

Andreza

IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO 63 OF 2016

**THE GOA POSTAL EMPLOYEES
CO-OPERATIVE SOCIETY LIMITED**

a Society registered under the Maharashtra Co-operative Societies Act, 1860 (as applicable to the State of Goa) and having its office/place of work at Champa Vihar, Near Popular High School, Margao, Goa, represented herein by its Secretary-Shri Ramnath G. Naik, son of Gopal Naik, aged 57 years, married, Indian National, residing at House no. 326, Comba, Margao, Goa.

... Petitioner

V e r s u s

1. MS NIRUPA C. UDAIKAR

daughter of Chandrakant Udaikar, aged 40 years, Indian National, residing at House no.74, Talwada-Veroda, Cuncolim, Salcete Goa.

2. HON'BLE PRESIDING OFFICER

Industrial Tribunal & Labour Court-1,
Government of Goa at Panaji, Goa.

3. STATE OF GOA

through the Chief Secretary-Shaving its office at Secretariat
Porvorim, Goa.

... Respondent

Shri S. P. Munj, Advocate for the Petitioner.

Shri J. J. Mulgaonkar, Advocate for the Respondent no.1.

Coram:- NUTAN D. SARDESSAI, J.

**Reserved for Order on : 21st September 2017
Order Pronounced on : 13th October, 2017**

JUDGMENT

1. Heard Shri S P Munj, learned Advocate for the Petitioner and Shri J. J. Mulgaonkar, learned Advocate on behalf of the Respondent no.1.

2. It was the contention of Shri S. P. Munj that the Petitioner-Society was a non-commercial Society which was assailing the Award dated 04.08.2015 passed by the Industrial Tribunal and Labour Court in favour of the Respondent no.1 holding that their action in terminating the Respondent no.1 was illegal and unjustified and ordering her re-instatement in service with full back wages and continuity in service alongwith all the other consequential benefits. The Respondent no.1 was an Accounts Assistant working with them w.e.f. 01.07.2000 and whose services came to be confirmed on the same day. The material question at large in this Petition was whether the Respondent no.1 was entitled to the back wages when she had absented herself and refused to join services. She had absented herself from duties on 12.05.2009 and lodged a police complaint on 14.07.2009. They had issued a letter to her dated 18.07.2009 to handover the keys on account of her absence from office. On 20.05.2009, she had

complained to the Labour Commissioner that her services were terminated w.e.f. 12.05.2009 and a copy thereof was received by the Petitioners only on 08.07.2009. A letter was issued to her to explain her unauthorised absence from 11.05.2009.

3. Shri Munj further contended that a meeting was held on 01.02.2010 between their Management and the Respondent no.1 in the matter of the alleged illegal termination of services and as the proceedings before the Labour Commissioner had failed, the matter was then referred to the Industrial Tribunal. There was a specific averment in the Petition that the services of the Respondent no.1 were not terminated but that she had indulged in absentism. They had responded to her complaint dated 20.05.2009 made to the Labour Commissioner by their letter dated 22.01.2010 and in which they had made it abundantly clear that they had not appointed any new staff and that they were badly in need of staff and had requested the Respondent no.1 on several occasions to join her duty. The Respondent no.1 by her counter reply dated 01.02.2010 had maintained her case that her services were terminated and no question arose to rejoin the same and of keeping the post vacant and had sought for the payment of the entire compensation.

4. Shri S. P. Munj, learned Advocate for the Petitioners next adverted to the claim statement made by the Respondent no.1 before the Industrial Tribunal and their reply in which they had consistently taken a plea that they had not appointed any new staff in place of the Respondent no.1 and that they were in

need of an Accounts Assistant and therefore her services were not terminated and quite on the contrary she had indulged in absentism. He relied in **Sonal Garments vs Trimbak Shankar Karve [(2002) 6 Bom CR 529]**, **VFC Industries Pvt Ltd vs Balu Ganpat Sakpal [2006 (6) ALL MR 688]** and in **Madhuri Chandulal Lakhani vs Prashant Shripad Satpute [2015 LLR 239]** apart from the unreported Judgment in **Tantrik Shikshan Karmachari vs The Assistant Commissioner of Labour-cum-Authority [Writ Petition no.3239 of 2015]** to substantiate his case.

