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(2012) 10 P&H CK 0196

High Court Of Punjab And Haryana At Chandigarh

Case No: RA No. 11 of 2012 in/and LPA No. 1178 of 2010

G.D. Goyal		APPELLANT
	Vs	
Presiding Officer, Central Govt. Industrial Tribunal-cum-Labour Court-II, U.T., Chandigarh and Another		RESPONDENT

Date of Decision: Oct. 5, 2012

Citation: (2013) LLR 9

Hon'ble Judges: Rajiv Narain Raina, J; Hemant Gupta, J

Bench: Division Bench

Advocate: R.K. Gautam, for the Appellant; Tribhawan Singla, for the Respondent

Final Decision: Dismissed

Judgement

Hemant Gupta, J.

RA No. 11 of 2012

1. After hearing learned counsel for the parties, the review application is allowed and the order dated 20.12.2011 is recalled and the appeal is restored to its original number.

LPA No. 1178 of 2010

The instant appeal filed under Clause X of the Letters Patent is directed against judgment dated 1.12.2009 rendered by the learned Single Judge of this Court holding that the award passed by the Labour Court on 5.8.2007/15.02.2008 (P-1) did not suffer from any legal infirmity warranting interference of this Court. Thus, the writ petition filed by the RA No. 11 of 2012 in/and appellant-workman was dismissed. The basic reason for dismissal of the writ petition is that there is voluntary cessation of employment by the employee himself as per Clause 17(c) of the Bipartite Settlement. The clause 17(a) operates if an employee is absent for 12 or

more consecutive days, then the management is expected to give a notice of 30 days'' time for reporting for duty. If he reports then he is permitted to join duty without prejudice to the right of the respondent to take action available under the Service Rules. Sub-clause (b) of Clause 17 postulates a situation where a workman is served with notice for being absent for a period of 150 consecutive days without submitting any application for leave and he remains in service after notice. The section provides a reprieve for the workman against termination, if the employee submits a satisfactory reply and reports for duty within 30 days. However, Clause 17(c) has been invoked against the appellant-workman which postulates striking off his name from the establishment after 30 days, if such a workman is absent for the third time and he does not resume duty after notice. The first notice in the present case was issued on 4.11.1993 and the second one on 10.12.1993 along with notice dated 28.12.1993 on the ground that notice dated 10.12.1993 was not served. The finding recorded by the learned Single Judge is discernible from para 6 of the order which reads as under:

6. To the workman''s contention that the Management had not deliberately allowed him to join the duty, the answer by the management was that after he was served with notice of termination of service on 16.9.1994, the workman had not challenged the order within any reasonable time and a demand notice issued on 15.10.1997 more than three years after the RA No. 11 of 2012 in/and termination. Under normal circumstances I would have been inclined to refer the case to the Labour Court again for consideration whether the notice dated 21.1.1994 had really been issued and whether the reference to it in the notice dated 16.9.1994 was only an after thought or whether it was a genuine document. The notice dated 21.1.1994 was indeed he linchpin on which the validity of the order of termination would revolve. However, I do not feel necessary to undertake such a course for admittedly by that time when the workman had issued a demand notice on 15.10.1997 it was a case where the workman had actually remained absent from more than three years. This absence was a regular feature and during the entire period between 11.3.1993 to 16.9.1994 it could be seen that the workman had worked only for short duration from 22.11.1993 to 9.12.1993 and during the remaining periods he had been giving some false excuse or the other. A long absence as such from 11.4.1993 to 22.11.1993 was explained with lame excuses like he had submitted the leave applications that he was unwell but he had no medical certificates to substantiate the same. Again after he resumed on 22.11.1993 he was attending to duty duly only up to 8.12.1993 and again remained absent from 9.12.1993 onwards. The so called willingness to resume duty on 21.2.1994 or a day earlier on 20.2.1994 have not been in any way substantiated. If he was really prevented from joining duty there was no reason why he has not complained of the same till when a demand of notice was issued nearly more than three years later. The conduct of the workman had been such that he does not deserve consideration for reinstatement. The termination that has resulted shall stay and notice issued more than three years, although not barred

by limitation, must be taken to be a circumstances when the discretionary jurisdiction of this Court shall not be exercised. The writ petition shall, therefore, be dismissed. No costs.

2. We have heard learned counsel for the parties at a considerable length and are of the view that there is no ground to interfere in the view taken by the learned Single Judge as well as by the learned Labour Court.

3. Learned counsel for the appellant has vehemently argued that the appellant joined duties in pursuance of notice dated 21.1.1994 Exhibit W-16 (P-5) therefore, the Clause 17(c) of the 5th Bipartite Settlement could not be invoked against the appellant by the Bank. It is also contended that Clause 17(c) of the Bipartite Settlement has since been deleted on 1.11.1997 in a subsequent settlement, therefore, the action taken by the Bank against the appellant on the basis of such clause is not tenable.

4. A perusal of the record shows that the appellant joined on 19.2.1994 in pursuance of notice Ex. W-16 but again absented on 20.2.1994. Thus, the appellant joined duty only for a day. Such joining was only a paper joining without any intention to resume his duties and was thus with fraudulent intent.

5. The action against the appellant has been taken under Clause 17(c) of the Bipartite Settlement. The clause reads as under:--

(c) If an employee again absents himself within a period of 30 days without submitting any application after reporting for duty in response to the notice given after 90 days or 150 days absence, as the case may be, the second notice shall be given after 30 days of such absence giving him 30 days time to report. If he reports in response to the second notice, but absents himself a third time from duty within a period of 30 days without application, his name shall be struck off from the establishment after 30 days of such absence under intimation to him by registered post deeming that he has voluntarily vacated his appointment.

6. In view of the fact that the workman issued demand notice on 15.10.1997 but remained absent during the period between 11.3.1993 to 16.9.1994 except for short duration from 22.11.1993 to 9.12.1993, a categoric finding has been recorded by the learned Single Judge that the workman had been putting forward one false excuse or the other. In view of the above, we do not find any merit in the present appeal and the same is dismissed.