

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

Judgment Reserved on January 15, 2014
Judgment Delivered on February 11, 2014

+ **W.P.(C) 2923/2007**

JITENDER MATHURIA Petitioner

Represented by: Mr.S. Chakraborty, Advocate

versus

M/S. HINDUSTAN PETROLEUM CORPORATION LTD.

..... Respondent

Represented by: Ms. Raavi Birbal, Advocate

with

+ **W.P.(C) 3747/2007**

HINDUSTAN PETROLEUM CORP. LTD. Petitioner

Represented by: Ms.Raavi Birbal, Advocate

versus

JITENDER MATHURIA Respondent

Represented by: Mr.S.Chakraborty, Advocate

CORAM:
HON'BLE MR. JUSTICE V.KAMESWAR RAO

V.KAMESWAR RAO, J.

1. By this order, I shall dispose of the above captioned writ petitions which have been filed against an award of the Central Government Industrial Tribunal-II, New Delhi ('Tribunal' in short) dated September 07, 2006 in I.D. No.61/2003 with a further challenge to the order dated June 27, 2005 passed by the Tribunal,

vitiating the inquiry conducted by the petitioner against the respondent Jitender Mathuria in W.P(C) No.3747/2007.

2. For convenience, Hindustan Petroleum Corporation Limited [petitioner in W.P.(C) 3747/2007)] is referred as 'petitioner' in this judgment and Mr. Jitender Mathuria as the 'respondent'.

3. The brief facts are that, the respondent was appointed on March 27, 1998 on compassionate ground after the death of his father, who was an employee of the petitioner. The appointment was at LPG Plant, Village Asauda, Bahadurgarh, Haryana as a General Workman.

4. The respondent was issued a charge sheet dated February 16, 2000 for unauthorized absence for a period of 101 days between the period December 01, 1998 to January 31, 2000 as per Clause 31(7) of the Certified Standing Orders. The charge sheet also stipulated that the petitioner had sent various letters during the period February 02, 1999 to December 16, 1999 informing the respondent about his unauthorized absence, but to no avail. It is noted, the respondent replied to the charge sheet dated February 16, 2000 vide his letter dated March 25, 2000, wherein, one of the defence taken by the respondent was that he was seriously ill. That apart, because of the distance to workplace from his house being 54-55 Kms. and even from Shakurbasti, the place from where the company bus carry the employees for workplace at 5.30 a.m. is also 26-27 Kms. away from his residence, he could not approach on time to get his sick

leave application sanctioned from Plant Manager before availing sick leave. In his reply, he had also stated that he may kindly be excused and assured the authority in the petitioner-Corporation that he will not repeat this mistake again. It is noted that on July 18, 2000, the first date of hearing in the domestic inquiry, the respondent as well as his defence counsel were present, on which date, a request for giving charge-sheet in Hindi was made. The request was acceded to. The Inquiry officer who was appointed on July 06, 2000 conducted the inquiry and submitted his report to the Disciplinary Authority on February 13, 2001 wherein the inquiry officer had proved the charges levelled against the respondent.

5. A copy of the inquiry report dated February 13, 2001 was given to the respondent to enable him to make a representation on the same. The respondent submitted his representation to the inquiry report on April 20, 2001. The Disciplinary Authority, vide its order dated July 18, 2001 held that the petitioner was guilty of the misconduct of habitual absence without leave and discharged him from service with immediate effect.

6. The respondent challenged the order of Disciplinary Authority before the Appellate Authority by filing an appeal. The Appellate Authority, on a consideration of the appeal, did not find any merit in the same and dismissed the appeal. The respondent raised an industrial dispute by approaching the Conciliation Officer. The conciliation proceedings failed and the appropriate government, vide its office order dated April 22, 2003 referred the matter to the

Tribunal for adjudication on the following terms:

“Whether action of the management of Hindustan Petroleum Corporation, Asaudah, Bahadurgarh in terminating the serves of Jitender Mathuria S/o Late Sh. Radhey Shyam, General Workman with effect from 31.01.2000 is just and legal? If not, to what relief the workman is entitled to”?