5. Shri J. J. Mulgaonkar, learned Advocate for the Respondent no.1 adverted to the Award and the findings recorded by the learned Presiding Officer of the Tribunal and submitted that no notice was given to the Respondent no.1 to resume duty assuming without admitting that she had herself abandoned the services. He placed reliance in **Gaurishanker Vishwakarma vs Eagle Spring Industries Pvt. Ltd [1987 (55) 689]**, **Havaldar Tejbali Singh vs Major Nachhattar Singh & anr. [1998(1) LLJ 82]**, **Kendriya Vidyalaya Sangathan & anr [(2005) 2 SCC 363]** and **Deepali Gundu Surwase vs Kranti Junior Adhyapak Mahavidyalaya [(2013) 10 SCC 324]**. He too adverted to the notice dated 26.05.2009 and the statement of claim to buttress his pleas that there was no basis in the case of the Petitioners that she had abandoned the services and therefore there was no justification to interfere with the award under challenge.

6. Shri S. P. Munj in reply submitted that there was no scope to conduct any inquiry as the Respondent no.1 was already before the Labour Commissioner and the matter was thrashed out at that stage.

7. i would consider their submissions, the Judgments relied upon and decide the Petition appropriately.

8. In **Sonal Garments** (supra), a challenge was offered by the Petitioner-employer to the Award passed by the Labour Court in the dispute raised by the Respondent-Workman who was employed by the Petitioner in June 1990. According to him, he was terminated from employment with effect from 23.04.1991 orally. It was his case that no retrenchment compensation was given to him and no wages in lieu of one month's notice were also offered at the time of termination. Both the parties appeared before the Labour Court and filed their pleadings. According to the petitioner employer, the respondent workman was never terminated from employment but he remained absent from February 1991 and that as and when he reports for duty, he will have to explain his unauthorised absence. The petitioner employer further specifically averred that if the respondent workman was really interested to resume duties, he could do so. It was the specific case of the petitioner employer that the respondent workman was never terminated by the petitioner and that he remained absent unauthorisedly and that he was welcome to join his duties. It appears that the offer of the petitioner employer was not heeded and accepted by the respondent

workman and he never reported for work as stated by the petitioner employer in its written statement dated 10.01.1994. Both the parties adduced oral evidence in support of their pleadings. The Labour Court recorded its findings that the respondent workman was illegally terminated and that he was entitled to be reinstated with full back wages and continuity of service. This Court found that the Award so passed was totally erroneous. The Labour Court has not at all considered the offer of the petitioner employer in the written statement that the respondent workman, if really, interested to resume duties, could do so. His conduct lent support to the version of the employer that he had abandoned the employment and that he never came back to report for duty and that it was not a case of termination by the petitioner employer. Whenever the employer offers to reinstate the workman at any stage of the dispute or proceeding and if the workman does not accept the offer even without prejudice to his rights and contentions he will not be entitled to continue his claim for reinstatement in the proceedings and he will also be not entitled to claim any back wages from the date of such offer, conditional or unconditional and in that view of the matter quashed and set aside the Award.

