

RESERVED

A.F.R.

Court No. - 33

Case :- WRIT - A No. - 9538 of 2023

Petitioner :- Vibhushit Singh

Respondent :- National Thermal Power Corporation Limited through its Chairman and others

Counsel for Petitioner :- Siddharth Khare, Senior Advocate

Counsel for Respondent :- Naresh Chandra Nishad, Hanuman Prasad Dube, Senior Advocate

Hon'ble J.J. Munir,J.

Does the unreported abandonment of a course of study by an employee, who was sanctioned study leave for a specified period of time, entitle the employer to treat the period of sanctioned leave unauthorized absence from duty, leading to abandonment of service?

This question has arisen in the context of Rule 24.9 of the National Thermal Power Corporation Service Rules read with Rule 26(2)(vi)(e) of the Conduct, Discipline and Appeal Rules, 1977 applicable to the National Thermal Power Corporation¹. How the above referred question has arisen would shortly appear from facts giving rise to this writ petition.

2. The NTPC is a public sector undertaking of the Central Government. It is incorporated as a public limited company. According to the petitioner, it is classified as a “*Maharatna*” central public sector undertaking, possessing a certain degree of financial freedom. One of the projects of the NTPC is Rihand Super Thermal Power Project, Rihand Nagar, District Sonbhadra. The petitioner applied for consideration of his candidature in the recruitment of Executive Trainee (ET-2012). He participated in the various stages of selection and finally stood selected. In consequence of the selection, an offer of appointment dated 13.07.2012 was made by the Manager, Human Resource Centre of the NTPC. If

¹ 'NTPC' for short

accepted by the petitioner, the offer required him to undergo the formalities specified. The petitioner completed those formalities in response to the offer of appointment dated 13.07.2012 on the 21st of August, 2012. The Manager, Human Resource Centre issued a letter of appointment dated 21st August, 2012, saying that subject to the petitioner successfully completing the training, he would be posted to one of the projects/stations of the NTPC, based on his performance during training, assessed periodically. The petitioner, it goes without saying, completed the training successfully and was posted at the Rihand Super Thermal Power Project, Rihand Nagar, Sonbhadra.

3. After serving the NTPC for some years, the petitioner secured admission to the Master of Technology² Course. He then applied for sanction of study leave for a period of two years in order to enable him to pursue the full-time course of M.Tech. at the Krishna Institute of Engineering and Technology³, Ghaziabad. The petitioner's application was considered and sanctioned *vide* an order dated 17.06.2017, issued by the Senior Manager, Human Resource. He was sanctioned study leave from 19.06.2017 to 18.06.2019. The study leave was sanctioned on condition that the petitioner would not be entitled to any pay or allowances during the period of leave. The conditions carried in the order dated 17.06.2017, sanctioning study leave to the petitioner, read :

- He shall execute a service agreement bond to serve the Company for a minimum period of three years after completion of the study leave or to pay to the company Rs. 50,000/- in case of default.
- He will not be entitled to any pay or allowances during the period of study leave and he will not accept any part/full time employment, scholarship, honorarium or any other payment during this period without prior approval of the Competent Authority.
- He will be entitled to the benefits of the continuity of service for CPF and Gratuity and if he chooses to

2 'M.Tech' for short

3 'KIET' for short

contribute to his provident fund account during study leave period. the Company will make a matching contribution as per rules framed from time to time.

- During the study leave period, he shall not be considered for promotion. However, the period will count for eligibility for promotion only if he successfully completes his study. He will be considered for promotion as per the Company policy after rejoining duties on expiry of study leave. The duration of Study Leave availed without completing the study will not be reckoned for purpos of eligibility for promotion or for earning increments. He will also not be eligible for grant of study leave again.
- The Study Leave period will not be considered for the purpose of earning any kind of leave.
- He shall vacate the company accommodation provided to him within stipulated time period, failing which market rent will be charged.
- He shall also be covered by any other rules in respect of study leave as framed by NTPC from time to time.

