* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Date of order: 30th May, 2024**

\+ W.P.(C) 12738/2018

ICICI BANK LTD. ..... Petitioner

Through: Mr. Darpan Wadhwa, Senior Advocate, Mr. Anand Shankar Jha, Ms. Meenakshi S. Devgan, Mr. Sachin Mintri, Mr. Abhilekh Tiwari and Mr. Parvez Rahman, Advocate.

versus

UNION OF INDIA AND ANR. ..... Respondents

Through: None.

CORAM:
HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER

CHANDRA DHARI SINGH, J (Oral)

1. The instant writ petition under Article 226 of the Constitution of India has been filed on behalf of the petitioner seeking quashing of the impugned award dated 25th June, 2018 passed by the learned Presiding Officer, CGIT – cum – Labour Court No. 1, Dwarka Courts, New Delhi in ID No. 13/2014.

2. The relevant facts which led to the filing of the instant petition are as follows:

a. The petitioner i.e., ICICI Bank Ltd. ("petitioner Bank" hereinafter) *vide* letter dated 13th August, 2010 offered a job

to the respondent no. 2 ("respondent workman" hereinafter) which was duly accepted by him and accordingly, he joined his duties.

b. It is stated that the respondent workman from September, 2012 onwards allegedly absented himself from work without seeking prior permission of the petitioner Bank. Furthermore, the respondent workman was sanctioned leave by the petitioner from 16th November, 2012 to 23rd November, 2012 however the respondent workman failed to appear for the job thereafter.

c. The Human Resources Management Group of the petitioner Bank *Vide* letter dated 6th December, 2012 advised the respondent workman to resume duty immediately in light of his unauthorised absence and furnish reasons for the absence.

d. Thereafter, the petitioner *vide* letter dated 19th December, 2012, terminated the employment of respondent workman with immediate effect due to abandonment of service on his own account.

e. The respondent no. 2 then filed a representation against his termination by the petitioner before the Assistant Labour Commission (Central). Pursuant to the said representation, a notice was issued to the petitioner seeking its response. The

petitioner filed its response before the Assistant Labour Commission (Central) on 25th September, 2013.

f. In the year 2013, a certificate was issued by the Conciliation Officer under Section 2A of the Industrial Disputes Act, 1947 (hereinafter "the Act") stating failure of conciliation proceedings. Thereafter, the respondent no. 2 raised an industrial dispute bearing ID No. 13/2014 seeking reinstatement and recovery of dues.

g. Subsequently, v*ide* award dated 25th June, 2018, the learned Labour Court partly allowed I.D. No. 13/2014 and held that the termination of respondent no. 2 was illegal and unjustified. Accordingly, the respondent no. 2 was directed to be reinstated and the prayer for back wages was rejected.

h. Being aggrieved by the same, the petitioner has filed the instant writ petition seeking quashing of the impugned award.

3. Mr. Darpan Wadhwa, learned senior counsel appearing on behalf of the petitioner submitted that the terms and conditions of employment as contained in the letter of appointment clearly mention that breach of the rules and regulations of the petitioner bank shall render the services of the respondent no. 2 to be terminated.

4. It is submitted that the respondent no. 2 was performing duties of an administrative and supervisory nature and is thus not a "workman" under Section 2(s) of the Act. The respondent no. 2 has also admitted in his cross

examination that he was working in an administrative and policy making capacity.

5. It is submitted that from September, 2012 onwards, the respondent no. 2 started unauthorisedly absenting himself from his services without seeking prior permission of the petitioner bank.

6. It is submitted that the respondent no. 2 has been habitual in resorting to unauthorised absenteeism, thereby, causing disruption in the smooth functioning of the petitioner bank.

7. It is submitted that the respondent no. 2 did not respond to a letter issued by the Human Resources Management Group of the Bank so as to explain his absence from work. It is further submitted that none of the medical records filed by the respondent no. 2 before the learned Labour Court were brought to the knowledge of the petitioner bank.

8. It is submitted that after expiry of his authorised leave on 23rd November, 2012, the continued absence of respondent no. 2 without any explanation was indicative of the fact that he had abandoned services of the petitioner bank of his own volition.