9. In **VFC Industries** (supra), the Petitioner-Company had employed the Respondent as a Peon in an office at Mumbai and at a factory at Village Baska. They decided to shift the administrative and commercial office including the accounts department from Mumbai to its factory at Baska, and put up a notice to that effect on the notice board on 25.08.1998

intimating that the office would be shifted with effect from 01.09.1998, that all employees should report for duty at the factory at Baska and they would be given appropriate train fair and accommodation or house rent allowance in lieu of accommodation. Some of the employees joined the work at the transferred place, while others resigned the employment and were paid their dues. The respondent neither resigned the service nor joined the work at the transferred place. According to the respondent he went for work as usual at the Mumbai office on 01.09.1998 where he was orally told by the Managing Director Mr. Patel that his services were terminated. He approached the Union which wrote a letter to the petitioner on 12.09.1998 which was not replied. The respondent then personally wrote a reminder on 02.02.1999 which also was not replied. The respondent therefore filed a complaint before the Labour Court on 17.02.1999 alleging therein that the petitioner had committed unfair labour practice by unlawfully terminating his service and claimed reinstatement with full back wages.

10. In **VFC Industries** (supra) the Labour Court concluded that the Petitioner had orally terminated the services of the Respondent which amounted to an unfair labour practice and ordered his reinstatement in service w.e.f. 01.09.1998. The learned Single Judge considered the Judgment in Sonal Garments (supra) and in the facts at large found that the petitioner had made an offer of employment to the Respondent on 10.05.2001 which was replied by him on 29.05.2001 declining the offer and to join the employment. In

the circumstances, it was held that he would not be entitled to claim reinstatement nor entitled to claim back wages and therefore the Industrial Court had erred in confirming the Order for reinstatement in allowing back wages.

11. In **Madhuri Chandulal Lakhani** (supra), the Respondent was working as a Photo Printer with them who met with an accident and had to be admitted in the hospital for treatment. It was his case that he had informed the employer about the accident and his inability to report for work until he recovered from illness. The employer however contended that there was no such intimation. On 14.06.2001, the Respondent caused a demand for reinstatement with full back wages and continuity of service with effect from 24.12.2000. It was the case of the employer that they were surprised to receive the said demand letter. Nevertheless, they immediately offered him reinstatement who had declined the reinstatement on a specious plea that back wages for the period between 24.12.2000 and 20.07.2001 were not offered by the employer. The conciliation proceedings ultimately ended in a failure and a reference was made under Section 10 of the Industrial Disputes Act, 1947 resulting in the impugned Award.

12. In **Madhuri Chandulal Lakhani** (supra), the learned Single Judge found on an assessment from the material on record that there was no legal material on record to conclude that the Respondent's services were terminated on 24.12.2000 and that despite him making attempts to report for duties, the

employer did not permit him to resume duties. On the contrary, there was material on record that he had got himself employed with another Company from February 2001 and all this evidence was overlooked by the Labour Court which permitted itself to be influenced by depositions which had no pleadings to back the same. The learned Judge further found that even if this Court were to assume that the employer was to blame in not addressing the written communications to the Respondent between December 2000 and June 2001, the record was clear that in the month of July 2001, in the course of conciliation proceedings, the employer offered to reinstate the Respondent but he declined on the specious plea that back wages for a period of six months were not offered to him. The Labour Court had adopted an approach which was not correct. Once an offer of reinstatement was made by the employer before the Labour Commissioner, there was no good or valid reason for the Respondent to resume duties and the issue of back wages could always have been sorted out later on. The learned Judge ultimately held that though a case was made out to warrant interference, nonetheless, considering the fact that he had indeed met with an accident which made it difficult for him to report to duties for sometime, the impugned Award was modified with the direction to pay him the compensation in lieu of his demands.

13. Tantrik Shikshan Karmachari (supra), was a society which was functioning on 'No profit; No loss' basis with its object to advance loans to its members who comprised of the employees working with the Industrial Training Institutes. The

respondent nos. 3 and 4 claimed to be in employment with the Society and, according to them, they were not being paid wages as per the Minimum Wages Act of 1948 and therefore moved the Assistant Commissioner of Labour with a prayer that they be paid wages in accordance with the said Act. The Petitioners took a stand that it was not a commercial establishment and that the provisions of the Act were not applicable to it and the authority had no jurisdiction to entertain the claim for payment of minimum wages. The Respondent no.1 however allowed the application and directed the payment of minimum wages giving rise to the Petition before the High Court. The learned Single Judge on considering a host of judgments of this Court and that of the Supreme Court, observed that it was held in clear terms that in case of a Society that is constituted only for the purposes of rendering services to its members, its activities could not be treated to be the activities of an industry and the employees therein cannot be treated as workmen and in that view of the matter, quashed and set aside the Order passed by the Respondent no.1.