7. The Tribunal vide its order dated June 27, 2005 on a preliminary issue regarding fairness of the inquiry, held the same stands vitiated. The reasoning given by the Tribunal, vitiating the inquiry, is as under:

“It transpires from the perusal of the inquiry officer’s report dated 13.02.2000 that he has held inquiry ex-parte and there is no evidence on the record that the workman applicant was given intimation of the dates on which ex-parte proceedings were held. The disciplinary authority in his order dated 08.07.01 has mentioned in his order that some medical certificates for various periods from 04.12.1998 till 06.01.2000 have been attached but these medical reports are just certificates without any supporting report viz. pathological investigation, line of treatment, prescription etc. The disciplinary authority was aware of the medical certificates but he did not consider the same as there was no pathological investigation. Pathological investigations are not necessary in every case. In case, he was absent for a few days an explanation should have been called from him but no explanation regarding his absence has been called when he sent applications for leave along with medical certificates. All of a sudden he was informed that he has been absent for 101 days unauthorizedly so charge sheet has been submitted to him. The management should have considered his every application supported by certificates and when his first application was rejected he should have been informed of the same but according to Rule 22

disciplinary action has not been taken against him when he was absent unauthorizedly for the first time. As such, charges are vague as explanation has not been asked for every absence. My attention was drawn to AIR 1961 Calcutta Page 40 , (1949) 2 MLJ 310, AIR 1968 SC 266, it has been held by the Hon'ble High Court and Hon'ble Supreme Court that charges should contain full particulars and should be specific and not vague otherwise it will vitiate the inquiry proceedings. In the instant case the charges appear to be vague and proper opportunity to the workman applicant has not been given. The inquiry has been held ex parte. The applications of the workman applicant supported by medical certificate have not been considered. In case the principles of natural justice are not followed, the inquiry vitiates. In the instant case principles of natural justice have not been followed. The workman applicant has not been given opportunity to defend himself and to cross examine the management witness. These applications supported by medical certificates have not been filed during the inquiry proceedings and the same has not been considered. Thus the domestic inquiry held by the management/respondents stands vitiated. It is unfair. Issue No. 1 is decided accordingly. Issue notice to both the parties”.

8. The reasoning of the Inquiry Officer, in vitiating the inquiry, primarily are:

- 1) There is no evidence on the record that the respondent was given intimation of the dates on which ex parte proceedings were held.
- 2) The Disciplinary Authority was aware of the medical certificates, but, he did not consider the same as there was no pathological investigation. Pathological investigations are not necessary in every case. In case, he was absent for few days,

the explanation should have been called from him, but no explanation regarding his absence has been called when he sent applications for leave along with the medical certificates.

3) All of a sudden, he was informed that he was absent for 101 days unauthorizedly.

4) The management should have considered his every application supported by certificate and when his first application was rejected, he should have been informed of the same but according to Rule 22 of the Standing Orders, disciplinary action has not been taken against him when he was absent unauthorizedly for the first time.

5) The charges are vague as explanation has not been asked for every action as the law laid down by the High Court and the Hon'ble Supreme Court stipulates that charges should contain full particulars and should be specific and not vague.

6) Since principles of natural justice have not been followed, the inquiry stands vitiated.

9. That while vitiating the inquiry, the Tribunal granted liberty to the petitioner to produce evidence in support of its charges framed against the respondent. After the parties had availed opportunities for producing the evidence, the Tribunal, after hearing both the parties, passed the award dated September 07, 2006. In the award, the Tribunal concluded as under:

“It was submitted that the workman at that time was a boy of 18-19 years. He has been provided job at a distance of 55 Kms. from his residence. He should have been appointed in the existing vacancy of his father in Delhi but job to him in Delhi was refused

on extraneous consideration. He was compelled to join at Asaudha Village and he undertook arduous journey in odd time from the place of his residence to place of his employment.