9. It is submitted that it was the petitioner's right to conclude that absence for 25 days amounted to abandonment of services by the respondent no. 2 and accordingly, a letter dated 19th December, 2012, was issued to him terminating his employment with the petitioner bank.

10. It is submitted that none of the doctors had recommended complete bed rest to the respondent no. 2 and his absenteeism without furnishing any reasons is unjustified.

11. It is submitted that the respondent no. 2 had failed to submit any dispute or demand notice to the petitioner management before approaching the learned Labour Court. Hence, the action of the respondent no. 2 is not maintainable under the Act.

12. It is submitted that the award passed by the learned Labour Court is arbitrary and unreasonable as it disregarded the cross examination of the respondent no. 2 and the authorities relied upon by the petitioner bank.

13. It is submitted that it was not correct for the learned Labour Court to shift the burden on the petitioner management to prove whether the respondent no. 2 was a workman or not in light of his admission that he was performing work of an administrative nature.

14. It is further submitted that the impugned award was passed without appreciating that the respondent no. 2 had voluntarily abandoned the services of the Bank by remaining continuously absent for 25 days without any intimation.

15. It is submitted that the learned Labour Court has erroneously concluded that the petitioner bank was aware of the medical condition of the respondent no. 2 as none of the medical records were brought to the petitioner's attention.

16. It is submitted that the learned Labour Court failed to appreciate the entire facts and circumstances available on its record and thus, the impugned award is liable to be set aside.

17. Therefore, in view of the foregoing submissions, it is submitted that the instant petition may be allowed and the reliefs be granted as prayed for.

18. Heard learned counsel appearing on behalf of the petitioner and perused the material on record.

19. It is the case of the petitioner the learned Labour Court erred in passing the impugned award as it failed to appreciate that the respondent no. 2 is not a workman under the Act, since he was working in an administrative role and imparting supervisory functions. Further, the learned Labour Court failed in considering that the respondent no. 2 workman absented himself from his services voluntarily. Therefore, it is prayed that in view of the said contentions, the impugned award is liable to be set aside.

20. It is prudent to state that the respondent no. 2 workman never appeared in the instant petition and despite several opportunities, neither any appearance has been entered on his behalf, nor any reply/counter has been placed on record on his behalf. Therefore, this Court shall proceed on the basis of the Trial Court's Record.

21. The short question that arises for the consideration of this Court is whether the interference under its writ jurisdiction is warranted in the impugned award passed by the learned Labour Court.

22. Therefore, before adverting to the merits of the instant petition, this Court deems it imperative to analyse the findings arrived at by the Labour Court. The issues framed by the Labour Court are as follows:

> "*...1) Whether claimant rendered continuous service of 240 days in preceding 12 months from the date of termination of his services?*
> *2) Whether claimant is entitled to relief of reinstatement in service of the Management?*

3) Whether the claimant is a workman as defined under Section 2(s) of the Industrial Disputes Act, 1957?
4) Whether the claimant has not abandoned his services by remaining unauthorized absent with effect from 24/11/2012?..."

23. The relevant extracts of the award are reproduced herein below for reference:

"....*Issue No. 3* :-
10) After hearing the submissions of the parties counsel at length and careful scrutiny of the evidence on record, I am of the firm view that the claimant falls within the definition of "workman" as provided under Section 2(s) of the Act, for the reasons hereinafter mentioned.

11) It is well settled that in order to find out as to whether a person was performing the work of supervisory or managerial in nature, the dominant purpose of the employment of the person concerned should be taken into consideration and certain additional duties performed by him should be ignored while determining the status and character of the person. Since the objection regarding the status of the workman being employed In supervisory capacity has been taken by the management as such the onus to prove this fact is upon the management. It was imperative for the management to adduce cogent evidence to prove the specific nature of duty regarding supervisory or managerial work."

