

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

Date of decision: 29.02.2016

CWP No.4001 of 2016

Smt. Niranjani Devi

...Petitioner

Vs.

State of Punjab & another

...Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr. R.D.Bawa, Advocate,
for the petitioner.

RAJIV NARAIN RAINA, J.

1. The petitioner was a Science Mistress in a school run by the Education Department, Punjab. She remained absent from duty from 1st January, 1988 to 30th June, 1998 which was a rather long stint of no work. She was removed from service on 16th September, 2002 after holding an ex parte inquiry. She filed a suit, which succeeded on the short ground that she was not given an opportunity of being heard and therefore the removal order was held to be illegal and the defendants were directed to re-conduct the inquiry by associating the petitioner and in case the inquiry went in her favour then she should be reinstated and be entitled to service benefits from the due date. The department filed an appeal against the decree while the employee filed an execution application in the civil court. The State appeal was dismissed in the year 2011. The judgment and decree of the trial Court was affirmed. The order attained finality. In implementation of the order the department appointed an Inquiry Officer in November, 2011 to go into the misconduct of willful

absence without leave. Petitioner failed to produce the leave applications claimed by her to explain her absence which she says she made from time to time that she was not in possession of copies thereof. When asked about the mode of transmission, she stated that she sent them through school teachers, through ordinary post and over the telephone. The report was submitted on 5th November, 2013. The charge was proven that she remained willfully absent from 1st May, 1988 to 14th March, 1996/98. The school had repeatedly written to her to join, lastly on 15th March, 1996. The inquiry report was forwarded to the petitioner to know her version. She was given an opportunity of personal hearing on 30th December, 2013. It was her case she had to leave on account of her mother-in-law's illness and her social obligations. These were lame excuses.

2. Nevertheless, the disciplinary authority found from the inquiry report that the department had produced no witness to prove that she remained absent without leave. And nor was she called at the time of recording statements of prosecution witnesses produced by the department so that she had opportunity cross examine them. The disciplinary authority heard both the petitioner and the Inquiry Officer and directed the latter to remove the flaw and re-submit his inquiry report after following due procedure on which the petitioner expressed her satisfaction after concluding her arguments in her defense against the ex parte enquiry. The result remained the same after holding fresh enquiry on remand. The charge of misconduct of long absence without leave was again proven in the presence of the petitioner for want of evidence to show sufficient cause of absence. The petitioner knew the case against her and the onus was on her to produce evidence of alleged leave applications sent to employer covering the enormous period involved; 1st May, 1988 to 14th March, 1996. It appears that during that period her mother-in-law

died and to make things worse her husband turned sick. These are hardly valid reasons explaining absence.

3. The disciplinary authority visited the past record of unlawful absences of the petitioner from where he found a litany of absenteeism, a gist of which is tabulated in the written statement of the department of the State, see Pages 129 to 131 of the paper-book to confirm. The entries, to say the least, are enormous bridges to cross, involving days, months and more than a year, the stark one of which was for the period 1983-84. The last and material absence is shown from 1st May, 1988 to 30th June, 1998, the period relevant to the instant dispute which by any standards is gigantic. Having regard to all the above jumble of misconducts, past and present, the Director, Education Department (Schools) Punjab, Ajitgarh vide impugned order dated 16th April, 2014 thought it fit to reject her representation for reinstatement in service.

4. The inquiry report was accepted by the disciplinary authority and she was given due opportunity of hearing and recourse to procedure established by law which was meticulously followed before the order was made. The order of removal from service dated 16th September, 2002 was affirmed. Thus the order relates back to the original order and creates neither any new rights nor liabilities. Nor any fresh cause of action had arisen despite the order passed by the civil suit which when read in decree is not a decision on the merits of the case or revival of rights which have lapsed by passage of time. It may be noted that the civil court held the removal order was illegal, but the court did not set it aside when it concluded that hearing was not offered on which premise directed holding of a regular inquiry, which has resulted in the impugned order rejecting the petitioner's request for reinstatement.

5. The period of unexplained absence for such an enormous period involved precludes me from interfering in the matter. I had occasion to deal with a similar situation involving a much shorter period of absence found fatal in the case of Dr. Dalbir Singh Vs. State of Haryana & Another, 2014 (2) SCT 498. Dr. Dalbir Singh was a Dental Surgeon charged with absence from duty without permission from Government resulting in violation of Rule 3.1 (ii) and (iii) of the Government Employees (Conduct) Rules, 1966. After noticing a number of judgments of the Supreme Court and lastly and very importantly the decision in Vijay S. Sathaye Vs. Indian Airlines Limited & others, (2013) 10 SCC 253, I held in *Dalbir Singh* under similar circumstances as below:-

“On hearing counsel and perusing the record and noticing the missing links of facts from his last letter dated 13th July, 2007 asking for extension in leave till 10th January, 2008 and the issuance of the charge-sheet on 14th July, 2010 for major misconduct of absence without leave, I am convinced that after the period 13th July, 2007 the petitioner had no intention to return to his duties as a Dental Surgeon and his intention became manifest on 10th January, 2008 when he still made no effort or give valid explanation for the absence without permission.

