

Date of Decision : 01-04-2025

MUNISH KUMARPetitioner

VERSUS

.....Respondent(s)

NITESH RAIPetitioner

VERSUS

.....Respondent(s)

AMIT KUMARPetitioner

VERSUS

.....Respondent(s)

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Mr. Vikas Chatrath, Advocate and
Ms. Priya Kaushik, Advocate
for respondent Nos. 2 and 3.

HARSIMRAN SINGH SETHI, J. (Oral)

1. Present bunch of three writ petitions involve common question of law in the context of common set of facts and thus they are being decided

by a common order. All three petitions herein are challenging the same award dated 06.04.2016 passed by the Labour Court.

2. In the present bunch of petitions, the grievance of the petitioner(s) is that without even discussing upon the issue that without there being any evidence to show that the petitioner(s) had abandoned their job, a finding has been recorded by the Tribunal while passing the impugned award dated 06.04.2016 (Annexure P-3) in CWP No.15036 of 2016 merely on the submission by the respondent-Management.

3. Learned counsel for the petitioner(s) argues that the petitioner(s) were appointed as a Chowkidar on a Class-IV post with the respondent-Corporation in the year 1991 and they worked continuously for a period of 11 year when their services were wrongly terminated and once, the petitioners were working for a period of 11 years with the respondent-Corporation, it cannot be said that on one fine morning, Workman will abandon the job.

4. Learned counsel for the petitioner(s) submits that no such evidence was brought to the notice of the Labour Court that it was the petitioner(s)-Workmen who abandoned their job and not the respondent(s) that wrongly terminated their services.

5. Learned counsel for the petitioner(s) further argues that the findings while passing the impugned order has been recorded by the Labour Court without appreciating the facts and evidences, which have come on record.

6. Learned counsel appearing on behalf of the respondent-Corporation submits that once, it has already come on record that the

petitioner(s)-Workman have abandoned their job and the same has been accepted by the Tribunal hence, the said acceptance need not be re-opened and the present bunch of the writ petitions may kindly be dismissed.

7. I have heard learned counsel for the parties and have gone through the records of the present bunch of cases with their able assistance.

8. The petitioner(s)-Workmen had worked with the respondent-Corporation for more than a decade. Nothing has come on record to show as to why on one fine morning, the petitioner(s)-Workmen abandoned the job especially when they have been working for so long. The said issue has not been dealt with by the Tribunal while passing the impugned award. The Labour Court while passing the impugned award has only relied upon the assertion of the respondent-Corporation that there is no positive act on the part of the respondent-Corporation to terminate the services of the petitioner(s)-Workmen hence, it is to be treated as a case of abandonment.

9. While recording the said finding, the Tribunal has ignored the fact that there was no appointment order in favour of the petitioner-Workmen giving appointment to the petitioners as the petitioners were working on a daily-wage basis.

10. Once an employee has been working on a daily-wage basis, the usual practice for the employer is to tell such employees orally that their services are no longer required hence in such cases, the specific order of termination is hardly passed.

11. Further, in case the petitioner(s)-Workmen had abandoned their job, who had already rendered service for 10 years with the respondent-Corporation, nothing has been brought on record by the respondent-

Corporation to show that they looked out for the petitioner(s)-Workmen to ensure that whether, those Workman and interested in working and qua this, whether any communication of any kind so as to intimate them, to join the services was sent to them or not. Even when the reference was raised by the petitioner(s)-Workmen, the respondent-Corporation could have asserted that they never terminated the services of the petitioner(s)-Workmen and that they are ready to welcome the petitioner(s)-Workmen so that they can perform their duties. No such actions on the part of the respondent-Corporation has been brought before the Court by the respondent-Corporation to prove their assertion that the abandonment of job was on the part of the petitioner(s)-Workmen.

12. Learned counsel for the respondent-Management has argued that as per the judgement of the Hon'ble Supreme Court of India in *SLP(C) 3927 of 1992 decided on 18.01.1996 titled "State of Haryana Vs. Om Parkash and ors."*, where the daily-wage worker, who had absented himself for a period of 4 years before raising the demand, it has been held by the Hon'ble Supreme Court of India that the abandonment of the job was on the part of the petitioner(s)-Workmen. The said judgment cannot be applied in the present case, where the petitioner(s)-Workmen, had continuously discharged the duties for a period of 11 years before it was alleged by the respondent(s)-Corporation that the petitioner(s)-Workmen have abandoned the jobs. The judgment of the Hon'ble Supreme Court of India in *Om Parkash's case (supra)*, will not be applicable in the present case as the facts of the present case are entirely different from *Om Parkash's case (supra)*. Even otherwise in *Om Parkash's case (supra)*, the Workman had

not worked even for 240 days so as to seek the benefit of Industrial Disputes Act, 1947 hence, the judgment of the Hon'ble Supreme Court of India in ***Om Parkash's case (supra)***, will not be applicable in the facts and circumstances of the present bunch of cases.

13. Keeping in view the totality of the circumstances, the impugned award dated 06.04.2016 (Annexure P-3) is set aside and the present bunch of petitions are remanded back to the Labour Court to record a specific finding based upon the facts and evidences, which have come on record whether, it is a case of termination or abandonment of job.

14. Parties are directed to appear before the Labour Court on 30.04.2025.

15. It may be noticed that nothing mentioned in the order will be treated as an expression of opinion of this Court on merits as the Labour court will be free to decide the said issue on the basis of the evidences and facts, which will come on record.

16. It may be directed that in order to record the said findings in case, the parties are to be allowed to give the additional evidence, the same be also permitted on the discretion of the Labour Court.

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

18. Photocopy of this order be placed on the files of other connected cases.

01-04-2025
Sapna Goyal

(HARSIMRAN SINGH SETHI)
JUDGE

NOTE: Whether speaking: YES
Whether reportable: NO