

(2010) 05 P&H CK 0130
In the Punjab And Haryana At Chandigarh

Kalika Prashad Yadav

APPELLANT

Vs

Kadimi Tool Manufacturing Company (Pvt.) Ltd. and Another

RESPONDENT

Date of Decision : 06-05-2010

Acts Referred:

Industrial Disputes Act, 1947 — Section 25F

Citation : (2010) 05 P&H CK 0130

Hon'ble Judges : Augustine George Masih, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Augustine George Masih, J.—The prayer in the present writ petition is for setting aside of the Award dated 03.12.2008 (Annexure-P-8), passed by the Industrial Tribunal-cum-Labour Court, Gurgaon, (in short "the Labour Court"), vide which the reference had been answered against the petitioner/Workman (in short "the Workman"), holding him entitled to no benefit as he had not been able to prove before it that his termination was not in accordance with law and further that the respondent No. 1/Management (in short "the Management") had been able to prove that the Workman had abandoned his service.

2. Counsel for the petitioner/Workman contends that the Workman was appointed as a Screw Packing Supervisor, vide Order dated 29.01.1996 and he joined the duty on 29.01.1996. He continued to work with the Management till he proceeded on three days leave. On expiry of the leave, he reported for duty on 26.10.1998, when the Workman was not permitted to join duty and his services were terminated. He had been all through approaching the Management for permitting him to join duty, but he was not allowed to do the same. Faced with this situation, the Workman preferred a demand notice dated 23.04.1999 (Annexure-P-2). The conciliation proceedings were held, wherein the Management had taken only one ground that the petitioner/Workman is not a Workman as he was appointed as a Screw Packing Supervisor. As the conciliation proceedings failed, the matter was referred to the Labour Court for adjudication.

Before the Labour Court on a claim submitted by the Workman, the Management apart from the stand that the petitioner was not a Workman as he was working as a Screw Packing Supervisor, also took a stand that the services of the Workman were not terminated by it, but he had voluntarily abandoned the service and had not reported for duty after 25.10.1998. He on this basis contends that the plea of abandonment is an afterthought, which had been taken by the Management just to come out of the fact that the Workman was terminated on 26.10.1998 as he was not allowed to join duty. His further contention is that the plea of the Management that they had sent registered letter dated 04.12.1998, wherein the Management had informed the Workman that he is absenting from duty from 25.10.1998 onward and he had not joined duty thereafter. He contends that, although, the address on the registered letter was the address, which the Workman had given to the Management for correspondence, but in the light of the fact that the services of the Workman were terminated and he was not earning anything, he had no option but to go to live with his son at Delhi. As the Workman had all through been approaching the Management to take him back and trying to persuade them in this regard, the explanation having been given by the Workman before the Labour Court for non receipt of the said registered letter should have been taken into consideration. He on this basis contends that the Award passed by the Labour Court deserves to be set aside and the Workman, although, in the light of the fact that the Screw Packing Department, where the Workman was working, had been closed by the Management on 06.11.2000 but in the light of Clause 14 of his appointment letter, he would be entitled to adjustment/transfer in some other department of the Management. He, therefore, prays that the present writ petition be allowed and the Workman be directed to be reinstated in service.

3. On the other hand, counsel for respondent/Management submitted that the Management on the basis of evidence both oral and documentary had been able to prove that the Screw Packing Department, where the Workman was working, stood closed with effect from 06.11.2000, therefore, the question of reinstatement in service of the Workman does not arise. In any case, the services of the petitioner/Workman were not terminated by the Management. He contends that the Workman failed to report for duty on 26.10.1998 and, therefore, the Management firstly waited for him to report for duty, but when he did not turn up, the Management sent a registered letter dated 04.12.1998 at his address, which he had given to the Management. Despite issuance of the said registered letter, which was returned with the report that he is not residing and has left the present address and thereafter, the Management came to a conclusion that he had abandoned his service. He on this basis contends that the Award passed by the Labour Court is fully justified and does not call for any interference. His further contention is that in exercise of the writ jurisdiction, this Court can only interfere in the Award passed by the Labour Court, where the finding recorded by the Labour Court, if are perverse or based on no evidence or also where there is some illegality or irregularity committed by the Labour Court.

- He on this basis contends that the present writ petition deserves to be dismissed.
4. I have heard counsel for the parties and have gone through the records of the case.
5. The facts are not disputed as regards the terms of appointment, date of appointment and the date from which the Workman had not reported for duty or had been terminated. The question, therefore, and as rightly has been posed by the Labour Court which clinches the issue in the matter that whether the termination of the services of the Workman was in violation of the provisions of the Industrial Disputes Act, 1947 (in short "the Act"). The Workman had asserted before the Labour Court that his services were terminated on 26.10.1998 without complying with the provisions of Section 25-F of the Act. The Management had taken a stand that his services were not terminated, but as a matter of fact, the Workman had himself abandoned the service. The Management had, after 25.10.1998, when the Workman did not report for duty on 26.10.1998, waiting for sometime sent a registered letter dated 04.12.1998 at the address, which was given by the Workman to the Management, which fact is not disputed by the Workman before the Labour Court. The Management had taken all precautions and taken care of that principles of natural justice are not violated and the Workman was given a reasonable chance to explain the cause for his absence from duty. In case, the Workman as alleged by him had been reporting for duty with the Management, he should have placed some documentary evidence on record. There is nothing on record to suggest that any representation was preferred by the Workman between 26.10.1998 till 23.04.1999, when the demand notice was sent by the Workman. After seeing the conduct of the Management, it was quite natural that when he was not being allowed to join the duty, he could have sent a registered letter to the Management requesting therein or pressing for his joining duty. There is nothing on the record to suggest that such steps were taken by the Workman nor was it pleaded or asserted before the Labour Court in evidence. The Management had no option in the given circumstances, but to proceed on the assumption that he had abandoned the service. The explanation, which has been put forth on behalf of Workman that he had to shift to Delhi because of his financial position as he had lost the job also does not give him the liberty to claim that he had not abandoned the service. Had he been interested about his service, he should have reported the Management about his address for correspondence, which the Workman failed to do. The findings, therefore, recorded by the Labour Court are fully justified and based on the evidence, which had been produced before the Labour Court. There is not illegality committed by the Labour Court either during the proceedings or in the passing of the impugned Award.
6. In view of the above, finding no merit in the present writ petition, the same stands dismissed.