4. The petitioner took admission at the KIET, Ghaziabad in the M.Tech., Electrical & Electronics Course in the first year of the Academic Session 2017-18. The petitioner pursued his studies in the first semester of the course. The petitioner says that on account of his “personal circumstances” he could not appear in the examination at the end of the first semester. During this period of time, the petitioner married on 18.04.2018. The parties are *ad idem* that the petitioner was unable to complete the course successfully, that would have led to award of the degree of M.Tech. On the 17th of June, 2019, that is to say, well within time before expiry of leave, the petitioner reported back to duty. He submitted his joining report to the respondents, but not permitted to join. The petitioner stayed back at District Sonbhadra for about a month. During this period of time, the petitioner made abortive attempts to join duties, but not permitted. He returned to his hometown, awaiting further orders from the respondents. The respondents constituted a three-member committee headed by the General Manager (O & M) with an Assistant General Manager, Human Resource and the Assistant General Manager (MTP) as its members, for the purpose of holding an inquiry into the

petitioner's 'unauthorized absence'. The petitioner was finally required to appear before the committee last mentioned on 20th September, 2019, which he did. It is the petitioner's case that certain questions were put to him, which he answered. His answers were recorded. The Committee submitted a report to the respondents, recommending that the period of the petitioner's study leave be treated as unauthorized absence under Rule 24.9 of the NTPC Rules read with Rule 26(2)(vi)(e) of the Conduct, Discipline and Appeal Rules, 1977⁴. Both these Rules appear to have been amended by Corporate Personnel Circular No. 415/99 dated 13.05.1999 issued by the Corporate Circular Personnel Division of the NTPC. The petitioner says that a copy of the inquiry report was not supplied to the petitioner, when it was made. It was at a subsequent stage that the said inquiry report was supplied to the petitioner, upon an application made for the purpose under the Right to Information Act, 2005. The report was supplied to the petitioner, under the Act last mentioned, through a memo dated 1st April, 2021.

5. Much before a copy of the inquiry report was supplied to the petitioner, the impugned order dated 31.03.2020 came to be passed by the Senior Manager (HR-EB) Rihand Super Thermal Power Project, Sonbhadra, holding that based on the recommendations of the committee and approval of the competent authority, the period of leave shall be treated as unauthorized absence, and, in consequence, the petitioner held to have abandoned service. The petitioner's lien was declared to be lost on the post held by him. The aforesaid order was passed in the exercise of powers under Rule 24.9 of the NTPC Rules read with Rule 26(2)(vi)(e) of the CDA Rules, directing that the petitioner's name be struck off the rolls of NTPC with effect from 17.09.2017, afternoon. The period of unauthorized absence from 19.06.2017 to 17.06.2019 was directed to be treated as *dies non*.

4 'CDA Rules' for short

6. The petitioner preferred an appeal under Rule 32(i) of the CDA Rules, challenging the order dated 31.03.2020 to the competent authority, but the appeal was dismissed both as not maintainable and on merits *vide* order dated 03.03.2023.

7. Aggrieved by the orders dated 31.03.2020 and 03.03.2023, the petitioner has instituted this writ petition under Article 226 of the Constitution.

8. In the writ petition, it is the petitioner's case that unauthorized absence has a specific connotation under Rule 24.9 of the NTPC Rules, which postulates unauthorized absence from duty or work, either without sanction of leave or after the expiry of sanctioned leave. The absence from duty for any reason, in either of the two eventualities, is for a period of 90 consecutive days or more. It is only then that the consequence of the employee automatically losing lien on the post attaches, resulting in the voluntary abandonment of service. It is pleaded on behalf of the petitioner that the petitioner proceeded on duly sanctioned study leave, and, merely because he could not successfully complete his course of study, the consequences envisaged under Rule 24.9 of the NTPC Rules would not attach. For the same reason, the consequences envisaged under Rule 26(2) (vi)(e) of the CDA Rules would also not be attracted. The case of the petitioner pleaded is that the consequences would be governed by Paragraph No. 2.6 (iv) of the NTPC Scheme of Facilities for Higher Studies, which provides that in case the employee fails to complete the course of study satisfactorily, rejoining the services of the company will require specific approval of the Director, Human Resource.

9. A counter affidavit has been filed on behalf of the NTPC, respondent No. 1 being the NTPC represented by its Chairman and the other three respondents being its officers of varied rank.

