



203                      IN THE HIGH COURT OF PUNJAB AND HARYANA  
AT CHANDIGARH

CWP-408-1999 (O&M)

Date of Decision : 18-07-2025

A.K.SHARMA

.....Petitioner

VERSUS

INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT AND OR.

.....Respondent(s)

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. Rahul Rathore, Advocate  
for the petitioner. (*joined through V.C.*).

Mr. Ashish Kapoor, Advocate with  
Ms. Himani Sharma, Advocate  
For respondent No.2.

**HARSIMRAN SINGH SETHI, J. (Oral)**

1. In the present petition, the challenge is to the award passed by the Labour Court dated 23.05.1997 published on 08.09.1997, copy of which has been appended as Annexure P-11 on the ground that, the claim of the petitioner that his services have wrongly been terminated, has not been appreciated correctly by the Labour Court so as to decline the relief.

2. Learned counsel for the petitioner argues that the petitioner was working with the respondent No.2 and once, he fell ill and could not report for the duty starting from September, 1985 for a period of 3 months, the petitioner could not perform the duties he was assigned and ultimately, the petitioner became fit to discharge the duties in December, 1985 but at that time he was not allowed to rejoin in the service hence, the action of the respondents of not allowing the petitioner to join the service after period of absence amounts to termination of service, which has not been appreciated

especially when the allegation of unauthorised absence has not been proved by the respondent No.2 holding a domestic enquiry.

3. Learned counsel for the petitioner places reliance upon the judgment of the Hon'ble Supreme Court of India in Civil Appeal No.166 (NL) of 1983 titled "***D.K Yadav Vs. M/s J.M.A Industries Ltd.***" 1993(3) SCT 537 decided on 07.05.1993, to contend that the holding of proper enquiry is must before terminating the services of an employee.

4. Learned counsel for the respondent No.2 submits that it is a conceded fact that the petitioner stopped performing his duties starting from 12.09.1985 and did not perform the duties continuously thereafter and never joined back.

5. Learned counsel for the respondent No.2 submits that the finding has been recorded by the Labour Court that at no given point of time, even before raising the reference, the petitioner did not make any effort to join the duties hence, it is a case of abandonment of job rather than termination of the services, on account of prolonged unauthorised absence from performing assigned duties hence, the findings recorded by the Labour Court declining the grant of relief to the petitioner is perfectly valid and legal and the same may kindly be upheld.

6. I have heard the learned counsel for the parties and have gone through the records of the present case with their able assistance.

7. The fact that the petitioner stopped performing the duties starting from 12.09.1985 has gone un rebutted. Nothing has come on record to show that the petitioner came to join the duties even in December, 1985. Once, the said finding has been given, it can be safely held that in the

present case, there was an abandonment of job at the hands of the petitioner rather than being treated as absent from duty.

8. As per the settled principle of law settled by the Hon'ble Supreme Court of India in ***SLP(C) No.24220-24221-2007 titled as Vijay S. Sathaye Vs. Indian Airlines Ltd. and anr. And ors decided on 06.09.2013,*** wherein it has been held that where the non-performance of a duty is for a shorter period, the same is to be treated as on duty but where an employee has not performed the duties for months together, the same has to be treated as abandonment of job and where the job has been abandonment, no order is required to be passed even terminating the services. The relevant paragraph of the judgment is as under:-

*"9.It is a settled law that an employee cannot be termed as a slave, he has a right to abandon the service any time voluntarily by submitting his resignation and alternatively, not joining the duty and remaining absent for long. Absence from duty in the beginning may be a misconduct but when absence is for a very long period, it may amount to voluntarily abandonment of service and in that eventuality, the bonds of service come to an end automatically without requiring any order to be passed by the employe<sup>10</sup>. In M/s. Jeewanlal (1929) Ltd., Calcutta v. Its Workmen, AIR 1961 SC 1567, this Court held as under: ".....there would be the class of cases where long unauthorised absence may reasonably give rise to an inference that such service is intended to be abandoned by the employee." 6 Page 7 (See also: Shahoodul Haque v. The Registrar. Co-operative Societies, Bihar & Anr., AIR 1974 SC 1896). 11. For the purpose of termination, there has to be positive action on the part of the employer while abandonment of service is a consequence of unilateral action on behalf of the employee and the employer has no role in it. Such an act cannot be termed as 'retrenchment from service. (See: State of Haryana v. Om Prakash & Anr., (1998) 8 SCC 733). 12. In Buckingham and Carnatic Co. Ltd. v. Venkatiah & Anr., AIR 1964 SC 1272 while dealing with a similar case, this Court observed : "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." A similar view has been reiterated in G.T. Lad & Ors. v. Chemicals and Fibres India Ltd., AIR 1979 SC 582. 7 Page 8. 13. In Syndicate Bank v. General Secretary, Syndicate Bank Staff Association & Anr., AIR 2000 SC 2198; and Aligarh Muslim University & Ors. v. Mansoor Ali Khan, AIR 2000 SC 2783, this Court ruled that if a person is absent beyond*

*the prescribed period for which leave of any kind can be granted, he should be treated to have resigned and ceases to be in service. In such a case, there is no need to hold an enquiry or to give any notice as it would amount to useless formalities. A similar view has been reiterated in V.C. Banaras Hindu University & Ors. v. Shrikant, AIR 2006 SC 2304; Chief Engineer (Construction) v. Keshava Rao (dead) by Lrs., (2005) 11 SCC 229; and Regional Manager, Bank of Baroda v. Anita Nandrajog, (2009) 9 SCC 462."*

9. A similar view was also taken by this Court while passing order in RSA-1274-2013 titled as, State Bank of Patiala and others vs. Bhagwan Dass Ahuja, decided on 08.05.2023 wherein also, this Court held that when there is a abandoned job by an employee, no disciplinary proceedings are required to be conducted before terminating the services of such an employee. The said judgment has already been upheld by Hon'ble Supreme Court of India in SLP (C)19314-19315-2023, decided on 06.09.2023.

10. In the present case, as the petitioner did not perform the duties with the respondents starting from 12.09.1985 onwards, the same has to be treated as abandonment of job and no order of termination is required to be passed as per the judgment of the Hon'ble Supreme Court of India in **Vijay S. Sathaye's case (supra)**.

11. Further, the judgment in **D.K. Yadav's case (supra)**, where the services of an employee were terminated on an allegation of absence without hold the enquiry whereas, in the present case, it is case of abandonment of job, in which case, the enquiry is not needed hence, the facts in **D.K. Yadav's case (supra)** does not exist in the present case so as to make applicable the said judgment.

12. Keeping in view the totality of the circumstances as, the petitioner has failed to prove that the findings recorded by the Labour Court dated 08.09.1997 (Annexure P-11) are perverse to the evidences or facts on

record or the settled principle of law, no ground is made out for any interference by this Court in the facts and circumstances of the present case.

13. Present petition stands dismissed.

14. Pending application, if any, also stands disposed of.

18-07-2025

Sapna Goyal

**(HARSIMRAN SINGH SETHI)**

**JUDGE**

NOTE: Whether speaking: YES  
Whether reportable: NO