It was argued by the management that there was no post in Delhi so compassionate appointment was given in Asaudha Village. Compassionate appointment is always a compassionate appointment and the workman cannot claim to be posted at a particular place. He was provided job where vacancies existed.

It was further submitted from the side of the management that he was unauthorizedly absent for 101 days from December 1998 to January 2000 and this habitual absence without leave is misconduct as per Clause 31(7) of the Certified Standing Orders applicable in the case of the workman.

It was further submitted that the workman submitted a letter that his village is at a distance of 55 Kms. from the place of his employment. So he could not reach the place of employment on account of illness and he could not submit letters regarding his absence in time. He has prayed for pardon and he has promised that he will never commit such mistakes again. I have perused the inquiry proceedings. The letters, applications and the medical certificates have been mentioned in the application dated 16.02.2000 but it was not placed on the file of the inquiry and the leave applications of the workman and his medical certificate have not been considered.

It was submitted from the side of the workman that he fell ill so he could not get leave sanctioned.

It is proved from own letter of the workman that he could not get leave sanctioned from time to time as his place of employment was situated at a distant place. The workman has admitted that he was on unauthorized leave on several occasions. The management has not considered the leave applications of the workman.

It was the duty of the workman to get leave sanctioned every time he was absent. It is not ground

that his residence is at a distance of 55 Kms. So he could not get leave sanctioned before proceeding on leave. The workman on various occasions was absent without sanctioned leave. He has filed applications along with medical certificates regarding his illness and the same should have been considered in the inquiry report.

It is true that an employee should not remain absent without sanctioned leave. If an employee remains absent without sanctioned leave that absence is treated as unauthorized absence. This workman has committed this mistake several times as has been admitted by him in his letter dated 16.02.2000 but he has proved that he was sick so he could not obtain prior sanctioned leave. In the facts and circumstances of the case the management should have considered his applications supported by medical certificate for medical leave. He appears to be a habitual absentee. But he has filed medical certificates in support of his leave.

It appears that the leave applications of the workman were not considered as the same were not supported by pathological test etc. A poor workman cannot get himself pathological examined. So pathological report is not necessary for sanction of medical leave. The workman has admitted that on several occasions he could not get leave sanctioned. This is a misconduct on the part of the workman but this misconduct is not so punishable. Discharge is not proportionate punishment. He should have been awarded a lesser punishment. In the facts and circumstances of the case, the workman deserves to be reinstated without any back wages and without any consequential benefits.

It appears that there is mistake regarding date in the reference. The workman was really discharged from service on 18.07.2001.

The reference is replied thus:-

*The action of the management of
Hindustan Petroleum Corporation
Limited, Assandha Bahadurgarh in*

terminating the services of Jitender Mathuria, S/o Shri Radhy Sham a general workman w.e.f. 31.01.2000 is neither just nor legal. The respondent/management is directed to reinstate the workman without any back wages and without any consequential benefits within two months from the date of the publication of the award.

Award is given accordingly”.

10. The Writ Petition (Civil) No. 3747/2007 has been filed by the petitioner challenging the order of the Tribunal dated June 27, 2005, whereby the Tribunal held that the inquiry stands vitiated and award dated September 07, 2006, whereby the termination of service of the respondent is held as not legal and directing his reinstatement without any back wages and without any consequential benefits within two months from the date of publication of the award.

11. The Writ Petition (C) No. 2923/2007 has been filed by the respondent declining the back wages and consequential benefits to him.