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12. The first part of the definition gives statutory meaning of the term 'workman'. This part of the definition determines a workman by reference to a person (including an apprentice) employed in an "industry" to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward. This part determines what a "workman" means. The second part is designed to include something more in what the

term primarily denotes. By this part of the definition, person (i) who have been dismissed, discharged or retrenched in connection with an industrial dispute, or (ii) whose dismissal, discharge or retrenchment has lead to an industrial dispute, for the purpose of any proceeding under the Act in relation to such industrial dispute, have been included in the definition of "workman". This part gives extended connotation to the expression "workman". The third part specifically excluded the categories of persons specified in clauses (i) to (iv) of this sub section. The third part connotes that even if a person satisfies the requirements of any of the first two parts but if he falls in any of the four categories in the third part, he shall be excluded from the definition of workman'. Not only the persons who are actually employed in an industry but also those who have been discharged, dismissed or retrenched in connection with or as a consequence of an industrial dispute, and whose dismissal, discharge or retrenchment has lead to that dispute, would fall within the ambit of the definition. In other words, the second category of persons included in the definition would fall in the ambit of the definition, only for the purpose of any proceedings under the Act in relation to an industrial dispute and for no other purposes. Therefore, date of reference is relevant and in case a person falls within the definition of workman on that day, the Tribunal would be vested with jurisdiction to entertain it and the jurisdiction would not cease merely because subsequently the workman ceases to be workman.

13. For an employee in an industry to be a workman under this definition, it is manifest that he must be employed to do skilled or unskilled manual work, supervisory work, technical work or clerical work. If the work done by an employee is not of such a nature, he would not be a workman. The specification of the four types of work obviously is intended to law down that an employee is to become a workman only if he is employed to do work of one of those types, while there may be employees who,

not doing any such work, would be out of the scope of the word 'workman', without having resort to the exceptions. It cannot be held that every employee of an industry was to be a workman except those mentioned in the four exceptions as in the case these four classifications need not have been mentioned in the definition and a workman could have been defined as a person employed in an industry except in cases where he was covered by one of the exceptions."

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15. Applying the legal principle as discussed above, this Tribunal is to examine whether claimant was performing any supervisory or administrative type of job so as to exclude him from the definition of workman. In this regard it is appropriate to refer to the contents of his affidavit Ex.WWI/A which is in consonance with the statement of claim. While appearing as WW1, the claimant Naresh Kumar has admitted that his last pay drawn was Rs. 13,000/- or above. He clarified that since his ID was found locked and his senior Mr. Manish Chaudhary had told him about this. He also clarified that he is not member of any union and his work was of administrative nature in the bank and that he was also taking part in the policy making meetings of the bank with other officials of the bank.

16. To my mind simply because the claimant was performing administrative nature of duties or was taking part in the policy making meetings of the bank with other officials of the bank, would not be legally sufficient to exclude him from the definition of the workman. It has been held in the case of ***Hussan Mithu Mhaswvadkar Vs. Bombay Iron and Steel Iron Board (2001) 7 SCC 394*** *that the designation of an official alone is not decisive regarding applicability of the definition of workman under the Act and one has to examine the nature and kind of his duty as well as power and functions of such official, so as to decide whether he is performing supervisory nature of*

work or whether he is mainly employed in managerial or administrative capacity or not. There is nothing in the evidence of the Management as to what was the supervisory nature of work/duty which the claimant was performing and in what kind of policy decision, the claimant has taken part. There is also nothing on record to show that the claimant had got any kind of disciplinary powers or any official was working under his control and supervision, so as to hold that he was exercising any supervisory authority over his subordinates. In this regard it is also appropriate to refer to the statement of MW 1 Ms. Penaaz Gupta, Manager (HR) of the Management Bank. There is nothing in the statement of this witness regarding supervisory nature of duty which the claimant was performing or what are/were the powers & functions which claimant was enjoying in managerial or administrative capacity."

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18. There is hardly any dispute with the above preposition of law but in the case in hand there is no evidence on record to suggest that claimant was performing any managerial function or administrative work in the course of his primary or basic duties. The Management was under obligation to lead cogent evidence in this respect so as to exclude the claimant from the definition of the workman.

19. Equally settled is the position under law. The Industrial Dispute Act being a social and beneficial legislation, its provisions should be construed liberally and harmoniously so as to advance the Interests of the workman.

20. In view of the above discussion, it is held that the claimant herein falls within the definition of workman. This issue is decided accordingly."

