

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

CWP No.27498 of 2019

Date of decision: 25.09.2019

Lallan Rai

...Petitioner

Versus

The Presiding Officer, Industrial Tribunal-cum-Labour Court-I, Gurgaon
and another

... Respondents

Before: Hon'ble Mr. Justice B.S. Walia.

Present: Mr. Narender Kumar Vashist, Advocate for the petitioner.

B.S. Walia, J.,

1. Prayer in the writ petition is for the issuance of a writ of Certiorari for quashing award Annexure P/2 dated 14.03.2017, passed by the learned Presiding Officer, Industrial Tribunal-cum-Labour Court-I, Gurugram (hereinafter referred to as 'the Tribunal') and further for the issuance of a writ of Mandamus for directing respondent No.2 to reinstate the petitioner with full back wages w.e.f. 09.05.2012.

2. Brief facts of the case leading to the filing of the instant writ petition are that the petitioner claimed that he was working with the respondent-company since 16.03.1992, on the post of Operator but his services were illegally terminated on 28.08.2008. Demand notice was served by him on the respondent-company and eventually on the basis of proceedings conducted before the Tribunal, award Annexure P/1 dated 08.12.2011, was passed reinstating the petitioner, however, he was not paid back wages. However, later on, services of the petitioner were again terminated by respondent No.2 w.e.f. 12.05.2012 without any reason.

3. In reply, the management took up the plea that the workman joined only on 01.12.1994, on the post of helper and the respondent could not pursue its case before the Tribunal, resultantly, ex-parte award was passed against the respondent and respondent on implementing the above said award, paid back wages and the petitioner joined duty on 15.03.2012 and worked till 08.05.2012. Thereafter, workman started absenting from duty on his own w.e.f. 09.05.2012 without any intimation to the respondent-company and a number of letters were issued to the petitioner workman requiring him to join duty but the petitioner/workman did not rejoin duty, therefore, since the petitioner/workman had himself abandoned service by remaining absent from duty on his own, he was not entitled to any relief.

4. On the pleadings of the parties, following issues were framed by the Tribunal:-

1. Whether the services of workman were illegally terminated ?

If so, to what relief, he is entitled to ? OPW

2. Whether the reference is not maintainable in the present form ? OPM

3. Relief.

5. The Tribunal by taking into account all aspects of the matter, held that admittedly the petitioner was working with the respondent-company. The management had claimed that the workman had himself absented from duty from 09.05.2012 onwards, whereupon notices recording workman's absence from duty Ex.RW2/8, Ex.RW2/10 and Ex.RW/12 were sent to the workman at his correct address through registered post, vide postal receipts Ex.RW2/9, Ex.RW2/11 and Ex.RW2/13. On the aforesaid basis, the Tribunal held that notices directing the workman to rejoin duty

must have been received by him having been sent at his correct address. However, the workman failed to resume duty despite being served three registered notices. The Tribunal further took into account that it was very important to note that witness Dinesh Kumar (RW1), an official of the office Assistant Labour Commissioner, Rewari had produced on record (Ex.M-1 and M-2) relating to the conciliation proceedings recorded between the parties and the same clearly revealed that the respondent/management had offered to take the workman back on duty but the workman refused to resume duty by pleading that he feared that he would be physically attacked at the place of his duty. The Tribunal held that the aforementioned stand of the workman before the statutory authorities made it amply clear that the workman had no intention to rejoin duty with the respondent-management besides the workman had not led any evidence in defence that he was stopped by the respondent from performing his duties. He had also not produced any evidence to prove that his services had been terminated by the respondents and despite serving of three registered notices requiring the petitioner to join back duty as also the stand of the petitioner before the Conciliation Authorities refusing to join duty, clearly reveals that it was the petitioner who himself abandoned service and in the circumstances cannot be heard to complain that his services had been terminated by the respondent. Ultimately, issue No.1 and 2 were answered against the workman and in favour of the management and reference was rejected.