12. It is the submission of the respondent that his appointment was on the terms and conditions of Long Term Settlement dated April 13, 1983 and in compliance of the provisions of the Long Term Settlement, the petitioner-Corporation signed a settlement with All India Unions on June 27, 1984, laying down the procedure to be followed for employment of dependants of workman, who die in service. According to him, his father was serving the petitioner in administrative office at Parliament Street, New Delhi and as per the

settlement, he was to be provided a job commensurating his qualification in place of his deceased father in the administrative office. He further submits that if there was no regular vacancy, a supernumerary post was to be created to adjust him. Since the petitioner did not provide the respondent a job in Delhi and compelled him to join as a General Workman at the LPG Gas Plant at Village Asauda, Bahadurgarh, Haryana i.e. about 55 Kms. from his residence and the plant running in double shift, the respondent was to report at 6.30 a.m. during first shift for which he was to leave home at 4.30 a.m. and during second shift, he use to leave the plant at 10.30 p.m. and reach home at 12.30 a.m. adversely affecting his health and he was compelled to avail extra leave on medical grounds. All the 101 days leave, said to be unauthorized during 1998-2000, was on medical grounds supported by 25 medical certificates and producing a fitness certificate on resuming duties. The further submission of the learned counsel for the respondent is that the petitioner allowed his leave without pay and termed the leave on medical grounds as a misconduct and issued a vague charge sheet. The inquiry was held ex parte and resulting in his termination. In support of the relief claimed by him in Writ Petition (C) No. 2923/2007, the grounds are that the charge sheet being vague and not specific inasmuch as no dates of alleged unauthorized leaves were mentioned; he is entitled to full back wages with consequential benefits. Further, the Tribunal had not appreciated that the settlement entered between the petitioner and the Union wherein the dependant of the deceased employee was to be provided with a job commensurating with the qualification and the experience

at the same place, provided he or she is otherwise eligible for regular vacancy. If no regular vacancy is available, a supernumerary post was to be created, till a regular vacancy becomes available. In other words, he could have been provided the appointment in Delhi itself and not at a far off place at Asauda in Bahadurgarh. It is his case that his mother had to forego her entitlement to the last drawn salary of her husband as the petitioner deducted 60% of entitlement for granting compassionate appointment. Further, the leave having been treated without pay, cannot be termed as a misconduct and the same has been taken care of in the Certified Standing Orders, even on this ground, he would not have been denied the back wages. Further, the order of the Presiding Officer is self-contradictory inasmuch as on one hand, the termination is held to be bad and on the other hand, he has denied back wages and continuity in services, which is untenable. The learned counsel for the respondent relied upon the following judgments in support of his contention.

- 1) *AIR (2008) SC Supp 836, Novartis India Limited Vs. State of West Bengal,*
- 2) *1992 LLR 853, Vasant Laddo Naik Vs. Kohinoor Mills No.1 through its Manager,*
- 3) *1993 LLR 142, Govind Singh Vs. Presiding Officer, Labour Court, Agra, Uttar Pradesh, and,*
- 4) *1990 LLR 6, Baldev Singh Vs. Labour Court, Chandigarh.*

13. Ms. Raavi Birbal, the learned counsel for the petitioner submits that the Tribunal has clearly erred in setting aside the order of discharge/termination of the respondent when there is enough evidence on record to show that the respondent was absent

unauthorizedly. She would submit that the Tribunal has erred in vitiating the inquiry on totally frivolous grounds inasmuch as while considering a preliminary issue on the aspect of the inquiry, the Tribunal was only required to see whether the inquiry has been conducted fairly in accordance with the principles of natural justice and the rules. According to her, there was nothing on record to show that the inquiry was not conducted in terms of principles of natural justice. Her submission is that the respondent was proceeded ex parte rightly in domestic inquiry when he and his defence counsel failed to appear before the Inquiry Officer. Learned counsel would submit that, regrettably, the Tribunal goes into the merit of the charge to hold the inquiry as vitiated. This, according to her, is not tenable. Further, she would submit that even on merit, the petitioner had issued various communications to the respondent from February 02, 1999 to December 16, 1999, informing him about his unauthorized absence which were received by the respondent as he signed the same in token of receipt. According to her, the respondent at the bottom of the letter dated February 02, 1999 had stated that he shall not repeat the same in future. Meaningfully read, the respondent was conscious of the fact that he was unauthorizedly absent and was regretting the same. In fact, it would also show that there was no explanation for the respondent to justify his unauthorized absence. The ground of sickness is an after-thought. Ms. Raavi Birbal would also state that some other letters dated December 16, 1999, November 09, 2000, June 21, 2000 and August 21, 2000 were also sent to the respondent, but the respondent had never responded to any of the

