

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CWP No. 18903 of 2016

Date of decision:14.9.2016

Jai Pal Sharma

... Petitioner

Versus

State of Haryana & ors.

... Respondents

CORAM:- HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. Anurag Goyal, Advocate,
for the petitioner.

RAJIV NARAIN RAINA, J.(Oral)

When the petitioner was transferred and posted in 2006 he did not report for duty. He disobeyed the transfer order. He made no effort at all to inform the department of his whereabouts for 6 long years and sauntered in like the prodigal son-in-law of the Government in the year 2012 to make a protest request that he may be permitted to join service. Thereafter, he claims in this petition seeking reinstatement and pension benefits that he has been running from pillar to post but no one is ready to listen to him. Six years of absence amounts to abandonment of service and such an inference can easily be drawn by his conduct and therefore, in view of the law laid down in Vijay S. Sathaye v. Indian Airlines Ltd. & ors., (2013) 10 SCC 253, neither notice nor any inquiry was required to be conducted in such circumstances. The petitioner himself bid goodbye to the principles of natural justice. The termination order passed in 2012 was formal, superfluous and redundant and an actionable claim does not arise therefrom for the exercise of extraordinary writ jurisdiction in his favour. His intention was to leave the job. The delay and laches as against a transfer order is fatal to the cause and washes out past service. He proved it for 6 years of absence

without leave. In *Sathaye* the Supreme Court held:-

“9. 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 voluntarily 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.

10. In *M/s. Jeewanlal (1929 Ltd., Calcutta v. Its Workmen*, AIR 1961 SC 1567, this Court held as under: “.....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. The Registrar, Co-operative Societies, Bihar & Anr.*, AIR 1974 SC 1896).

11. 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 Prakash & Anr.*, (1998) 8 SCC 733).

12. In *Buckingham and Carnatic Co. Ltd. v. Venkatiah & Anr.*, AIR 1964 SC 1272 while dealing with a similar case, this Court observed : “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 & Ors. v.Chemicals and Fibres India Ltd., AIR
1979 SC 582.”

No merit. No equity. No compassion is involved. Dismissed.

However, on dogged persistence of counsel the dismissal of the
petition will not preclude the petitioner from hunting out his administrative
remedies, if any, because the administrator may give what the Court shies
from and often repels.

(RAJIV NARAIN RAINA)
JUDGE

14.09.2016
monika

<i>Whether speaking/reasoned</i>	<i>Yes</i>
<i>Whether reportable</i>	<i>Yes</i>