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PUNJAB HIGH COURT ON EMPLOYEE'S MINIMUM SERVICE REQUIREMENT

A. Introduction

The Division Bench of the High Court of Punjab and Haryana (“**Division Bench**”), in the January 2023 order in *Anil Kumar vs. Presiding Officer*,¹ held that an employee has abandoned their employment, if they did not resume their duties despite the employer’s repeated notices. The HC also held that the obligation on an employer to conduct an inquiry into the employee’s behavioural issues or absenteeism exists only when they complete the minimum service requirement of 240 days under the Industrial Disputes Act, 1947 (“**ID Act**”).

B. Brief Facts

1. Anil Kumar (“**Kumar**”) who was a ‘workman’ under the ID Act, was absent from his duties, for a period between January and May 2008.
2. Furthermore, Kumar had displayed behavioral issues, such as use of abusive language, and making threats of violence to officials of the employer’s management (“**Management**”). The Management further presented that Kumar had visited their premises and threatened to implicate them in a false case under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.
3. Kumar’s services were terminated without the Management holding an inquiry into his behavioural issues or his absenteeism from work.
4. The Management argued that Kumar had not completed the required 240 days of continuous service, and therefore, there was no obligation to conduct an inquiry prior to terminating his employment.
5. Kumar had also claimed that his absence was due to medical issues, specifically issues with his mental health and depression.
6. The Labour Court issued an award in favour of Kumar, ordering his reinstatement with 40% back wages from September 2008. However, the Single Judge of the HC set this aside. Kumar appealed this decision before the Division Bench.

C. Order

The Division Bench:

1. Upheld the decision of the Single Judge where it was concluded that Kumar had not completed 240 days of continuous service.
2. Noted that Kumar’s argument regarding his medical condition lacked any supporting evidence,

¹ *Anil Kumar vs. Presiding Officer, Industrial Tribunal-cum-Labour Court-I and Ors.* (16.01.2023 - PHHC): MANU/PH/0073/2023.

apart from his own statements.

3. Observed that Kumar had been issued several notices from the Management to resume his duties, but he failed to adhere to them.
4. Concluded that: “[...] *the right to seek reinstatement would only arise on the strength of having served for 240 days. In the absence of the same, the Labour Court could not have ordered reinstatement as the violation of Section 25-F of the Act² cannot be said to be committed by the management.*”
5. Upheld the decision of the Single Judge and dismissed Kumar’s appeal.

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² Section 25-F prescribes the conditions precedent to retrenchment of workmen, in the ID Act.