10. The stand taken by the NTPC in the counter affidavit is that the petitioner never intimated the management at any stage that he did not appear in any of the papers of the first semester examination of the M.Tech. Course and had discontinued his course of study. The petitioner had been sanctioned study leave for the purpose of enabling him to complete the course. The stand of the respondents is that study leave having been granted to the petitioner under the leave rules for a particular purpose, the purpose having been abandoned by the petitioner, he would no longer be entitled to the leave sanctioned. It was then incumbent upon the petitioner to have intimated the NTPC regarding discontinuance of his course of study. It is the respondent's case that the petitioner deliberately concealed material facts regarding discontinuation of his studies, nor did he post the NTPC with developments in this regard up to the date of reporting for duty, upon completion of the study leave on 17.06.2019. The management say that the petitioner has played fraud on them.

11. In the rejoinder affidavit, the aforesaid contention has been disputed by the petitioner, with the material facts pleaded in paragraph No. 6, that reads :

6. The fact that the petitioner could not appear in all the papers of the first semester examination is not disputed. However it is incorrect to assert that intimation of such fact had not been given by the petitioner to the authority. It is specifically stated that during the period the petitioner was on leave the petitioner had specifically intimated the authority on telephone with regard to his existing position on which the petitioner was intimated that he should report for joining after expiry of period of leave. The order sanctioning the study leave itself also specify the consequences of failure to complete the study during the leave period. There existed no indication of the petitioner being treated during this period as being on unauthorized absence. It is false to aver that the petitioner made any concealment of fact or played any fraud on the management. Both the allegations of fraud and concealment are allegations of misconduct requiring the same to be established during the course of regular disciplinary proceedings.

12. Heard Mr. Ashok Khare, learned Senior Advocate assisted by Mr. Mohammad Atif, learned Counsel for the petitioner and Mr. Ravi Kant, learned Senior Advocate assisted by Mr. Hanuman Prasad Dube, learned Counsel on behalf of the respondents.

13. This Court has keenly considered the matter and perused the record as well as the rules relevant to the issue. There is no issue about the fact that the petitioner is a permanent employee and his services can be terminated in one or the other eventualities, as they are called, provided for by Clauses (a) to (h) of sub-Rule (1) of Rule 24 of the NTPC Rules. Unauthorized absence is one of the contemplated contingencies, which may lead to termination of an employee's services. Unauthorized absence is a particular and special eventuality, which entitles the employer to treat the employee as having abandoned service. It is not one of the usual modes by which the employer may dispense with the services of an employee. Normally, unauthorized absence from duty is a misconduct, upon which, disciplinary action against the employee concerned may follow. It is only in cases where for a particularly long period of unauthorized absence that rules provide for abandonment can the employer, upon strict compliance with the conditions of the rule, infer abandonment. In those cases also, the Courts insist on opportunity to be given to the employee, whose services the employer proposes to treat as abandoned. Therefore, the most important question to be determined in this case is whether Rule 24.9 of the NTPC Rules can, at all, be invoked to treat the petitioner as an employee abandoning his services.

14. To the understanding of the Court, the mode of termination of service by abandonment being a special provision, very different from the normal modes where the services of an employee may be terminated for misconduct, after following the procedure prescribed, the rule can be invoked only if the conditions thereof are strictly satisfied. Said

differently, the rule has to be strictly construed in favour of the employee with burden upon the employer to show that the employee's act, indeed, falls in the teeth of the rule and the conditions of the rule to be applied have been strictly followed by the employer.

15. The foremost condition to attract the rule, as evident from a bare reading of Rule 24.9 of the NTPC Rules, is 'unauthorized absence from duty or place of work, without sanction of any leave' or 'not reporting for duty after expiry of the sanctioned leave for any reason whatsoever'. The next condition is that the absence in either contingency, whether it be unauthorized absence without leave or overstaying leave, should be for a consecutive period of 90 days. When both these conditions are satisfied, the Rule authorizes the employer to treat the employee as having lost his lien on the post and deemed to have voluntarily abandoned service without notice. The employee's rights are safeguarded by the proviso which says that upon reporting for duty within 90 days from the date of the termination order, if the employee explains the cause for his absence to the entire satisfaction of the management, the management may regularize the unauthorized absence on terms and conditions considered fit.

16. This Court, in the facts of the present case, does not intend to go into the validity of the rule that confines opportunity to account for unauthorized absence within 90 days of the termination of service, because we think that the said question does not, indeed, arise in this case. Here, to the understanding of this Court, either of the two fundamental conditions for the invocation of the rule does not arise. It is not a case where the petitioner has unauthorizedly absented from duty, for reason that admittedly, he proceeded on study leave for two years, which was granted under the rules as leave without pay.