letters. According to her, the respondent had never taken any permission for leave. Even the certificates issued by the Doctor, it is her submission, the respondent had only submitted the advice of doctor, advising him rest, without supporting documents like the medical prescriptions and pathological test, if any. According to her, the fact that the respondent never bothered to send the reply to the letters sent by the petitioner, would show the absence being wilful. She, in fact, went on to challenge the authenticity of the documents submitted by the respondent. In the last, she would state that no organization need to take the unauthorized absence lightly. She would submit that the charges were virtually admitted by the respondent. The reasoning given by the Tribunal for the respondent not getting the leave sanctioned as he resides 50-55 Kilometers away from the place of work is totally unjustified. It is a case where the respondent had taken the duties very casually and the plea that on compassionate appointment, the respondent was required to be posted in Delhi, is totally untenable. He had accepted his appointment as a General Workman at LPG plant Asauda. She relies upon the following judgments in support of her contention:

- 1) M/s. L and T, Komatsu Limited Vs. N.Udayakumar, (2008) 1 SCC 224,*
- 2) Burn and Co. Limited Vs. Their Workman and Others, (1960), II LLJ 261 SC,*
- 3) Delhi Transport Corporation Vs. Sardar Singh, AIR 2004 SC 4161*
- 4) Punjab and Sind Bank and Others Vs. Sakattar Singh, (2001) 1 SCC 214*

14. Having considered the submissions made on behalf of the parties insofar as the order dated June 27, 2005 whereby the Tribunal has vitiated the domestic inquiry conducted by the petitioner, I am of the view that the reasoning given by the Tribunal is untenable, the Tribunal misdirected itself on facts. The Inquiry Officer proceeded ex parte against the respondent on October 31, 2000 when neither the respondent nor his defence counsel, were present. The date of hearing i.e. October 31, 2000 was communicated to the respondent vide communication dated October 20, 2000. I find that the said communication was received by the respondent on October 24, 2000. There was no occasion for the Tribunal to hold that there is no evidence on record that the respondent was given intimation of the dates on which the Inquiry Officer has asked the Presenting Officer to sum up his report. I would like to point out here the date of hearing before October 31, 2000 was October 19, 2000, when Mr. Mahabir Singh, the defence counsel of the respondent was present. On a specific query by the Inquiry Officer, Mr. Mahabir Singh stated *“the employee is not coming to plant for so many days and I am not having any document to present his case”*. In other words, the defence counsel was also helpless because of lack of assistance from the respondent.

15. Further, the Disciplinary Authority was justified in observing that except medical certificates, no other documents like pathological test reports, line of treatment, prescriptions were attached as the same would suggest the seriousness of illness if any, which may justify the absence of the respondent. Further the

reasoning given by the Disciplinary Authority in his order dated July 18, 2001 is that the medical certificates were sent in bunch at the time of replying to the charge sheet and again while replying to the Inquiry Officer's report. According to the Disciplinary Authority, had the respondent sent these medical certificates from time to time, he could have been examined by the Corporation's Medical Advisor. Even, I note that the respondent never sought leave by sending medical certificates from time to time. Rather, he sent these medical certificates for the first time at the time of replying to the charge sheet. This itself suggest – (1) he had not been sending the leave application regularly; and (2) the illness was only an excuse to justify absence. If an employee is suffering from a serious ailment which has forced him to be on leave for a long duration, surely, if not get leave sanctioned in person, would definitely sent a request by post, attaching therewith the prescriptions, the pathological report, if any, the medical certificate of the doctor, advising him rest. Unfortunately, this not being done by the respondent, the respondent cannot justify his absence, which in the given facts, is a wilful one. The petitioner was justified to issue the charge sheet on February 16, 2000 when finding no response to different letters written to the respondent. To say that the petitioner had not taken action when the respondent unauthorizedly remained absent for the first time, has no basis, rather it shows the bona fides of the petitioner, ensuring, that if for good valid reasons, the respondent remained absent, he (respondent) could still justify the same. In this case, the respondent failed to justify the same and was accordingly issued a charge sheet. It