14. Gaurishanker Vishwakarma (supra), was working as a miller in the first Respondent-Company's factory for about 6 to 7 years prior to the refusal of work to him on and from 03.04.1980. It appears that the workman worked upto 02.04.1980 and when he went to report for duty as usual on 03.04.1980, he was asked not to resume the duties and was told that he would be intimated later as to when he should resume the duty. He approached for work on two or three

occasions thereafter but having failed to get any response from the employer, ultimately, on 08.05.1980, approached the Government Labour Officer. The matter having not been settled at that stage, it was taken in conciliation. The conciliator made his failure report and hence there was a reference of the dispute to the Labour Court. The Labour Court, by its impugned Order, held that it was the workman who had abandoned the service and that it was not a case of termination of service as alleged by him giving rise to the Petition.

15. In **Gaurishanker Vishwakarma** (supra), Their Lordships of this Court found that admittedly the 1st Respondent-Company had not given any notice to the workmen either calling upon him to resume the duty or asking him to show cause as to why his services should not be terminated for his failure to resume his duties. No wonder, therefore, that there was no inquiry held before the termination of his service. In fact, according to the respondent No.1 company, there was no termination of service. Their case was that the petitioner-workman had abandoned the service by refusing to come and to resume the work which it found difficult to accept. It was also well settled that even in the case of the abandonment of service, the employer had to give a notice to the workman calling upon him to resume his duty and also to hold an enquiry before terminating his service on that ground. In the present case the employer had done neither. It was for the employer to prove that the workman had abandoned the service. To prove it, the employer relied

solely on two pieces of evidence-one is the so-called report of the Government Labour Officer to which we have made a reference. The report was not proved by examining the Government Labour Officer. It was not even shown to the workman, much less, was he confronted with it. Thus, no explanation was called for from the workman with regard to the statements made by the Government Labour Officer in his so-called report. Secondly, the report itself was ambiguous with regard to what exactly transpired before the Government Labour Officer and in what circumstances the events stated there took place, if at all they had occurred as stated therein. It appears from the judgment of the Labour Court that the report was of 27.05.1980 and it states that it was the company which had stated before him (i.e. the Government Labour Officer) that since there was a quarrel of the petitioner-workman with his co-workman, the workman did not want to join the duty. It was also stated there that the company was ready to take the workman back but without back wages. No statements of the workman was recorded by the Government Labour Officer. It was on the basis of this so-called statement of the company, that the Government Labour Officer had noted that it was the petitioner who was not ready to come and join his duties. It may also be pointed out here that even according to the report the offer of the company was to take the workman back but without back wages. It must be noted that the petitioner-workman at the relevant time was drawing daily wages of about ₹33/-.

16. In **Gaurishanker Vishwakarma** (supra), it was admitted by the respondent company that nothing had happened before 03.04.1980 to create any apprehension in the mind of the workman that he would be "troubled" or that he would be in danger if he joined duty from 03.04.1980. It is therefore difficult to believe that the workman who had worked continuously for six to seven years, would abandon his service for no rhyme or reason. It had also to be remembered that it was the workman who had approached the Government Labour Officer with a specific grievance that he was not allowed to join his duty. It was also his grievance that although he had approached the company for work from time to time, and the company's partner Anand had kept on promising him that he would be taken in service, he was not given work and hence he was forced to approach the Government Labour Officer. Since it was the case of the Respondent-Company that the workman had abandoned the service, it was for the Company to prove that there was such abandonment and in that view of the matter, allowed the Petition and set aside the Order of the Labour Court directing the 1st Respondent to reinstate him in service with full back wages and all other benefits accruing in his favour.

