

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

LPA No. 659 of 2016 (O&M)

Date of decision : 22.7.2019

Chief Conservator of Forest, Wild Life and others Appellants
versus
Ram Parkash (deceased) through LRs ... Respondent

**Coram: Hon'ble Mr. Justice Rajiv Sharma
Hon'ble Mr. Justice Harinder Singh Sidhu**

Present Mr. Aayush Sarna, Assistant Advocate General, Punjab.
Mr. Ashish Grover, Advocate,
for the LRs of deceased respondent.

Rajiv Sharma, J.

1. The present Letters Patent Appeal is instituted by the appellant-State against the judgment rendered by learned Single Judge in Civil Writ Petition No. 1664 of 2013 Ram Parkash vs Presiding Officer and others, decided on 14.9.2015.

2. The brief facts necessary for the adjudication of the case are that one Shri Ram Parkash had raised an industrial dispute. The matter was referred to the Labour Court by way of reference. The reference reads as under:-

“Whether termination of service of workman Ram Parkash is justified and in order ? If not so, to what relief he is entitled?”

3. Respondent-workman filed the claim petition. According to him, he was employed as Chowkidar with Inspector Wild Life, Bir Talab, Bathinda, on permanent job in the year 1988 @ ₹ 2,000/- per month. He was retrenched from service with effect from 5.2.2001. The retrenchment was

illegal and in violation of the provisions of the Industrial Disputes Act, 1947 (hereinafter to be referred as 'the Act'). The claim was resisted by the appellant-State by filing written statement. Preliminary objections were raised. According to the appellant-State, the workman was working with the management since September, 1988, but he was working as *Coolie* on muster roll basis and was paid as per DC rates. The Department of Wildlife Wing and Wildlife Department were merged in the Forest Department vide letter dated 20.4.2000. The workman was never retrenched. He had abandoned the job. He was asked to join the duty vide letter dated 6.2.2002, however, he did not resume his duty. The following issues were framed by the learned Labour Court in Reference No. 211/2002:-

1. Whether service of workman stand validly terminated by the management ? If not so, to what relief is he entitled ? (OPR)
2. If issue no.1 is not proved, whether workman has abandoned his services voluntarily ? (OPR)
3. Whether reference is not maintainable ? (OPR)
4. Whether workman has concealed true facts from (sic) respondents has concealed true facts.
5. Whether respondents do not fall under the definition of 'industry'? (OPR)
6. Whether reference is bad for non-joinder of necessary party ? (OPR)
7. Whether workman has no locus standi & cause of action to file this reference ? (OPR)
8. Relief.

4. The appellant-State examined Tejinder Singh, Forest Range Officer, Bathinda, as MW-1. He filed his affidavit, Ex.M-1. He also placed on record various documents, Ex.M-2 and Ex.M-3. The workman appeared

as WW-1. He filed his affidavit, Ex.WW-1/A. Shri Jarnail Singh, Forest Guard, was also examined as WW-2.

5. The workman had started working with the appellant-State in September, 1988. He was retrenched on 5.2.2001. The stand taken by the management was that the respondent-workman has abandoned his job and he was asked to join his duty vide letter dated 6.2.2002. The main reliance has been placed by the appellant-State on letter No. 3/9/2000 F.11 dated 19.2.2001. The respondent-workman was transferred to Dayalpura station but he did not join his duty.

6. The learned Labour Court answered the reference in favour of the appellant-State vide award dated 9.5.2012. The respondent-workman feeling aggrieved by the award dated 9.5.2012 filed CWP No. 1664 of 2013. The learned Single Judge allowed the writ petition vide judgment dated 14.9.2015 and ordered the reinstatement of the respondent-workman with back wages and with continuity of service. Hence, the present Letters Patent Appeal is instituted against the judgment dated 14.9.2015. Respondent-workman Ram Parkash died during the pendency of the present appeal and his legal representatives were brought on record.

7. The learned Single Judge has considered the statement made by MW-1 Shri Tejinder Singh. He has categorically deposed that no enquiry or notice was issued to the respondent-workman. The workman was working on D. C. rates. The workman had worked continuously. He did not know that how letter, Ex.M-3, was sent to the workman. He had no knowledge whether the same was delivered to the workman or not. He did not know whether any information was given to any senior officer that the workman

did not join his duties. The appellant-State was ready to employ the workman but under the NREGA Scheme.

8. It was not proved by the appellant-State that the letter Ex.M-3 dated 6.2.2002 was sent to the workman. The workman had already completed 240 days preceding to his retrenchment. His retrenchment is in violation of the provisions of Section 25-F of the Act.

9. Their Lordships of Hon'ble the Supreme Court in G. T. Lad and others vs Chemicals & Fibres Of India Limited AIR 1979 SC 582 have held that the abandonment of service is a question of fact and is required to be proved by the employer. 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* (1964) 4 SCR 265, 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 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 re- instatement 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 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 absence 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*, (1963) 3 SCR 405 which is on all force 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 conditions 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.”

10. The learned Single Judge has rightly come to the conclusion that it was not a case of abandonment. No cogent evidence has been led by the appellant-State that the letter dated 6.2.2002 was served upon the workman.

11. There is no illegality in the judgment passed by the learned Single Judge. Accordingly, the appeal is dismissed.

(Rajiv Sharma)
Judge

22.7.2019
vs

(Harinder Singh Sidhu)
Judge

Whether speaking/reasoned

Yes/No

Whether reportable

Yes/No