

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

LPA No.718 of 2018
Date of decision : 27.09.2022

CHATTAR LAL

..... APPELLANT

VS

PRESIDING OFFICER, LABOUR COURT II,
FARIDABAD AND ANR.

..... RESPONDENTS

CORAM : HON'BLE MR.JUSTICE AUGUSTINE GEORGE MASIH
HON'BLE MR.JUSTICE ALOK JAIN

Present :- Mr. Deepak Sonak, Advocate for the appellant.

Mr. Deepak Bhardwaj, Deputy Advocate General, Haryana.

Mr. S.S. Saini, Advocate for respondent No.2

ALOK JAIN, J.

The present appeal has been filed *inter alia* praying for setting aside the order dated 28.02.2018 passed by the learned Single Judge, whereby the award dated 04.10.2016 (Annexure P-2) passed by Industrial Tribunal-cum-Labour Court, Faridabad (hereinafter referred to as “Tribunal”), had answered the reference against the workman and the said award has been upheld by the learned Single Judge.

The short controversy in the present appeal is “Whether the services of the workman were terminated or the workman himself abandoned his employment?”

1. The brief facts of the case are that the appellant claims to have been appointed as a Chowkidar (watchman) w.e.f. February, 2000 by respondent No.2 on a monthly salary of ₹1800/- per month and his

services were terminated w.e.f. 18.06.2005. Subsequent thereto, the appellant served the demand notice on 11.07.2005.

The parties were initially referred to the conciliation proceedings, wherein respondent No.2 categorically stated that the services were never terminated and the appellant had himself abandoned the job and further reiterated that he may resume the duty.

The appellant without taking the said offer went ahead with the demand notice, which led to the reference to the Tribunal.

The Tribunal, vide award dated 04.10.2016 (Annexure P-2), after recording detailed reasons based on the evidence led by the parties, gave a categoric finding that even during the proceedings before the Tribunal, respondent no. 2 offered the workmen to resume the duty but the appellant again made a statement to the effect that he was not ready to join the duty with the respondent. The appellant has not come forward with any fair candid and plausible explanation for he was not accepting the offer of coming back to work. The said offer was being repeatedly made right from the very inception of the dispute even before the Conciliation Officer but the appellant has been categorically refusing to join back the duties, in such a situation the Tribunal passed the reference against the workman.

The learned Single Judge reiterated the findings of the Tribunal and recorded that the respondent-Management has always shown interest to take the appellant back on duty right from the inception of the proceedings i.e. to say, before the conciliation proceedings as well as before the Tribunal but the workman has repeatedly refused to join back. The learned Single Judge relying upon the categoric findings by the Tribunal has dismissed the petition.

It has been argued by the learned counsel for the appellant that the services of the appellant/workman were terminated and he had always been ready and willing to join back the services, but respondent no. 2 has created a sham that he has refused to join back. Further, learned counsel for the appellant has relied upon the judgment passed by this Hon'ble Court in the case of "*HUDA Vs. Tarsem Singh, 2001 (3) SCT, 667*" to contend that when the demand notice is served in a short span after termination, the plea of abandonment is not available to the management. The said preposition of law does not come to the rescue of the appellant for the simple reason that in the present case, it is established by cogent evidence that respondent no. 2 has always been, repeatedly requesting the appellant, to join back the duty and despite a specific query put by the Tribunal also, the appellant-workman has refused to join back, which clearly establishes that he had knowingly and willingly abandoned the job.

This Court vide order dated 24.08.2022 directed the counsel for respondent No.2 to seek instructions as to whether the respondent-Management is ready to take the appellant back in service but without back wages. However, learned counsel for respondent No.2, on instructions has fairly conceded that the appellant has crossed the age bar and is more than 70 years old now hence, cannot be taken back in service and the counsel for the appellant has also stated that the appellant is not ready to join back the services without back wages.

Having considered the matter in its entirety, it is admitted position that the respondent-Management had clearly demonstrated its intention to take the workman on duty which fact is also admitted vide letter dated 29.08.2008 (Annexure P-4). Learned counsel for the appellant has not been able to demonstrate by any cogent evidence that the findings recorded

by the Tribunal are wrong and incorrect and contrary to the evidence on record. Once it is established from the record and it was found that the workman himself was not interested in continuing the services, coupled with the fact that despite repeated offers being made by the management right from the stage of conciliation requesting the workman to join back the duty, it clearly shows that the workman had abandoned the job.

That being the position, the appeal being devoid of any merit deserves to be dismissed.

Ordered accordingly.

(AUGUSTINE GEORGE MASIH)
JUDGE

(ALOK JAIN)
JUDGE

27.09.2022
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Whether speaking/reasoned Yes/No

Whether Reportable Yes/No