Issue No. 1 and 4 :-

24. It is now well settled position in law from various authorities of the Hon'ble Apex Court as well as of the High Courts that in case an employee remains absent from duty without intimation and without any cogent reasons, the employer is required to issue show cause notice to such an employee and hold a formal inquiry against such delinquent official. It is only thereafter the Competent Authority can pass order of termination or dismissal against such an employee. Reference can be made to the decision of the Hon'ble Apex Court in ***D.K. Yadav Vs. JMA Industries 1993 LLLR 584 (SC)*** *wherein it was observed that even if a workman absents or over-stays his leave, an enquiry will be imperative in order to afford an opportunity to the employee. Further, in the case of* ***Uptron India Vs. Shammi Bhan, 1998 LLR 385 (SC)****. Hon'ble Apex Court had held that the abandonment of job by an employee depends upon his intention. Our own High Court in the decision titled* ***Economic Transport Organization Vs. Dharmendra Mishra, 2014, LLR 696*** *held that plea of abandonment in absence of domestic enquiry is untenable.*"

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26. Admittedly, no regular inquiry was held by the Management Bank against the claimant on account of his unauthorized absence from duty or abandonment of the job. MW1- sole witness examined by the Management Bank did not state in his affidavit Ex.MWI/A that any regular/formal inquiry was held by the Management Bank against the claimant regarding his unauthorized absence from duty and only thereafter the letter Ex.MW1/2 was issued.

27. As a sequel to my aforesaid discussion, it is held that action of the Management Bank to serve the claimant with letter dated 19/12/2012 whereby the claimant was informed that he ceased to be in the employment of the Bank with immediate effect, is neither legal nor justifiable, moreso when the Management Bank was well aware of the medical condition of the claimant

and had approved his leave for the period from 16-11-2012 to 23-11-2012. Even if it is assumed for the sake of arguments that the claimant was on unauthorized leave w.e.f. 24/11/2012 onwards, then also it can not be concluded that the claimant had intention to abandon the employment with the Management Bank, inasmuch as he was undergoing treatment in a Govt. Hospital for the injuries sustained by him in an accident. Resultantly, both these issues are decided in favour of the claimant and against the Management Bank."

Issue No. 2 :-

28. Now the residual issue arises for consideration is as to whether the claimant is entitled for reinstatement with full back wages or that the workman/claimant is to be given only reasonable compensation.

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32. The Hon'ble Apex Court also held that different expressions are used for describing the consequence of termination of a workman's service/employment/engagement by way of retrenchment without complying with the mandate of Section 25F of the Act. Sometimes it has been termed as ab initio void, sometimes as illegal per se, sometime as nullity and sometimes as non est. Leaving aside the legal semantics, we have no hesitation to hold that termination of service of an employee by way of retrenchment without complying with the requirement of giving one month's notice or pay in lieu thereof and compensation in terms of Section 25F (a) and (b) has the effect of rendering the action of the employer and nullity and the employee is entitled to continue in employment as if his service was not terminated. (Anoop Sharma Vs. Executive Engineer. Public Health Division No.1 Panioat (2010) 5 SCO 497)."

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35. Having regard to the legal position as discussed above and the fact that the claimant was performing duty to a post of regular and perennial nature, this Tribunal is of the firm view

that the claimant herein is entitled for reinstatement into service inasmuch as his termination is per-se illegal, particularly when the job is of permanent nature and the Management has employed another person in place of the claimant. As regards payment of back wages to the claimant, it is pertinent to mention here that there is no pleadings in the statement of claim to the effect that the workman/claimant is not gainfully employed after his termination, nor this fact has been stated in the affidavit Ex.WWI/A by the claimant. In such circumstances, there is no question of grant of back wages to the claimant. Law is well settled that back wages are to be granted not as a matter of course by the Tribunal and that grant of back wages is subject to the pleadings of "non gainful employment" coupled with cogent evidence thereof. This issue is decided accordingly…"

24. Upon perusal of the aforementioned extracts of the impugned award, it is made out that the learned Labour Court has termed the action of the management in terminating services of the claimant (herein respondent no. 2 workman) illegal and unjustified. The learned Labour Court had observed that the petitioner bank could not substantiate its assertion that the respondent no. 2 workman was employed in a supervisory/managerial capacity so as to take him outside the scope of Section 2(s) of the Act with substantial evidence.

