

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT:

THE HONOURABLE MR. JUSTICE A.MUHAMED MUSTAQUE

THURSDAY, THE 19TH DAY OF FEBRUARY 2015/30TH MAGHA, 1936

WP(C) .No. 13665 of 2014 (G)

PETITIONER(S) :

SAM K. JULIUS AGED 42 YEARS  
S/O.K.J.JULIUS  
(EX-5TH ENGINEER OFFICER(FOREIGN GOING) SHIPPING CORPORATION  
OF INDIA LTD  
REGISTERED OFFICE SHIPPING HOUSE  
NO.245 MADAME CAMA ROAD  
MUMBAI - 400 021) RESIDING AT KALLUVEETIL HOUSE  
'ANCHORAGE', HOUSE NO.44/1051-D, POTTAKUZHAY ROAD  
KOCHI - 682 017.

BY ADVS.SRI.A.X.VARGHESE  
SRI.A.V.JOJO

RESPONDENT(S) :

1. THE CHAIRMAN & MANAGING DIRECTOR, SHIPPING CORPORATION  
OF INDIA LTD, REGISTERED OFFICE SHIPPING HOUSE, NO.245  
MADAME CAMA ROAD, MUMBAI - 400 021.

2. THE GENERAL MANAGER  
SHIPPING CORPORATION OF INDIA LTD REGISTERED  
OFFICE SHIPPING HOUSE  
NO.245, MADAME CAMA ROAD, MUMBAI - 400 021.

3. THE DIRECTOR (P&A)  
SHIPPING CORPORATION OF INDIA LTD  
REGISTERED OFFICE SHIPPING HOUSE, NO.245  
MADAME CAMA ROAD, MUMBAI - 400 021.

4. THE CHIEF VIGILANCE OFFICER SHIPPING CORPORATION OF  
INDIA LTD REGISTERED OFFICE SHIPPING HOUSE, NO.245  
MADAME CAMA ROAD, MUMBAI - 400 021.

R1 BY ADV. SRI.JOY THATTIL ITTOOP, SC, SHIPPING CORPORATION  
OF INDIA

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON  
19-02-2015, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER(S) ' EXHIBITS:

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- EXT.P-1: TRUE COPY OF THE APPOINTMENT ORDER DATED 13.12.1999
- EXT.P-2: TRUE COPY OF THE EMPLOYMENT AGREEMENT DATED 7.12.1999
- EXT.P-3: TRUE COPY OF THE LETTER DATED 12.6.2000
- EXT.P-4: TRUE COPY OF THE COMMUNICATION DATED 21.5.2009
- EXT.P-5: TRUE COPY OF THE EXAMINATION LEAVE APPLICATION DATED 23.8.2011 ALONG WITH APPLICATION FORM.
- EXT.P-6: TRUE COPY OF THE LEAVE APPLICATION CUM-SANCTION FORM.
- EXT.P-7: TRUE COPY OF THE LETTER DATED 27.2.2012
- EXT.P-8: TRUE COPY OF THE ACKNOWLEDGEMENT CARD DATED 27.2.2012
- EXT.P-9: TRUE COPY OF THE REPRESENTATION DATED 20.3.2012
- EXT.P-10: TRUE COPY OF THE ACKNOWLEDGEMENT CARD IN REPRESENTATION DATED 20.03.2012
- EXT.P-11: TRUE COPY OF THE REQUEST LETTER DATED 11.3.2013
- EXT.P-12: TRUE COPY OF THE TERMINATION ORDER DATED 18.4.2013
- EXT.P-13: TRUE COPY OF THE RELEVANT PAGES OF MUI-INSA AGREEMENT
- EXT.P-14: TRUE COPY OF THE REPRESENTATION DATED 13.5.2013
- EXT.P-15: TRUE COPY OF THE REPRESENTATION SUBMITTED BY THE UNION DATED 15.5.2013
- EXT.P-16: TRUE COPY OF THE APPEAL DATED 12.6.2013
- EXT.P-17: TRUE COPY OF THE JUDGEMENT DATED 17.1.2014 IN WPC 30790/2013
- EXT.P-18: TRUE COPY OF THE ORDER DATED 18.03.2014
- EXT.P-19 TRUE COPY OF THE RELEVANT PAGE OF MUI-INSA AGREEMENT

RESPONDENT(S) ' EXHIBITS:NIL

True Copy/

P A to Judge

**A.MUHAMED MUSTAQUE, J.**  
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**W.P(C).No.13665 of 2014**  
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**Dated this the 19<sup>th</sup> day of February, 2015**

**JUDGMENT**

Petitioner was appointed in the Shipping Corporation of India as 5<sup>th</sup> Engineer on 13.12.1999. An employment agreement was executed between the petitioner and Shipping Corporation of India. Ext.P1 is the employment agreement. This Writ Petition is filed challenging Exts.P12 and P18 orders terminating petitioner from service consequent upon unauthorized absence for more than a period of twelve months.