In Syndicate Bank v. Staff Assn. (2000) 5 SCC 65 and Aligarh Muslim University v. Mansoor Ali Khan (2000) 7 SCC 529; AIR 2000 SC 2783 the Supreme 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 should be taken as one who ceases to be in service. In such a case, there is no need to hold an inquiry or to give any notice as it would amount to useless formalities. This view was reiterated in Banaras Hindu University v. Shrikant, (2006) 11 SCC 42, Chief Engineer (Construction) v. Keshava Rao, (2005) 11 SCC 229 & Bank of Baroda v. Anita Nandrajog, (2009)

9 SCC 462. The law has again been restated recently in [Vijay S.Sathaye vs. Indian Airlines Limited and others](#), (2013) 10 SCC 253. The Supreme Court here emphasized that an employee has a right to abandon service at any time voluntarily by submitting his resignation and alternatively by not joining or reporting for duty for a long period. Absence from duty in the beginning may be misconduct, but when such absence is for a long period, it may amount to voluntary abandonment of service resulting in termination of service automatically without necessitating any further order from the employer. Therefore, the inquiry held and the dismissal order passed are legal speaking merely otiose and surplusage.

In this view of the matter, it will of little help to the petitioner to take pot shots at the infirmities, if any, in the inquiry report and the acceptance of it leading to the order of dismissal. This is for the reason that a full-fledged ex parte inquiry could have been held but that process was not adopted for good or bad reason but at the same time I am not prepared to hold that the petitioner can have any advantage of mere technicalities of the law and for which reason to come to his rescue in exercise of equitable jurisdiction exercised by this Court under Article 226 of the Constitution. I would be loathe to interfere in this matter. Merely because the petitioner had been appointed as a Dental Surgeon in August 1992 and had put in about 14 years of prior service before proceeding on sanctioned leave and thereafter without permission of leave from the Government would not in the view of this Court be a mitigating circumstance to water down the dismissal order to return him to service by ordering reinstatement. If there was any void created in dental services to the public that was filled long ago. Those wounds inflicted on the employer by denial of duty to serve the ailing stand healed long ago and those wounds do not deserve to be re-opened. The petitioner not only breached the

rules he served under but also the Hippocratic oath he took as a doctor to serve humanity, if he swore on it.”

6. The principle of law laid down in *Sathaye* is that an employee has a right to abandon service any time voluntarily by tendering his resignation and alternatively, not joining or reporting for duty for a long time. The absence from duty in the beginning may be misconduct, but when absence is for a long period of time, it may amount to voluntary abandonment of service resulting in termination automatically without necessitating any further action or order from the employer.

7. It would not be necessary to hold an enquiry or comply with the principles of natural justice after inference of abandonment is drawn by employer. The decree of the civil court has to be understood in this manner since the law on the subject was not present in the mind of the trial court. If decree was affirmed in first appeal it matters little as far as employer's rights are concerned. But in any case an enquiry was held where charge was established.

8. In view thereof, I have no reason to take a different view though the petitioner may not have been bound by the Hippocratic Oath but all the same charged with an equally onerous duty and social responsibility as a school teacher.

9. One decade passing by is sufficient to raise a presumption of abandonment of job. Intention is a state of mind which needs no evidence or inquiry. Long absence on lame and unproven excuse is unpardonable. The State held enquiry under compulsion of court fiat which was faulted by the trial court on principles of natural justice was in recognition of situation presented. In the regular inquiry the petitioner fared no better. An employee is always free

to leave job. Leaving the job is no misconduct. If employee does not return to office she cannot be forced. What constitutes abandonment is length of time for the presumption to arise in favour of the employee or the employer who needs to be under no statutory obligation to disengage, is a question to be answered from case to case based on intention. The petitioner is a bounty hunter for whom no sympathy can be shown without harming the discretionary writ jurisdiction in passing effete orders. The statutory minimum for presumption of absence without permission in Appendix 'D' of the Standing Orders framed under The Industrial Employment (Standing Orders) Act, 1947 where one of the major misdemeanours is "absence without permission exceeding ten consecutive days." The Act may not apply to the case in hand but helps in understanding the issue of abandonment. One can count ten days statutorily as against roughly ten years and be assured that the refusal to work and the delay involved is an insurmountable barrier to relief claimed. As a matter of fact, no enquiry was required in a case of abandonment of services. If the enquiry was conducted under orders of the civil court to be re-done there was no legal compulsion to do so, not even affording an opportunity of hearing to the petitioner. The petitioner has only herself to blame.

10. Consequently, the present writ petition is found devoid of merit and thus fails and is dismissed.

29.02.2016
Vimal

[RAJIV NARAIN RAINA]
JUDGE