

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

CWP-9653-2014

Date of Decision: 16.01.2019

M/s Mementos & Souvenirs MFG Co ... Petitioner

Vs.

Presiding Officer and another ... Respondents

CORAM : HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present : Mr. Ajay Jain, Advocate
for the petitioner.

None for respondent No.2.

RAJIV NARAIN RAINA, J. (Oral)

On the last date of hearing, the matter was adjourned at the request of the learned counsel for the petitioner. Matter has been pending since 2014. Notice of motion order crystalizes the issue arising for consideration out of the Labour Court award dated 7.2.2014. The interim order dated 19.05.2014 reads thus:

“Counsel contends that the respondent-workman had himself abandoned the job in February, 2007 and thereafter, withdrawn his provident fund dues on 26.12.2008. He served demand notice on 27.12.2008 and the matter was referred to the Labour Court. The Labour Court has granted back wages from 10.04.2007 and foisted 1-1/2 years of wages upon the petitioner-management in spite of the fact that the workman himself had slept over his rights. It is further contended that the period of 240 days prior to the workman abandoning the job had not been completed in the preceding year and the Labour Court misread the evidence to record a finding that the workman had completed 240 days and was entitled to the protection under Section 25-F of the Industrial Disputes Act, 1947. Reference is made to Annexure P-5 also.

Notice of motion for 27.10.2014.

In the meantime, operation of the impugned Award shall remain stayed.”

Neither respondent No.2 nor his counsel have entered appearance on the last two dates i.e. 19.03.2018 and 13.08.2018. No one is present on behalf of respondent No.2 today also. I have no reason to adjourn this matter especially in view of the motion order dated 19.05.2014. It is unexplained why despite stay of award, the workman has not approached this Court by moving an application under Section 17-B of the Industrial Disputes Act, 1947 (for short “the Act”) nor has sought vacation of stay. Workman appears to have nothing substantial to say in defence of the award passed by the Presiding Officer, Labour Court-II, Gurgaon on 7.2.2014.

I have read the award with the assistance of Mr. Jain and perused the paper-book.

There is sufficient evidence on record to suggest that the workman was not interested to continue with his employment having abandoned the job in 2007 and collected his provident fund dues on 26.12.2008. Still further, the workman did not complete 240 days prior to the date he abandoned his job and the Labour Court has misread the evidence to return a palpably wrong finding that the workman has completed 240 days and is entitled to protection of Section 25-F of the Act. If this jurisdictional fact is not satisfied, the Labour Court loses jurisdiction to enter the reference. The Labour Court is not justified in reinstating the workman with continuity of service and full backwages from the date of termination i.e. 10.04.2007. Sudden departure from work place by a workman without intimation leaves a question mark on his willingness to work. An inference can be drawn of abandonment of job from the long

absence without sufficient explanation. To this, I can only add the observations of the Supreme Court in **Vijay K. Sathaye v. Indian Airlines Limited and others**, (2013) 10 SCC 253 that absence is a mis-conduct in the beginning, if it is for a short period, but if it is indefinite and spread over a long period of time and that too without prior notice to employer then *it* may amount to voluntary abandonment of service resulting in loss of Industrial rights. In such circumstances compliance of the provisions of Section 25-F of the Act is rendered meaningless.

In view of what has been said hereinabove, this petition is allowed and the impugned award dated 7.2.2014 (Annexure P-4) is set aside.

16.01.2019
rajeev

(RAJIV NARAIN RAINA)
JUDGE

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No