17. **Havaldar Tejbali Singh** (supra), invoked the contempt jurisdiction of the High Court under Section 12 of the Contempt of Courts Act, 1971 read with Article 215 of the Constitution to punish the non-petitioners for not complying with the Order of this Court and to direct the Respondent to promote him to the cadre of Subedar and to pay interest on

the amount due. In the brief facts, the Petitioner was a Havaladar in the 8th Infantry Brigade who was served with a chargesheet on 09.03.1989. A Summary Court Martial was held under the Army Act, 1950 wherein he was found guilty and was dismissed from service. However, the Brigade Commander of the Unit converted the sentence of dismissal into one of discharge under Section 162 of the Army Act which he challenged in a Petition and where the Order of discharge was set aside and he was ordered to be reinstated with all the consequential benefits. However, he was not reinstated even after completing 24 years of service. The learned Judge of the Madhya Pradesh High Court found that the writ Court had directed the Petitioner to be entitled to reinstatement with consequential benefits. After he had been in service and if he had fulfilled all the criteria for promotion to the cadre of Subedar his case would have been considered for his promotion to the higher rank however the Petitioner was not as a matter of course or as of right as there was no clear order of direction to promote the Petitioner and the Respondents in their bonafide interpretation of the Order did not grant him promotion because of non fulfilment of the criteria of promotion.

18. In **Kendriya Vidyalaya Sangathan** (supra), the Respondent joined service as a Principal in the appellant and in December 1996 he applied for sanction of earned leave with permission to go abroad. It came to be rejected by the Appellant no.3 and so too the permission to go abroad on the ground that disciplinary proceedings were contemplated

against him. The Respondent did not report back for duty till 02.07.1997. In the meanwhile, proceedings under the Central Civil Services (Classification, Control and Appeal) Rules, 1965 were initiated against him and he was declared as absconding from duty and his services were terminated by invoking Rule 19(ii) of the Rules. The Respondent challenged the Order before the Central Administrative Tribunal on the ground that no material was available by the Respondent no.3 which could justify the order of dismissal from service without holding regular enquiry in accordance with the procedure prescribed under the Rules. He also levelled allegations of malafides against the appellant No.3 and pleaded that all the actions taken by the said appellant should be declared a nullity. In their reply, the appellants justified the invoking of Rule 19(ii) on the ground that respondent No. 1 did not respond to the notices issued by appellant No. 3 and did not offer any explanation for his wilful absence from duty for a long period of more than 2 years. The CAT quashed the order of punishment as well as the appellate order by holding that the various provisions of Rules were not complied with. The appellants failed to prove that it was not reasonably practicable to hold the enquiry. It was held that the basic requirements of that provision were not complied with. Imposition of penalty was held to be not in order in the absence of disciplinary enquiry proceedings. Liberty was granted to the appellants to initiate disciplinary proceedings from the stage of serving a chargesheet on the respondent on the acts of misconduct which may be though fit for such proceedings and thereafter hold enquiry proceedings in

accordance with the Rules. The Tribunal further directed that the respondent-employee was to be re-instated in service with all the consequential benefits from the date of dismissal from service.

19. In **Kendriya Vidyalaya Sangathan** (supra), it was submitted before the High Court that the authorities were justified in invoking Rule 19(ii) as the respondent did not respond to the notices issued and did not offer any explanation for his wilful absence from duty for a long period of more than two years. The High Court concurred with the views of the Tribunal that the disciplinary authority had not recorded reasons for dispensing with the enquiry and no material was produced to show that there existed reasons which justified dispensing with the regular enquiry. The High Court further found that the direction given for the payment of back wages from date of dismissal was in order. It was contended on behalf of the Appellants that the view of the High Court was not in order. The fact that the respondent was not responding to the various notices clearly showed that he had abandoned the job and by giving false addresses avoided to receive notice. Even though leave was not granted he did not join in spite of directions to do so. Therefore, there was no justification or necessity to hold a detailed enquiry or to take a decision in the matter of imposition of penalty. Alternatively, it was submitted that back wages could not be treated as a natural consequence whenever an order of termination was set aside and that a direction of payment would have been made conditional. It was contended on behalf of the Respondent