25. The learned Labour Court noted that there is nothing in the evidence of the petitioner bank to substantiate the supervisory nature of the respondent no. 2's work or that the respondent no. 2 is said to have been performing or to show that he had supervisory authority over his subordinates.

26. The learned Court below also observed the fact that the workman admitted in his cross-examination that he was performing administrative work and taking part in policy making meetings of the petitioner bank and observed that the same is not legally sufficient to exclude him from the definition of a "workman".

27. It further observed that that the contention of the petitioner bank that there is no positive evidence of the medical treatment of workman cannot be accepted due to the documentary evidence relied upon by the respondent no.2 which included the CT Scan by doctors of GB Pant Hospital on 1st December, 2012, and also the prescribed medicines when he visited the OPD on 6th December, 2012. Additionally, it observed that the petitioner bank was required to hold a formal enquiry against such delinquent officials who remain absent from duty without intimation and only then pass an order of termination thereafter.

28. Hence, in the absence of a formal enquiry conducted by the petitioner bank against the respondent no. 2, the learned Labour Court arrived at the conclusion that there is no evidence on record to show that the workman had any intention to abandon his employment with the petitioner in light of his medical condition.

29. Furthermore, the learned Labour Court also made an observation that since the workman was performing duties of a regular and perennial nature, he is entitled to be reinstated on his services as his termination is *per se* illegal and that the management had employed another person in his place. With respect to the payment of back wages, it was held by the learned

Labour Court that since there is no pleading to the effect that the workman is not gainfully employed, the same question has not been adjudicated.

30. Before delving into the merits of the instant petition, this Court deems it appropriate to briefly state the settled position of law in relation to the scope of interference under Article 226 of the Constitution of India, with reference to industrial disputes. The Hon'ble Supreme Court in ***Madurantakam Coop. Sugar Mills Ltd. v. S. Viswanathan,*** **(2005) 3 SCC 193**, has discussed the limited and narrow scope of writ jurisdiction in the context of interference in industrial disputes. The relevant observations are reproduced herewith:

> "*..Normally, the Labour Court or the Industrial Tribunal, as the case may be, is the* ***final court of facts in these types of disputes****, but if a finding of fact is perverse or if the same is not based on legal evidence the High Court exercising a power either under Article 226 or under Article 227 of the Constitution can go into the question of fact decided by the Labour Court or the Tribunal. But before going into such an exercise it is necessary that the writ court must record reasons* ***why it intends reconsidering a finding of fact****. In the absence of any such defect in the order of the Labour Court the writ court* ***will not enter into the realm of factual disputes and finding given thereon****. A consideration of the impugned order of the learned Single Judge shows that nowhere has he come to the conclusion that the finding of the Labour Court was either perverse or based on no evidence or based on evidence which is not legally acceptable. Learned Single Judge proceeded as if he was sitting in a court of appeal on facts and item after item of evidence recorded in the domestic enquiry as well as before the Labour Court was reconsidered and findings given by the*

Labour Court were reversed. We find no justification for such an approach by the learned Single Judge which only amounts to ***substitution of his subjective satisfaction in the place of such satisfaction*** *of the Labour Court...”*

31. In light of the above observations made in the aforesaid judgment, it is evident that the scope of review afforded to this Court under Article 226 is limited and this Court is not supposed to re-appreciate the facts and evidence unless a glaring illegality is apparent in the order passed by the Labour Court/Industrial Tribunal.

32. Now adverting to the issues raised in the instant petition with respect to whether the learned Labour Court was correct in holding that the management had failed to discharge its burden to prove that the respondent no. 2 was not a workman under Section 2(s) of the Act.

33. Here, it is apposite to refer to the judgement passed by the Hon’ble Division Bench of the Bombay High Court in ***Seth Jeejeebhoy Dadabhoy Charity Funds v. Farokh Noshir Dadachanji,*** **2005 SCC OnLine Bom 723**, wherein the management therein claimed that the employee was not a “workman” and the Court observed that the burden to establish that the workman had managerial, administrative and supervisory duties falls upon the management. It categorically observed that the burden to prove such assertion falls upon the employer. The relevant paragraphs are reproduced herewith:

“*...14. Applying the aforesaid legal position on the present facts, it may be immediately noticed that the complainant placed on record the list of duties which was not disputed by*

the present appellants. The appellants raised the plea that the complainant had the managerial, administrative and supervisory duties. The burden has to be on the employer to establish the same. The judgment of the Supreme Court in the case of Workmen of Nilgiri [2004 (2) L.L.N. 68] (vide supra), also does not help the case of the appellants.