cannot be said that in the given facts, the charges framed against the respondent were vague. The charges were very clear and have been understood by the respondent, who had filed a reply to the same wherein, he does not take any objection on the vagueness of the charges. If the charges were vague, he should have taken the objection at the threshold. Unfortunately, the Tribunal has not considered the facts from this perspective. I find, the rules of principles of natural justice have been followed and the Tribunal could not have vitiated the inquiry vide its order dated June 27, 2005.

16. Insofar as the award dated September 7, 2006 of the Tribunal is concerned, the Tribunal primarily got influenced by the fact that the respondent was provided a job at a distance of 55 kms. from his residence; he should have been appointed in the existing vacancy of his father in Delhi; he was compelled to join at Asauda village and was required to take an arduous journey at odd time from the place of his residence to the place of employment. His appointment as a General Workman was on compassionate basis, he had accepted the appointment with open eyes. Neither, there is anything on record to show that he had a grievance about his place of posting at Asauda village nor there is any representation made by him for change of posting. In any case, the scope of the inquiry was whether the respondent had committed a misconduct by remaining unauthorizedly absent. I find on the appreciation of the record, the Inquiry Officer has rightly held that the charges against the respondent stands proved. No other issue was required to be gone into, that too, on the aspect of his appointment in Asauda village

and not in Delhi. Even the conclusion of the Tribunal that the place of work being 55 Kms. away, he could not reach the place of employment on account of illness, and could not submit letters regarding his absence on time, is also without any basis. Nothing precluded the respondent to send leave applications duly supported by medical prescriptions, medical certificates and pathological report, if any, seeking leave on medical grounds through post. I find from the order of the Disciplinary Authority that the respondent had in one bunch submitted medical certificates along with his reply to the charge sheet for the first time. I also find that the respondent had failed to respond to various letters written by the petitioner, calling upon him to report for duty. I also find that in the later part of the award, the Tribunal had admitted that he was on unauthorized leave on several occasions. There was no reason for the Tribunal to still set aside the inquiry and direct the reinstatement of the respondent. It is also noted that the Tribunal has also concluded that it was the duty of the respondent to get leave sanctioned every time he was absent. The Tribunal also acknowledges the fact that the residence of the respondent being at a distance of 55 Kms., is not a ground for not getting the leave sanctioned. The Tribunal also acknowledges that the leave of the employees, who remained absent without sanctioned leave, is treated as unauthorized absence, but tried to justify the ultimate conclusion of the reinstatement of the respondent on the ground that the respondent has proved that he was sick, so, he could not get leave sanctioned. This conclusion of the Tribunal is perverse inasmuch as the respondent was not able to prove the authorities that he was sick. Mere submission of the

medical certificates would not support the leave. In this case, it is noted that the medical certificates were rightly considered by the competent authority but, the certificates could not satisfy the authority about the genuineness of the illness on which the leave had been sought.

Further, the Tribunal has also found the penalty as disproportionate. It also observed that he should have been given a lesser punishment. I hold that the charge of unauthorized absence in the given facts is a serious misconduct which justifies the discharge/termination. The reinstatement of the respondent without any back wages and without any consequential benefits in the given facts, is uncalled for.

17. Insofar as the judgments relied upon by the parties in support of their respective stands are concerned, the same are dealt hereinafter.

