

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

LPA No. 172 of 2015

Reserved on : 17.07.2019

Date of decision : 01.08.2019

M/s KRBL Limited, Bhasaur, Dhuri

.... Appellant

Versus

Presiding Officer, Industrial Tribunal, Patiala and others

..... Respondents

CORAM :- HON'BLE MR. JUSTICE RAJIV SHARMA

HON'BLE MR. JUSTICE HARINDER SINGH SIDHU

Present: Mr. P.K. Mutneja, Advocate,
for the appellant.

Mr. Vikas Arora, Advocate,
for respondent No.2.

* * *

RAJIV SHARMA, J.

1. This Letters Patent Appeal is instituted against judgment dated 28.11.2014, rendered by learned Single Judge in CWP No. 24299 of 2014.

2. The brief facts necessary for adjudication of this appeal are that respondent No.2 – workman was appointed as Personal Assistant on 16.07.2005. His services were terminated on 07.04.2007 without any show cause notice. The respondent – workman served demand notice on 24.02.2009. On failure of conciliation proceedings, the dispute was referred to Labour Court, Patiala (now Industrial Tribunal, Patiala) by Assistant

Labour Commissioner, Sangrur. The reference reads as under :-

“Whether termination of the services of workman Sat Narain Sharma by the respondent is illegal and un-justified ? If yes, what relief the workman is entitled to ?”

3. The workman filed the claim petition. Reply was filed by the Management. Following issues were framed by the Labour Court :-

- (1) Whether the services of workman were terminated illegally by the respondents ? OPW
- (2) If the issue No.1 is proved, whether the workman is entitled to consequential relief as claimed in the claim statement ? OPW
- (3) Whether the reference is not maintainable as the workman has himself resigned on 20.08.2007 ? OPM
- (4) Whether the workman has got no locus standi to seek relief under the Industrial Disputes Act ? OPM
- (5) Relief

4. The parties adduced their evidence. Learned Labour Court answered the reference in favour of the workman. He was held entitled to reinstatement with continuity of service and 50% back wages. The Labour Court directed the Management to reinstate the workman within 30 days of the publication of the award and release the awarded amount.

5. The Management feeling aggrieved by the award dated 10.09.2014 rendered in Reference No. 242/2009 filed Civil Writ Petition No. 24299 of 2014.

6. The learned Single Judge dismissed the writ petition vide judgment dated 28.11.2014, while upholding the award dated 10.09.2014. Hence, this Letters Patent Appeal.

7. We have heard learned counsel appearing on behalf of the parties.

8. The workman led his evidence before the Labour Court by way of his affidavit Ex.W1. According to the averments made in the affidavit, he was appointed as Personal Assistant with effect from 16.07.2005 and worked as such till 07.04.2007. He was drawing salary at the rate of ₹ 9,900/- per month. His services were illegally terminated on 07.04.2007. No notice was served upon him. He was orally told not to attend his duties with effect from 07.04.2007. He never signed the alleged resignation letter dated 20.08.2007.

9. Sagar Sidhu had appeared as MW.1. He led his evidence by way of filing his affidavit Ex.M1. According to him, the workman left job at his own volition. He had not worked for 240 days during the preceding 12 months.

10. The workman had submitted application dated 26.08.2011 to summon the record from the Management. The entire record was not produced. The case of the Management is that the workman had tendered his resignation on 20.08.2007. The resignation was accepted on 26.08.2007. Copy of the alleged resignation letter is Annexure P-3 on the paper book. MW.1 Sagar Sidhu in his cross-examination admitted that as per the record, the workman had worked continuously from 16.07.2005 to 09.04.2007. The workman had rendered continuous service of 240 days before termination of his services. Thus, Section 25-F of the Industrial Disputes Act, 1947 was attracted in this case.

11. The workman had appeared before the Labour Court and categorically deposed that he had never tendered resignation. As far as the plea of abandonment is concerned, it is a question of fact and the same was

required to be proved by the Management. Their Lordships of the Supreme Court in **G.T. Lad and others Vs. Chemicals and Fibres India Ltd., AIR 1979 Supreme Court 582,** have held that whether there has been a voluntary abandonment of service or not is a question of fact which has to be determined in the light of the surrounding circumstances of each case. Their Lordships have held as under :-

“6. From the connotations reproduced above it clearly follows that to constitute abandonment, there must be total or complete giving up of duties so as to indicate an intention not to resume the same. In **Buckingham Co. v. Venkatiah, AIR 1984 SC 1272**, it was observed by this Court that under common law an inference that an employee has abandoned or relinquished service is not easily drawn unless from the length of absence and from other surrounding circumstances an inference to that effect can be legitimately drawn and it can be assumed that the employee intended to abandon service. Abandonment or relinquishment of service is always a question of intention, and normally, such an intention cannot be attributed to an employee without adequate evidence in that behalf. Thus, whether there has been a voluntary abandonment of service or not is a question of fact which has to be determined in the light of the surrounding circumstances of each case.