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16. In Northcote Nursing Home (Private), Ltd., Bombay [2001 (3) L.L.N. 550] (vide supra), the learned Single Judge of this Court held that where there was a complaint by the employee of an unfair labour practice and the respondent denied complainant was a workman, the initial burden was on the employee to prove that he was workman under S. 2(s) of the Industrial Disputes Act. In the case before us and on the facts and the available material where the employer asserts that the complainant has been given managerial, administrative and supervisory duties, obviously to prove these facts the burden has to be on the employer and not on the complainant. The burden cannot be placed on the complainant to prove that he was not given managerial, administrative or supervisory duties. In our considered view, the burden of proof must depend on the facts and pleadings of each case. It is the appellants who raised the objection that the Industrial Court has no jurisdiction. Initial burden to prove the ouster of the jurisdiction of the Industrial Court therefore, has to be on the employer. We do not find any legal infirmity in the impugned order…"

34. In paragraph no. 11, the learned Labour Court had observed that in order to find out whether a person was performing the work of supervisory or managerial in nature, the dominant purpose of the employment of the person concerned should be taken into consideration and certain additional duties performed by him should be ignored while determining the status and character of the person.

35. Before the learned Court below, the workman had admitted that the last drawn salary by him was Rs. 13,000/- or above and that he used to take part in the policy making meetings of the bank. However, the learned Court below was of the opinion that the designation of an official alone is not a decisive factor to determine the applicability of the definition of a workman under the Act, rather one has to examine the nature and kind of duty as well as the power and functions of such official, so as to decide whether he is performing supervisory nature of work or whether he is mainly employed in managerial or administrative capacity or not.

36. With regard to the above, it was held by the learned Court below that the management failed to bring on record any evidence to show as to what exactly was the supervisory nature of the work which the workman was performing and in what kind of policy decision the workman had taken part.

37. Applying the aforementioned principle to the facts at hand, this Court does not find any infirmity with the conclusion as arrived at by the learned Labour Court that the management had failed to justify its assertion about respondent no. 2 not being a workman. It is observed by this Court that MW1, i.e., Ms. Penaaz Gupta (HR) of the petitioner bank could not depose as to what were the powers and functions of the workman in order to term his duty as that of the supervisory or administrative and the same has been rightly noted by the leaned Labour Court.

38. This Court is inclined to uphold the view taken by the learned Court below in holding that the respondent no. 2 is a workman under the Act. In this regard, it is held that the petitioner management has failed to bring on

record any evidence, either before the learned Court below or this Court, to show that the respondent no. 2 was not a workman in terms of the Act. The said view can be supported by the settled position of law that merely contending that a workman is performing a supervisory nature of job is not sufficient since it is pertinent to substantiate the same with cogent evidence.

39. Further, with regard to the issue of abandonment of services, it is pertinent to refer to the judgment of the Hon'ble Supreme Court passed in ***Vijay S. Sathaye v. Indian Airlines Ltd.*, (2013) 10 SCC 253**, relevant paragraphs of which are as under:

> "*...**12.** 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 voluntary 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 employer.*
>
> ***13.** In Jeewanlal (1929) Ltd. v. Workmen [AIR 1961 SC 1567] this Court held as under : (AIR p. 1570, para 6)*
>
> > *"6. ... 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."*
> >
> > *(See also Shahoodul Haque v. Registrar, Coop. Societies [(1975) 3 SCC 108 : 1974 SCC (L&S) 498 : AIR 1974 SC 1896] .)*
>
> ***14.** 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 Parkash [(1998) 8 SCC 733 : 1999 SCC (L&S) 262] .)