17. The second condition is not fulfilled, because the petitioner did report for duty on the expiry of two years, which he says he did on 17.06.2019, but was not allowed to join. His date of reporting for duty is not in issue. Therefore, there is, strictly speaking, no case of overstaying leave either.

18. The issue, which the respondents raise, is that leave was granted for a particular purpose, that is to say, to complete his M.Tech. Course, and the petitioner having abandoned that purpose even before he appeared for his end semester examination of the first semester, he forfeited his leave. The respondents say that having abandoned the course before the end semester examination of the first semester, it was incumbent upon the petitioner to have intimated the respondents regarding the discontinuance of his studies. The respondents, therefore, say that the study leave of two years, that was validly granted, turned into unauthorized absence the moment the petitioner abandoned the purpose for which leave was granted. The respondents also say that it amounts to playing fraud on the management, making the sanctioned leave turn into unauthorized absence, within the meaning of Rule 24(9) of the NTPC Rules.

19. As already remarked, the rule as to abandonment of employment under the NTPC Rules, like any other similar rule, has to be strictly construed. No doubt the petitioner did act unauthorizedly in abandoning his course of study while being on study leave and not intimating the management about it, followed by reporting for duty at the end of the period of leave. But, construing the rule strictly in favour of the employee, it does not satisfy the second condition where the rule may be invoked i.e. not joining duty after expiry of leave within the period of 90 consecutive days. The first part of the Rule about absence from duty without leave is not involved here at all. The petitioner was sanctioned study leave for a period of two years and did join on schedule. The fact that he did not

pursue his course of study for which the leave was sanctioned, which was a special leave and without pay, may have rendered the petitioner liable for disciplinary action, but that is not the case here. In the opinion of this Court, the sweep of the rule cannot be expanded to cover cases which may logically or through process of reasoning be regarded as unauthorized absence. The rule can be invoked, where there is a case of actual unauthorized absence for the specified period of time without sanctioned leave or overstaying leave beyond the sanctioned time for the specified period.

20. The Authorities that were cited at the Bar on both sides do not specifically bear on the question that arises here, though they generally are good guidance on principles relating to abandonment of employment, where rules provide for it. The decision of the Supreme Court in **V.C., Banaras Hindu University and others v. Shrikant**⁵ on which, much reliance has been placed by Mr. Ashok Khare, was a case where the employee, a Lecturer in Ophthalmology at the Institute of Medical Sciences, Banaras Hindu University, applied for different categories of leave with effect from 01.03.2000 to 30.06.2000, enabling him to accompany his wife to the United Kingdom on a Commonwealth Fellowship and also attend a Retina Meeting from 07.04.2000 to 09.04.2000 at Frankfurt, Germany as well as the Annual Congress of Royal College of Ophthalmology at Harrowgate, United Kingdom from 23.05.2000 to 24.05.2000. The leave was recommended by the Head of Department, but not sanctioned by the Vice Chancellor. The employee left for the United Kingdom without sanction of leave and without the Vice Chancellor's permission. He was asked to join his duties by the Registrar *vide* notice dated 24.03.2000, with a further direction to show cause why action be not taken against him for misconduct. The employee said he received the letter on or about 31.03.2000, which he answered on 12.04.2000. The University, by an

5 (2006) 11 SCC 42

order dated 18.04.2000, asked the employee to submit his reply by 05.05.2000, failing which, he would be deemed to have abandoned service with effect from 01.03.2000. By another notice dated 04.05.2000, the employee was asked to join his duty by 17.05.2000 on ground that his earlier reply has not been found satisfactory. It was also mentioned in this notice that he would be deemed to have abandoned his service with effect from 01.03.2000 if he did not respond to the last notice on ground that he had failed to comply with the orders, requiring him to report back. The services of the employee were terminated by the Vice-Chancellor with effect from 01.03.2000.

21. Apart from other issues on which **Shrikant** (*supra*) is an authority, including the Vice-Chancellor's jurisdiction to pass that kind of an order, which was held to be exclusively the Executive Council's province, the most relevant fact is that **Shrikant** was, after all, a case where the employee had left his duties, left the station as also the Indian shores without sanction of leave by the competent authority. Action was taken in terms of the relevant ordinance of the University, providing for abandonment of employment in case of unauthorized absence from duty. Therefore, the authority in **Shrikant** is about a case where an employee did go away from his duty, without sanction of leave by the competent authority and refused to join back, when given a certain time to do so. It is another matter that the determination of employment on other premise was held bad in that case, but, the authority does not, at all, deal with the issue that arises here, that we have noticed and dwelt upon in ample measure hereinbefore.

