev

(P.B. Bajanthri)
Judge

Whether speaking/reasoned **Yes/No**

Whether reportable **Yes/No**