

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

CWP-11838-2013 (O&M)

Date of Decision: 26.02.2018

Keshav Yadav

... Petitioner

Vs.

Presiding Officer and another

... Respondents

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

Present : Mr. Anil Shukla, Advocate
for the petitioner.

Mr. Mohak Bhadana, 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 5.12.2008 (Annexure P-3).

2. Petitioner was appointed as a Pressman in the month of March 1989. With reference to resignation letter dated 15.12.2003, respondents stated to have settled final dues of the petitioner by a sum of Rs.17,175/- in cash. Petitioner raised a dispute by issuing a demand notice on 18.12.2003. Thereafter reference was made. Thus, the Labour Court decided the reference against the petitioner. Hence, the present petition.

3. Learned counsel for the petitioner submitted that respondents have manipulated resignation letter so also full and final settlement arrived on 15.12.2003 the date on which petitioner is stated to have submitted resignation. Learned counsel for the petitioner submitted that petitioner never submitted resignation. Resignation letter is stated to have submitted by one Sh. Lalit as is evident from Annexure R-1. It was submitted that if Sh. Lalit is the signatory of resignation why respondent did not take him as a witness for the purpose of full and final settlement in lieu of resignation

letter dated 15.12.2003. It was further submitted that as and when petitioner came to know that respondents have proceeded to rely on Annexure R-1 relating to resignation and final settlement, on 16.12.2003, petitioner is stated to have given complaint to the management that respondents had forcibly taken his thumb impression etc. On 16.12.2003 copies have been marked to police as well as Labour-cum-Conciliation Labour Court Inspector. Thereafter, demand notice was issued immediately on 18.12.2003. Learned counsel for the petitioner submitted that assuming that petitioner had submitted resignation on 15.12.2003. There was no hurry in accepting the resignation and settling final settlement on the very same date. That apart they could have taken Sh. Lalit as one of the witness for the purpose of settlement. On the other hand, they have taken only one witness instead of two witnesses which is mandatory and the witness is employee of the respondents. It was also submitted that Labour Court has failed to appreciate dates and events i.e. on 15.12.2003 resignation and its acceptance and final settlement, complaint dated 16.12.2003 read with the demand notice dated 18.12.2003. It was also submitted that before the Labour Court in the written statement, respondents have not stated whether they have responded to demand notice under certified postal receipt on 18.12.2003 or not? Therefore, Labour Court has failed to appreciate these factual aspects before passing award against the petitioner.

4. Per contra, learned counsel for the respondents submitted that as per the model standing order, respondents were permitted to accept the resignation of an employee on the same day. There is no hurdle. It was further submitted that petitioner has not raised a demand notice on the respondents. They came to know through Labour Court which is a factual

aspect. It was not disputed by the petitioner. It was also submitted that if the petitioner is disputing of resignation letter, he could have brought Shri Lalit as a witness. There is no infirmity in the full and final settlement with reference to taking witness of their employee one Sh. Pralahd Singh. Learned counsel for the respondents relied on number of decisions relating to resignation to support his contention that once the resignation is given the same cannot be withdrawn. In this regard, he cited following decisions: *Shiv Kumar and others* v. *State of Haryana and others*; (1994) 4 SCC 445; *Nand keshwar Prasad* v. *M/s Indian Farmers Fertilizers Cooperative Ltd and others*; AIR 1999 SC 558 and *J.K. Cooton Spinning and Weaving Mills Company Ltd.* v. *State of U.T. and others*; (1990) 4 SCC 27.

5. Heard learned counsel for the parties.
6. Crux of the matter in the present petition is whether resignation submitted by the petitioner on 15.12.2003 and final settlement arrived at on 15.12.2003 could be arbitrary or not?

The resignation letter dated 15.12.2003 of the petitioner, from what date it should or could have been accepted, even though, it is stated that earliest in the Model Standing Order. At the same time respondent being a model employer could have asked the petitioner as to why is he submitting his resignation having regard to the length of service rendered by him in the respondent-organization from the year 1989. In a hurriedly manner, respondents have accepted the resignation of the petitioner on 15.12.2003 and so also they made full and final settlement after preparing a final receipt for which witness has been taken into consideration namely Sh. Prahlad Singh. Normally for a document two witnesses were necessary. Further when Sh. Lalit was present why he was not cited as witness to final

receipt or settlement when he has stated to have drafted resignation. Therefore, action of the respondents in accepting the resignation is highly arbitrary on the part of the respondents-management. The respondents could have gone for full and final settlement by issuing necessary demand draft or issuing cheque. Therefore, a doubt would arise in respect of settling final settlement by paying a sum of Rs.17175/- in cash on the same day i.e., 15.12.2013. Even the respondents have not pointed out in their written statement before the Labour Court stating that they did not receive demand notice. Even though petitioner has stated that demand notice was received by the management through Labour Department. The cited decisions by the respondents are not applicable having regard to the factual aspects of the matter like resignation date and its acceptance on 15.12.2003. In the present case, matter is not relating to submission of resignation and its withdrawal. Hence, cited decisions are distinguishable. Moreover as stated above that on the very said date process of resignation, its acceptance and final settlement which shows that respondent-management's intention was to get rid of the petitioner. Thus, Labour Court has not appreciated the factual aspects and erred in passing award in favour of the management.

7. Accordingly, petition stands allowed and award passed by the Labour Court dated 5.12.2008 (Annexure P-3) is set aside.

26.02.2018
rajeev

(P.B. Bajanthri)
Judge

Whether speaking/reasoned **Yes/No**

Whether reportable **Yes/No**