22. Reliance on behalf of the respondents is placed by Mr. Ravi Kant, learned Senior Advocate on a decision of the Kerala High Court in **M.P. Joseph v. Union of India and others**⁶. This was a case where the services of an officer of the Indian Administrative Services were held abandoned

6 2013 Lab. I.C. 2790

and a deemed resignation inferred under Rule 7(2) of 21(f) of the All India Services (Leave) Rules, 1955⁷. In the said case, the employee had been deputed on foreign assignment to a project of the International Labour Organization. After the period of deputation was over, he joined back for a day and then left post, after putting in an application for extraordinary leave for four years. The leave application was rejected and repeat directions issued to the officer to join back his duties. Besides these steps, disciplinary proceedings were initiated for unauthorized absence to take up remunerative assignment and failing to report for duty. He unauthorizedly absented for a continuous period of five years. He was given an opportunity to explain his absence, as provided in the Note to Rule 7(2) of the Rules of 1955 and held deemed to have resigned in accordance with the Rules aforesaid. As the report of the decision would show, the officer challenged the order of his deemed resignation as well as Rule 7(2) of the Rules of 1955 as *ultra vires* before the Central Administrative Tribunal. Failing there, he petitioned the High Court.

23. It appears that disciplinary proceedings were initiated, but noticing that there was continuous absence of more than five years, Rule 7(2) was invoked to declare the officer's deemed resignation. The decision of the Government under the Rule was upheld as also the *vires* of Rule 7(2). This decision, too, hardly bears on the point, because it was, on facts, a case of the officer leaving his post unauthorizedly and staying away for a period of five years, without sanctioned leave. The point here is very different, as already indicated.

24. In **Vijay S. Sathaye v. Indian Airlines Limited and others**⁸, the issue arose in the context of the Deputy Manager (Operations) of the erstwhile Indian Airlines, seeking voluntary retirement. The employee, in the said case, submitted an application on 07.11.1994, seeking voluntary

⁷ 'the Rules of 1955' for short

⁸ (2013) 10 SCC 253

retirement with effect from 12.11.1994. The petitioner was informed *vide* letter dated 11.11.1994 that he should continue in service till such time a decision is taken. However, the officer did not attend duty on 12.11.1994. He joined a certain Blue Dart Limited, and did not go back to his employers to work on 12.11.1994. Since there was no response from the Indian Airlines, he filed a writ petition before the High Court for a *mandamus*, directing the Airlines to accept his application for voluntary retirement. Pending the said petition, the employee was informed that his application had been rejected. The employee then challenged the order rejecting his application for voluntary retirement. Pending the said writ petition, the employee attained the age of superannuation. The High Court dismissed the petition. The employee petitioned the Supreme Court seeking Special Leave to Appeal. Upholding the High Court, an inference of abandonment from service was drawn. It was observed in **Vijay S. Sathaye** (*supra*) :

11. Even otherwise, the petitioner was asked to continue in service till the decision is taken on his application. However, he did not attend the office of the respondents after 12-11-1994. In view of the above, as the petitioner had voluntarily abandoned the services of the respondents, there was no requirement on the part of the respondents to pass any order whatsoever on his application and it is a clear-cut case of voluntary abandonment of service and the petitions are liable to be dismissed.

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].)

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."

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].

25. The decision in **Vijay S. Sathaye** turns on the principle that absence for a very long period may amount to abandonment of service, and, in that eventuality, the relationship of employer and employee comes to a terminus automatically, without an order by the employer. Apparently, in **Vijay S. Sathaye**, there was no order declaring the petitioner to have abandoned the post. Therefore, the general principle regarding abandonment was stated without reference to any provision governing abandonment. Long absence from the employer's establishment was held to give rise to an inference about abandonment.

