

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

+ **W.P.(C) 1064/2004 & CMA No. 922/2004**

% DATE OF DECISION : 13th AUGUST, 2008

DTC

..... Petitioner

Through: Mr. J.S. Bhasin with Ms. Seema,
Advocate.

versus

KRISHAN LAL

..... Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether the judgment should be reported in the digest?

J U D G M E N T

MANMOHAN , J: (ORAL)

1. The counsel for the petitioner has drawn my attention to the last order where the wife of the deceased respondent had made a statement that she does not wish to contest the petition. Consequently, the present petition is taken up for final hearing.

2. Rule.

3. This petition is directed against order dated 23.12.2002 passed by the Industrial Tribunal-II, Delhi in O.P. No. 567 of 1993 dismissing application of the Petitioner-DTC filed under Section 33(2)(b) of the Industrial

Disputes Act seeking approval of its approval of its action dated 19th December, 1993 to remove the Respondent from service.

4. Mr. Bhasin has drawn my attention to the impugned order where it has been held that availing leave without pay does not amount to misconduct. However, the Hon'ble Supreme Court in ***DTC vs. Sardar Singh reported in 2004 (7) SCC 574*** has held that there cannot be any sweeping generalization and availing of leave without pay can amount to misconduct. The relevant paragraphs of the said judgment are reproduced hereinbelow for ready reference:-

“9. When an employee absents himself from duty, even without sanctioned leave for a very long period, it prima facie shows lack of interest in work. Para 19(h) of the Standing Orders as quoted above, relates to habitual negligence of duties and lack of interest in the authority's work. When an employee absents himself from duty without sanctioned leave, the authority can, on the basis of the record, come to a conclusion about the employee being habitually negligent in duties and an exhibited lack of interest in the employer's work. Ample material was produced before the Tribunal in each case to show as to how the employees concerned were remaining absent for long periods which affects the work of the employer and the employee concerned was required at least to bring some material on record to show as to how his absence was on the basis of sanctioned leave and as to how there was no negligence. Habitual absence is a factor which establishes lack of interest in work. There cannot be any sweeping generalization. But at the same time some telltale features

can be noticed and pressed into service to arrive at conclusions in the departmental proceedings.

10. Great emphasis was laid by learned counsel for the respondent employee on the absence being treated as leave without pay. As was observed by this Court in State of M.P. v. Harihar Gopal by a three-Judge Bench of this Court, even when an order is passed for treating absence as leave without pay after passing an order of termination, that is, for the purpose of maintaining correct record of service. The charge in that case was, as in the present case, absence without obtaining leave in advance. The conduct of the employees in this case is nothing but irresponsible in the extreme and can hardly be justified. The charge in this case was misconduct by absence. In view of the governing Standing Orders unauthorized leave can be treated as misconduct.

11. Conclusions regarding negligence and lack of interest can be arrived at by looking into the period of absence, more particularly, when same is unauthorized. Burden is on the employee who claims that there was no negligence and/or lack of interest to establish it by placing relevant materials. Clause (ii) of para 4 of the Standing Orders shows the seriousness attached to habitual absence. In clause (i) thereof, there is requirement of prior permission. Only exception made is in case of sudden illness. There also conditions are stipulated, non-observance of which renders the absence unauthorized.

12. The Tribunal proceeded in all these cases on the basis as if the leave was sanctioned because of the noted leave without pay. Treating as leave without pay is not same as sanctioned or approved leave.”

5. In view of the aforesaid judgment of the Apex Court, the impugned order of the Industrial Tribunal is set aside. Normally, this Court would have been inclined to remand the matter to the Industrial Tribunal for reconsideration on merits. However, as respondent has already expired and his widow has informed the Court that she is not interested in contesting the present proceeding and according to the Apex Court the onus was on the employee to show that leave was not due to lack of interest, the removal order dated 19th November, 1993 passed by the DTC-Petitioner is approved. Consequently, the order dated 23rd December, 2003 passed by the learned Industrial Tribunal-II, Karkardooma, Delhi, in OP No.567/2002 is set aside and a writ of certiorari is issued approving the order dated 19th December, 1993 removing the Respondent from service.

6. The writ petition stands disposed of.

MANMOHAN, J

August 13, 2008

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