***15.** In Buckingham and Carnatic Co. Ltd. v. Venkatiah [AIR 1964 SC 1272] , while dealing with a similar case, this Court observed : (AIR p. 1275, para 5)*

> *"5. ... 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."*
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> *A similar view has been reiterated in G.T. Lad v. Chemical and Fibres of India Ltd. [(1979) 1 SCC 590 : 1979 SCC (L&S) 76 : AIR 1979 SC 582]*

***16.** In Syndicate Bank v. Staff Assn. [(2000) 5 SCC 65 : 2000 SCC (L&S) 601] and Aligarh Muslim University v. Mansoor Ali Khan [(2000) 7 SCC 529 : 2002 SCC (L&S) 965 : 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 Banaras Hindu University v. Shrikant [(2006) 11 SCC 42 : (2007) 1 SCC (L&S) 327] , Chief Engineer (Construction) v. Keshava Rao [(2005) 11 SCC 229 : 2005 SCC (L&S) 872] and Bank of Baroda v. Anita Nandrajog [(2009) 9 SCC 462 : (2009) 2 SCC (L&S) 689] ...*"

40. Upon perusal of the above, it is made out that abandonment of service means an act of intentionally or voluntarily abandoning service. This Court

is of the considered view that when an employee does not join duty and remains absent for long, then such absence is required to be treated as misconduct and if such absence is for a very long period, then it amounts to voluntary abandonment of service resulting in termination of service automatically.

41. This Court is of the view that the intention to voluntarily abandon service is not evident from the conduct of the respondent no. 2 workman as the records reveal that the workman visited his office at the petitioner bank on 16th November, 2012, and again asked for a leave till 23rd November, 2011. Furthermore, it is stated that his uncle, Mr. Subhash, had called respondent no. 2's reporting officer, Mr. Manish Chaudhary, informing him of his medical condition. Taking the same into consideration, this Court is of the view that there is nothing on record to prove that the workman remained voluntarily absent from his services, instead, the statement of witnesses and the other evidence show the contrary.

42. At this juncture, this Court shall now ascertain as to whether the respondent workman voluntarily abandoned his services or whether his services were terminated illegally.

43. As also noted by the Hon'ble Supreme Court in a catena of judgments, if there is absenteeism from services, the workman may be terminated even without conducting any enquiry. However, in the instant matter, the petitioner bank's assertion that the workman remained absented was rejected by the learned Court below, as well as by this Court in preceding paragraphs.

44. The law with regard to the termination is clear and it states that in the absence of a formal enquiry, termination without any cause is illegal since the same is in violation of principles of natural justice.

45. In the instant case, as also noted by the learned Court below, admittedly, no regular enquiry was held by the petitioner management against the workman on the account of his unauthorized absenteeism from his duty (stated in affidavit Ex MW1/A by the management). The petitioner bank was well aware of the workman's medical condition since it had approved the workman's leave for the period of 16th November, 2012 to 23rd November, 2012. Thus, taking into account the absent of intention to abandon his job on the part of the respondent no. 2 workman and due to the non-conduction of a formal enquiry by the petitioner, this Court does not find force in the submissions advanced on behalf of the petitioner bank that it had come to a conclusion that respondent no. 2 had voluntarily abandoned service due to his continuous absence as he was never given an opportunity to present his case.

46. Therefore, the termination of respondent no. 2 on the above-mentioned grounds by the petitioner management is untenable as the absence was occasioned due to medical reasons and there was no intention to voluntarily abandon service as rightly noted by the learned Court below.

47. In light of the above facts and circumstances, this Court is not inclined to exercise its extraordinary writ jurisdiction under Article 226 to interfere with the impugned award rendered by the learned Labour Court as the same does not suffer from any infirmity or illegality.

48. It is held that the petitioner has failed to make out any case in its favour and the learned Labour Court has passed the impugned award after taking into consideration the entire facts and circumstances as well as the settled position of law.

49. In light of the foregoing discussions, this Court does not find any merit in the instant petition, and hence, the impugned award dated 25th June, 2018 passed by the learned Presiding Officer, CGIT – cum – Labour Court No. 1, Dwarka Courts, New Delhi in ID No. 13/2014 is upheld.

50. Accordingly, the instant petition stands dismissed along with pending applications, if any.

51. The order be uploaded on the website forthwith.

CHANDRA DHARI SINGH, J

MAY 30, 2024
RK/RYP/AV

Click here to check corrigendum, if any