26. One of the Authorities noticed in **Vijay S. Sathaye** is **Buckingham and Carnatic Co. Ltd. v. Venkatiah and another**⁹. The case before the

9 AIR 1964 SC 1272

Supreme Court in **Buckingham** (*supra*) arose out of an award of the Labour Court, where the employer had refused to take back the workman in service. The workman proceeded on six days' leave starting from 10.01.1957, which, after taking into consideration the intervening holidays, expired on 18.01.1957. He did not report for duty on 19.01.1957 according to the employers, but remained absent without leave and without sending any communication seeking extension of leave. He sent a letter on 11.03.1957, saying that after reaching his village, he had suffered from fever and dysentery and treated by the Civil Assistant Surgeon. The letter was accompanied with a certificate issued by a government doctor. The medical certificate said that the workman had suffered from Chronic Malaria and Dysentery from 15.01.1957 to 17.03.1957. The workman appeared before the Manager, but was asked to report to the Senior Manager. The Medical Officer was unable to ascertain if he had been ill for a period of two months. The employers refused to take back the workman in service and informed him to the above effect on 23.03.1957, treating it to be a case of abandonment of service. His case was treated as one falling under Standing Order No. 8(ii) of the Standing Orders applicable to the employer's establishment. It was in the context of the aforesaid facts that it was held by their Lordships of the Supreme Court :

5. ...This Standing Order is a part of the certified Standing Order which had been revised by an arbitration award between the parties in 1957. The relevant clause clearly means that if an employee falls within the mischief of its first part, it follows that the defaulting employee has terminated his contract of service. The first provision in clause (ii) proceeds on the basis that absence for eight consecutive days without leave will lead to the inference that the absentee workman intended to terminate his contract of service. The certified Standing Orders represent the relevant terms and conditions of service in a statutory form and they are binding on the parties at least as much, if not more, as private contracts embodying similar terms and conditions of service. It is true that under common law an inference that an employee has abandoned or relinquished service is not easily drawn unless from the length of absence and from other surrounding circumstances an inference to that effect can

be legitimately drawn and it can be assumed that the employee intended to abandon service. 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. But where parties agree upon the terms and conditions of service and they are included in certified Standing Orders, the doctrines of common law or considerations of equity would not be relevant. It is then a matter of construing the relevant term itself. Therefore, the first part of Standing Order 8(ii) inevitably leads to the conclusion that if an employee is absent for eight consecutive days without leave, he is deemed to have terminated his contract of service and thus relinquished or abandoned his employment.

27. It, therefore, appears from the said decision that while essentially, abandonment is a matter of intention on the employee's part, if the issue is governed by a rule, the abandonment would depend on the terms of the rule.

28. What was said by their Lordships in **Buckingham** was about a certified standing order relying on a rule on the subject of abandonment. In the present case, this Court has, for the same reason, looked into the terms of the rules and concluded that the conditions spelt out therein, that are an exception to the usual mode of termination, have to be strictly construed in favour of the employee, and are not attracted here at all, for reasons already indicated. It is urged on behalf of the petitioner by the learned Senior Advocate that the consequences of failure to complete the course of study are dealt with under Paragraph No. 2.6 (iv) of the NTPC Scheme of Facilities for Higher Studies. The petitioner's case may not be open to be dealt with under para 2.6(iv) last mentioned, because it is not a case where the petitioner completed the course of study and failed to earn his degree. It is a case where he abandoned the course. As already remarked, the petitioner ought to have informed the respondents about his decision to abandon or the circumstances that led him to give up the course early into the first semester, but, in whichever manner the respondents may deal with the aforesaid lapse on the petitioner's part, it

would not constitute unauthorized absence from duty or overstaying the sanctioned leave within the meaning of Rule 24.9 of the NTPC Service Rules read with Rule 26(2)(vi)(e) of the CDA Rules. Therefore, the decision by the respondents to consider the petitioner's services as abandoned cannot be countenanced.

29. In the result, this writ petition **succeeds** and shall stand **allowed**. The impugned orders dated 31.03.2020 and 03.03.2023 passed by the Senior Manager (HR-EB), Rihand Super Thermal Power Project, Bijpur, Sonbhadra are hereby **quashed**. A *mandamus* is issued to the respondents to reinstate the petitioner forthwith with seniority and continuity of service, though no emoluments would be payable for the period by the terms of the leave.

30. It shall be open to the respondents to take action against the petitioner in abandoning the course of study for which study leave was taken as permissible under the rules.

31. There shall be no order as to costs.

Order Date :- October 19, 2023

I. Batabyal

(J.J. Munir, J.)