18. In the matter reported as L and T Komatsu Ltd. vs. N. Udayakumar, (2008) 1 SCC 224, the court has held that the reliefs granted by the Courts must be seen to be logical and tenable within the framework of the law and should not incur and justify the criticism that the jurisdiction of the Courts tends to degenerate into misplaced sympathy, generosity and private benevolence. The court has further stated that it is essential to maintain the integrity of legal reasoning and the legitimacy of the conclusions.

19. In the matter reported as Burn & Co. Ltd. v. Their Workmen

and Ors., (1960) II LLJ 261 SC, wherein the question before the court was whether habitual absents means the gross violation of discipline? The court has stated that:

“There should have been an application for leave but Roy thought that he could claim as a matter of right leave of absence though that might be without permission and though there might not be any application for the same. This was gross violation of discipline. Accordingly, if the company had placed him under suspension that was in order. On these findings, it seems to us that the Tribunal erred in holding that it could not endorse the Company's decision to dispense with the services altogether. In our opinion, when the Tribunal upheld the order of suspension it erred in directing that Roy must be taken back in his previous post of employment on the pay last drawn by him before the order of suspension.”

20. In the matter reported as Delhi Transport Corporation vs. Sardar Singh, AIR 2004 SC 4161, the court has held:

“9. When an employee absents himself from duty, even without sanctioned leave for very long period, it prima facie shows lack of interest in work. Para 19(h) of the Standing Order 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 concerned employees were remaining absent for long periods which affect the work of the employer and the concerned employee 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 Madhya Pradesh v. Harihar Gopal 1969 (3) SLR 274 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 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 Order 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.”

21. In the matter reported as Punjab & Sind Bank & Ors. vs. Sakattar Singh, (2001) 1 SCC 214, the court has held that it must be necessary to follow term of notice while dealing with services. The court has further stated:

“Under this Rule the employee is given an opportunity to rejoin duty within a stipulated time or explain his position to the satisfaction of the Management that he has no intention of not joining duty, and a presumption will be drawn that the employee does not require the job any more and will stand retired from service. Thus, there is no punishment for mis-conduct but only to notice the realities of the situation resulting from long absence of an employee from work with no satisfactory explanation thereto. The principles of natural justice cannot be examined in vacuum without reference to the fact-situation arising in the case. This Rule has been incorporated in an agreement where representatives of employees' unions were party. They also realised the futility of continuing a situation when an employee without appropriate intimation to the management is playing truant.”

22. Insofar as the judgments relied by the respondent is concerned, those are on the grant of back wages of reinstatement; conduct of workman is vital among other factors; refusal to grant back wages without any reason as required in law more so, when Labour Court found the charge of misconduct is not proved; the denial of back wages was improper; when termination of an employee was held to be illegal, reinstatement with back wages will follow. I find here that the inquiry against the respondent was held

properly in compliance of the principles of natural justice. The charges have been proved against the respondent by the Inquiry Officer and an appropriate penalty has been imposed by the Disciplinary Authority. The Tribunal could not have held that domestic inquiry has been vitiated. Even in the main award, the conclusion arrived at by the Tribunal is also not justified. Unauthorized absence is a very serious misconduct and the petitioner was justified in discharging the respondent/workman. I note that the judgments relied upon by the petitioner are fully applicable in the facts of the case. Since, I have held the inquiry was proper and the conclusion of the Tribunal in the impugned award as not justified being perverse and not considering the facts in proper perspective and also the law laid down by the Supreme Court and the punishment being justified, the writ petition No.2923/2007 filed by the respondent is liable to be dismissed. I order so. The Writ Petition (Civil) No. 3747/2007 is accordingly allowed. The order dated June 27, 2005 and the award dated September 07, 2006 are set aside.

23. No costs.

CM No. 9252/2012 in W.P.(C) 3747/2007

24. In view of the order passed in the aforesaid writ petitions, the present application has become infructuous and is disposed of as such.

(V.KAMESWAR RAO)
JUDGE

FEBRUARY 11, 2014/akb