2. The terms and conditions of employment for officers in the Shipping Corporation have been formulated on the basis of Memorandum of Agreement settled by the Negotiating Committee of the Indian National Shipowners Association. Clause 29 of that agreement provides as follows:

“It is agreed between MUI and INSA that an officer on permanent employment of the Company, while in service takes up employment elsewhere, if proved, Company may take appropriate action, including dismissal of such errant officer without any terminal benefits being paid. It is further agreed that if an officer on leave (except on medical leave) does not report to the company within a maximum period of 12 months, it will be presumed

that the officer has left the services of the company and the company may terminate the services of such officer without any further notice.”

3. The case of the Shipping Corporation is that petitioner unauthorizedly absented from service from 01.08.2011 to 31.03.2013 and in the light of clause.29, it is presumed that petitioner has left the service of the Company and he has been deemed to have been terminated without any notice.

4. Petitioner joined the service as 5<sup>th</sup> Engineer in the year 1999. Petitioner applied for study leave to obtain class IV FG certificate. This was for a period from 03.04.2011 to 31.07.2011 as per Ext.P5. This was sanctioned. Thereafter, petitioner again made a request for sanctioning leave and again applied for a leave as per Ext.P6. On 27.02.2012 petitioner submitted leave extension application upto 31.03.2013 through registered post.

5. The case of the Corporation is that petitioner has not obtained any permission from the Corporation to obtain leave during these periods. On the other hand, learned counsel for the petitioner submits that petitioner made requests as per Ext.P7 dated 27.02.2012 and Ext.P9 dated 20.03.2012. It is to be noted that petitioner was directed by the Corporation to obtain Class IV FG certificate as per Ext.P4 communication dated 21.05.2009. It is

the case of the Corporation that petitioner is required to possess the above qualification as per Ext.P2. Learned counsel for the petitioner submitted that it is not a requisite qualification for continuing in service, it is only a requirement for promotion.

6. The facts in this case would disclose that petitioner remained absent during the aforementioned period. The question is whether petitioner's service need be terminated on account of unauthorized absence for a period of twelve months. This is actually a presumption for abandonment of service by an employee of the company. The abandonment in the legal sense can be understood as a voluntary relinquishment of one's right in this context to continue in the service. No doubt, when an abandonment arises, no proceeding need be initiated against the employee for disciplinary proceeding for unauthorized absence.

7. Petitioner was granted leave for study purposes. Petitioner during this period as referred in the impugned order made request for extension of leave. It is seen that there was no response on the request of the petitioner. This has been pointed out by learned Standing Counsel for the respondent that this is not in requisite format and Corporation is not bound to consider such request. However, it is noted in Ext.P7 that petitioner has pointed out in his request that if there is any difficulty in

sanctioning the leave from 31.03.2013, he was willing to join duty immediately. However, this was also not responded. Ext.P9 is dated 20.03.2012 requesting leave extension upto 31.03.2013. No doubt, as revealed from the facts, petitioner was absent from service, nevertheless, it does not give a presumption that petitioner abandoned his service as per clause 29 of the agreement. As noted above, petitioner expressed his willingness to continue as such in service, if authorities are not intended to grant leave. It is one thing in law to proceed against an employee for unauthorized absence and another thing to rely upon presumption based on the relevant provision for a deemed termination.

8. As seen from the letters written by the petitioner, he was very much intended to join service if authorities are not willing to grant leave. In view of that, I am of the view, clause 29 cannot be relied on by the Corporation to treat the petitioner's service deemed to have been terminated. In view of the above, the impugned orders are set aside. However, this will not stand in the way of Corporation to proceed against the petitioner in accordance with law for taking action against him for unauthorized absence from service.

Resultantly, petitioner shall be reinstated in service with immediate effect. Petitioner is not entitled to get any monetary benefits during this broken period of service. He will be entitled for any service benefits only after joining the service. Petitioner shall be reinstated in service within a period of two weeks from the date of receipt of a copy of this judgment subject to any action to be initiated against the petitioner.

The Writ Petition is disposed of. No costs.

Sd/-

**A.MUHAMED MUSTAQUE, JUDGE.**

Sbna/19/02/15