Re : Question No. 2: This takes us to the consideration of the second question, namely, whether in the circumstances of the instant case, it could be said that the appellants had voluntarily

abandoned the service of the Company. It may be recalled that the appellants had along with 229 other workmen gone on indefinite and peaceful strike (which ended on October 22, 1972) in response to the strike notice given by the union to the Company to press its demand for reinstatement of its three dismissed leaders and had not only by their letters dated September 21, 1972 and September 26, 1972 unequivocally intimated to the Company that they did not intend to abandon the service but had also returned the cheques sent to them by the Company on account of their leave salary, gratuity etc. The appellants' stand that the letter of the Company dated September 7, 1972 was received by them on September 20, 1972 and not earlier was never denied or refuted by the Company in the correspondence that passed between the parties. Thus, there was nothing in the surrounding circumstances or the conduct of the appellants indicating or suggesting an intention on their part to abandon service which in view of the ratio of Gopal Chandra Misra's case (AIR 1978 SC 548), can be legitimately said to mean to detach, unfasten, undo or untie the binding knot or link which holds one to the office and the obligations and privileges that go with it. Their absense from duty was purely temporary and could by no stretch of imagination be construed as voluntary abandonment by them of the Company's service. In **Express Newspapers (P) Limited v. Michael Mark**, AIR 1963 SC 1141, which is on all fours with the present case, it was held that if the

employees absent themselves from the work because of strike in enforcement of their demands, there can be no question of abandonment of employment by them. In the present case also the appellants' absence from duty was because of their peaceful strike to enforce their demand. Accordingly, we are of the view that there was no abandonment of service on the part of the appellants.

Re : Question No. 3: Let us now advert to the last but the most crucial question, namely, whether the action of the Company in removing the names of the appellants from its rolls during the pendency of the proceedings before the Labour Court in respect of the industrial dispute on the presumption that they had abandoned Company's service constituted an alteration in the conditions of service applicable to them immediately before the commencement of the said proceedings which prejudicially affected them. Although the learned Counsel appearing on behalf of the respondent has taken us through the certified standing orders as applicable to the appellants, he has not been able to point out anything therein to indicate that the company could terminate the services of the appellants on the ground of abandonment of service because of their going on strike in enforcement of their demands. Thus, their being no provision in the certified standing orders by virtue of which the Company would have terminated the services of the appellants in the aforesaid circumstances, the impugned action on the part of the Company

clearly amounted to a change in the condition of service of the appellants during the admitted pendency of the industrial dispute before the Labour Court which adversely affected them and could not be countenanced. We are fortified in this view by the aforesaid decision of this Court in **Express Newspapers (P) Limited v. Michael Mark** where repelling an identical contention to the effect that the failure of the workmen to return to work by a notified date clearly implied abandonment of their employment, it was held that the management cannot by imposing a new term of employment unilaterally convert the absence of work into abandonment of employment. It was further held in that decision that if the strike was in fact illegal, the management could take disciplinary action against the employees under the standing orders and dismiss them. If that were done, the strikers would not have been entitled to any compensation under standing orders but that was not what the appellants purported to do and the respondents were, therefore, entitled to relief.”

12. It is also not understandable why the workman would tender his resignation after his retention. The resignation letter is false and fabricated. The Management has indulged in unfair labour practice. The case of the Management is that the workman had abandoned his job on 07.04.2007. The Management at no point of time had served notice to the workman to resume his duties. The Management has not produced any record that the workman had worked between 07.04.2007 to 20.08.2007, i.e. the date of the alleged resignation letter submitted by the workman. The learned Single

Judge has rightly come to the conclusion that no plausible explanation was given why the workman was not marked absent with alphabet 'A' after 08.04.2007. The case of the Management before the learned Single Judge was also that the workman submitted his resignation due to his mis-conduct. However, no evidence/ record was produced that any domestic enquiry was initiated against him.

13. There is no merit in the instant Letters Patent Appeal. Accordingly, same is dismissed.

(RAJIV SHARMA)
JUDGE

August 01, 2019
ndj

(HARINDER SINGH SIDHU)
JUDGE

Whether speaking/reasoned	Yes
Whether Reportable	Yes