that the Order of CAT as affirmed by the High Court did not suffer from any legal infirmity. The Apex Court found that for application of Rule 19(ii) in the background of Rule 14 of the Rules, the basic requirement was that a conclusion had to be recorded that it was not reasonably practicable to hold the inquiry proceedings. Such a finding does not appear to have been recorded. Therefore, the views expressed by the CAT as affirmed by the High Court did not suffer from any infirmity. The Apex Court held that the inevitable conclusion is that the respondent was not entitled to full back wages which according to the High Court was natural consequence and to that extent set aside the Order of the High Court.

20. In **Deepali Gundu Surwase** (supra), the Hon'ble Apex Court culled out the propositions from its Judgments while deciding the issue of back wages as under :

"i) In cases of wrongful termination of service, reinstatement with continuity of service and back wages is the normal rule.

ii) The aforesaid rule is subject to the rider that while deciding the issue of back wages, the adjudicating authority or the Court may take into consideration the length of service of the employee/workman, the nature of misconduct, if any, found proved against

the employee/workman, the financial condition of the employer and similar other factors.

iii) Ordinarily, an employee or workman whose services are terminated and who is desirous of getting back wages is required to either plead or at least make a statement before the adjudicating authority or the Court of first instance that he/she was not gainfully employed or was employed on lesser wages. If the employer wants to avoid payment of full back wages, then it has to plead and also lead cogent evidence to prove that the employee/workman was gainfully employed and was getting wages equal to the wages he/she was drawing prior to the termination of service. This is so because it is settled law that the burden of proof of the existence of a particular fact lies on the person who makes a positive averment about its existence. It is always easier to prove a positive fact than to prove a negative fact. Therefore, once the employee shows that he was not employed, the onus lies on the employer to specifically plead and prove that the employee was gainfully employed and was getting the same or substantially

similar emoluments.

iv) The cases in which the Labour Court/Industrial Tribunal exercises power under Section 11-A of the Industrial Disputes Act, 1947 and finds that even though the enquiry held against the employee/workman is consistent with the rules of natural justice and / or certified standing orders, if any, but holds that the punishment was disproportionate to the misconduct found proved, then it will have the discretion not to award full back wages. However, if the Labour Court/Industrial Tribunal finds that the employee or workman is not at all guilty of any misconduct or that the employer had foisted a false charge, then there will be ample justification for award of full back wages.

v) The cases in which the competent Court or Tribunal finds that the employer has acted in gross violation of the statutory provisions and/or the principles of natural justice or is guilty of victimizing the employee or workman, then the concerned Court or Tribunal will be fully justified in directing payment of full back wages. In such cases, the superior Courts should not exercise power under Article

226 or 136 of the Constitution and interfere with the award passed by the Labour Court, etc., merely because there is a possibility of forming a different opinion on the entitlement of the employee/workman to get full back wages or the employer's obligation to pay the same. The Courts must always be kept in view that in the cases of wrongful / illegal termination of service, the wrongdoer is the employer and sufferer is the employee/workman and there is no justification to give premium to the employer of his wrongdoings by relieving him of the burden to pay to the employee/workman his dues in the form of full back wages.