6. Reiterating the submissions made before the Tribunal, learned counsel for the petitioner prays for setting aside of the impugned award as also for reinstatement of the petitioner with full back wages. On query, learned counsel failed to point out the reasons for delay in challenging award

Annexure P/2 dated 14.03.2017, vide writ petition dated 12.09.2019, except of taking up the plea that the Manager of respondent No.2/company met the petitioner in Court premises at Gurgaon and assured him that he would try to effect a compromise in the matter with the Owner/Managing Director of the Company for reinstatement of the petitioner. However, this stand of the petitioner is unbelievable and unworthy of acceptance because on the one hand, before the Assistant Commissioner-cum-Conciliation Authorities the respondent-management offered to take back the workman on duty but the workman specifically refused to join duty by pleading that he feared physical harm at the hands of the management while on the other hand, it is very strange that in the given set of circumstances after the rejection of the reference, the petitioner would try to compromise the matter with the management and go to them repeatedly thereby resulting in delay in challenging the award. Stand of the petitioner to explain the delay is nothing except a concoction of facts to cover up delay and in the light of the position as noted above, not believable. Thus, apart from the fact that it is a case of abandonment of service, the fact also remains that the petitioner did not challenge award dated 14.03.2017 for a period of more than 2 years and 6 months. The petitioner having failed to join duty despite having been issued three registered notices at his correct address as also an offer having been made by the respondent/management before the Assistant Commissioner-cum-Conciliation Officer, to take back the petitioner on duty and the petitioner having refused to join duty, it is clear that the petitioner had no intention to join service and the same amounts to abandonment of service. Therefore, there was no requirement to conduct a regular domestic inquiry and accordingly the aforementioned plea is rejected. Reference in this

context can be made to the decision of a Coordinate Bench in **Narpal Singh vs. Presiding Officer, Industrial Tribunal-cum-Labour Court, Gurgaon and another 2015 (3) SCT 831**. Relevant extract of the aforementioned decision is reproduced as under:-

“5. The Labour Court has recorded a finding of fact as regards the workman having left service on his own accord. In this regard, evidence in the nature of Exhibit MW1/1 and Exhibit MW1/4 has been adverted to in the impugned award and which were two separate communications sent by registered post to the workman calling upon him to justify the period of absence and to report back for duty. The address in these notices was given as 'Narpal son of Prithvi Ram, Nurgarh, Gurgaon'. The workman, while appearing as PW1, had admitted in the cross-examination that such address was correct. A report Exhibit MW1/2 was also adduced in evidence as regards refusal. It is in the light of due appreciation of evidence that the Labour Court has concluded that the workman had abandoned service and it was not a case of termination. This Court, in exercise of its supervisory jurisdiction, would not go into the question of adequacy and sufficiency of evidence. The finding arrived at by the Labour Court does not suffer from any infirmity.

6. There would be no dispute with the proposition that the Management/employer before taking a decision to strike off the name of an employee from its rolls on account of absence from duty under the Standing Orders would have to comply with the

principles of natural justice. In the facts of the present case, the Management-Company had issued two separate communications sent through registered notice. There was a report adduced in evidence to reflect refusal of service in regard thereto. No evidence had been led on behalf of the petitioner-workman to demonstrate any explanation having been offered with regard to absence from duty or an attempt having been made to join back on duty. Under such circumstances, the contention raised on behalf of the petitioner that it would be imperative to conduct a regular domestic enquiry on the charge of absence from duty is without merit and is rejected. The principles of natural justice would be taken as complied with on account of the employer having called upon and granted opportunity to the workman to justify absence as also to report back on duty.”

7. In the light of the position as noted above, the petitioner has failed to prove it to be a case of termination. Learned Counsel for the petitioner-workman has not referred to any evidence led by the workman to show any explanation having been offered with regard to absence from duty or an attempt having been made to join back on duty. In such circumstances, the submission on behalf of the petitioner that no regular domestic enquiry was conducted on the charge of absence from duty is without merit and is rejected. The principles of natural justice would be taken as complied with on account of the employer having called upon and granted opportunity to the workman to give explanation as well as to rejoin duty. Instead the facts of the case go to show that it was a case of abandonment of service and

accordingly findings recorded by the Tribunal rejecting the reference do not warrant any interference. The writ petition is bereft of merit and is accordingly dismissed in limine. However, there shall be no order as to costs.

(B.S. Walia)
Judge

25.09.2019
rajesh.k.khurana

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| 1. Whether speaking/reasoned: | Yes/No. |
| 2. Whether reportable : | Yes/No. |