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

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DECIDED ON: 05.02.2016

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LPA 72/2016, CM APPL.3921-3923/2016

VANDANA JHINGAN

..... Appellant

Through: Mr. A.P. Dhamija, Advocate.

versus

UNION OF INDIA & ORS

..... Respondents

Through: None.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MS. JUSTICE DEEPA SHARMA

S.RAVINDRA BHAT, J. (ORAL)

1. The appellant is aggrieved by an order of the learned Single Judge rejecting her writ petition. In the petition she had questioned a letter/communication of 10.10.1995 written by her employer, i.e., M/s Goa Shipyard Ltd (hereafter referred to as the “employer”) informing that she had lost her lien due to voluntary abandonment of the services.

2. The appellant was working as Senior Marketing Assistant Gr.I at the Delhi office of her employer. She claims that she sought and was granted the NOC to seek visa for visiting United States (“US”) in December, 1994. On 06.12.1994, she was transferred to the Goa office of her employer and asked to report

for duty in the first week of January, 1995. She sought leave complaining that she had sprained her right ankle for which medical leave was sanctioned w.e.f. 17.04.1995 to 01.05.1995. Immediately upon the expiry of the medical leave, she availed of the leave which she claimed was granted to her in December, duly sanctioned by the General Manager. Reliance is placed upon a letter of 06.02.1995 which recorded that the applicant has deferred her visit to the United States. In view of the deferment of visit, there was no objection to visit the US from the revised date. The appellant thereafter relies upon a letter of 04.04.1995 (which has been disputed by her employer in the writ proceedings) allowing her to proceed on leave from 01.05.1995 to 08.06.1995.

3. According to the appellant's averments in the petition - as well as during the contentions urged before this Court - the facts which emerge are as follows: The appellant was to report for duties on 12.06.1995 when her extended leave expired. She did not do so. Much later on 20.07.1995, she sent a fax without indicating her address, seeking extension of leave and without furnishing any reason. The extension sought was till 15.09.1995. In the meanwhile, her employer claimed that despite their efforts she could not be served with the notice to show cause why she should not be deemed to have lost her lien in view of her persistent refusal to report for duties. In these circumstances, newspaper publication was resorted to; a notice was published on 09.09.1995. In terms of the notice, upon failure of the appellant/employee to report for duties within one month, she would be deemed to have lost her

lien. In these circumstances, for the first time on 13.10.1995, the appellant represented against newspaper notice claiming to have been shocked and contending that her loss of lien and punishment of her employment was arbitrary and illegal. Upon her employer not heeding her representations, the appellant approached this Court under Article 226 of the Constitution of India. The learned Single Judge after considering the entire records, pleadings and the submissions of the parties was of the opinion that interference was not warranted.

4. It is contended by learned counsel for the appellant that finding of the learned Single Judge was erroneous. Counsel submitted that the sanction of leave to enable the appellant to visit US was permitted and consequently the letter/certificate issued on 04.04.1995 was perfectly authorized. It is submitted that findings of the Single Judge that the individual who granted it was not authorized to do so and had been subsequently dismissed, are not correct. It was argued that the recourse to Regulation 29 (1) governing her employment cannot be attracted. Counsel relied upon the judgments of the Supreme Court reported as *D.K. Yadav v. J.M.A. Industries Ltd* 1993 (3) SCC 259 and the subsequent judgment in *Vijay S. Sathaye vs. Indian Airlines Limited and Others*, (2013) 10 SCC 253. It is submitted that the subsequent judgment was inapplicable and that the Single Judge fell into error in holding that it was relevant. Counsel highlighted in this context that without holding an enquiry, the employer could not have dispensed with her services. He also referred to *Uptron India Ltd.*

v. Shammi Bhan, AIR 1998 SC 1681. It was lastly urged that the learned Single Judge erred in misconstruing the instructions of the Central Government dated 27.05.1992 which authorized the individual Mr. Gupta to issue a sanction letter dated 04.04.1995.

5. We have carefully considered the submissions. The material on record shows that the petitioner had apparently applied for leave to go to the US in December, 1994 and later sought to postpone it. Even if the submission that the General Manager had granted approval for the proposal for leave at a later date were to be accepted, the fact remains that the employer disputed the grant of sanction by the letter of 04.04.1995. This aspect was gone into by the Single Judge rather elaborately who concluded that S.C. Sharma who styled himself as a Regional Manager was not designated as such and was just a Manager. It was held that in all past instances, approval of the personnel department and the headquarters was required and granted for such proposal. That finding is one of fact and we see no reason to interfere with it. That being the case, what emerges is that between the period 01.05.1995 to 08.06.1995, the appellant was granted leave and was thereafter asked to rejoin duties. Even according to her case, if credence were to be given, for the purpose of argument, to the letter of 04.04.1995 sanctioning leave, at best, that permitted her to remain absent till 08.06.1995. The earliest communication seeking extension was addressed by her, however, only on 22.07.1995. In that fax message which bears no address or telephone number and appears to have been sent from the US, she sought for further leave

up to 14.09.1995, further stating that she would begin work on the 15th. Concededly, she did not report on 15.09.1995. In these circumstances, in the interregnum period, the employer appears to have issued notice at her last known address and formed an opinion that it was not possible to serve her. In these circumstances, the notice asking her to report back or else deemed to have abandon her lien, was issued on 09.09.1995. It is after the expiry of period of such notice on 13.10.1995 that the appellant represented against the employer's move.

6. So far as the authorization is concerned, as would be evident from the above discussion, the finding of this Court is premised additionally on the footing that even if the appellant's leave were considered authorized, there is no explanation for her absence after 08.06.1995.

7. Having regard to the conspectus of circumstances, the Court is of the opinion that the Single Judge cannot be faulted in following the decision in *Vijay S. Sathaye (supra)*. Undoubtedly, the judgments in *D.K. Yadav (supra)* and *Uptron India Ltd. (supra)* do suggest that where terms of employment indicate, in automatic termination of services, the employer should ordinarily hold an enquiry. In the present case, however, the public employer appears to have taken all the necessary and reasonable steps to grant the appellant an opportunity to report back and serve in employment. Concededly, she did not report to Goa at all and sought leave. The leave expired on 01.05.1995. Under somewhat suspicion circumstances relying upon sanction letter which had no authority,

she went to the US virtually abandoning her employment. Having regard to all these facts, the Court is of the opinion that the impugned judgment cannot be termed as erroneous. The appeal is unmerited and the same is accordingly dismissed, along with pending applications.

**S. RAVINDRA BHAT
(JUDGE)**

**DEEPA SHARMA
(JUDGE)**

FEBRUARY 5, 2016
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