vi) In a number of cases, the superior Courts have interfered with the award of the primary adjudicatory authority on the premise that finalization of litigation has taken long time ignoring that in majority of cases the parties are not responsible for such delays. Lack of infrastructure and manpower is the principal cause for delay in the disposal of cases. For this the litigants cannot be blamed or penalised. It would amount to grave injustice to an employee or workman if he is denied

back wages simply because there is long lapse of time between the termination of his service and finality given to the order of reinstatement. The Courts should bear in mind that in most of these cases, the employer is in an advantageous position vis-à-vis the employee or workman. He can avail the services of the best legal brain for prolonging the agony of the sufferer, i.e., the employee or workman, who can ill afford the luxury of spending money on a lawyer with certain amount of fame. Therefore, in such cases it would be prudent to adopt the course suggested in Hindustan Tin Works Private Limited v. Employees of Hindustan Tin Works Private Limited (supra).

vii) The observation made in J.K. Synthetics Ltd. v. K.P. Agrawal (supra) that on reinstatement the employee/workman cannot claim continuity of service as of right is contrary to the ratio of the judgments of three Judge Benches referred to hereinabove and cannot be treated as good law. This part of the judgment is also against the very concept of reinstatement of an employee/workman."

21. It was the consistent case of the Petitioners that the Respondent no.1 had abandoned the services and not joined even though they were badly in need of staff. Quite on the contrary, it was the case of the Respondent no.1 that the Petitioners had terminated her services with effect from 12.05.2009 and that she was entitled to reinstatement in service with full back wages and continuity of service alongwith all the consequential benefits. Although it was the consistent case of the Petitioners that she had abandoned the service and that they were ready and willing to receive her back in service, it was nowhere the case on behalf of the Petitioners that any notice was issued to her calling upon her to resume duty nor had they held an inquiry before terminating her service on the ground of abandonment. It was the case of the Respondent no.1 consistently that she had reported for her duties on 12.05.2009 but was unable to enter the establishment since the lock on the establishment was changed. On inquiries she was told that her services too were terminated and that she should not report to duties any further giving rise to an Industrial dispute at her instance. The matter was tried to be conciliated but on failure, a reference was made to the Industrial Tribunal which accordingly passed the Award dated 04.08.2015 holding in her favour and against the Petitioners herein. The learned Presiding Officer of the Tribunal considered the Judgment in **Gaurishanker** (supra), wherein it was held that even in a case of abandonment of service, the employer had to give a notice to the workmen calling upon him to resume his duty and hold an inquiry before terminating his services on that ground. In that context, the

learned Officer held that when an employee absents himself from duty, the burden was on the Applicant to call upon him to resume his duty.

22. Although the Petitioners had set out a plea even in their written statement to the statement of claim that they had not appointed any new staff in place of the Respondent no.1 even though they were badly in need of an Accounts Assistant, it does not depart from the fact that the Respondent no.1 was not in their employment w.e.f. 12.05.2009 and that the Petitioners in particular had not given any notice to her to resume her employment accepting without admitting their case that she had abandoned her service and as held in Gaurishanker (supra). It was rather her case that her services were orally terminated by Shri R. Naik, Secretary of the Petitioners and that she was even threatened that she would be engaged in vexatious litigations in the Courts. The Petitioners had denied her case on her termination and instead carved a case that she had remained absent unauthorisedly w.e.f. 12.05.2009, that she had not handed over the office keys and that even by their letter dated 22.01.2010, they had appealed to her to join duty but she had neglected and failed to join her duty. It bears recording that no notice of joining service was issued to the Respondent no.1 by the Petitioners assuming for a moment that she had abandoned her service with them.

23. The learned Presiding Officer of the Industrial Tribunal considered the evidence led by the parties and drew adverse

inference against the Petitioners that they had never sent any show cause notice to the Respondent no.1 and that such a statement at the instance of the Secretary was clearly as an afterthought. She was constrained to conclude so precisely for the reason that the so called notice did not bear the signature of the Respondent no.1 nor an endorsement by the staff that the Respondent no.1 had refused to sign the notice in acknowledgement. The learned Judge had therefore found that the statements which were recorded were too contradictory and did not substantiate the case of the Petitioners that a show cause notice was in fact delivered to the Respondent no.1. The learned Judge further went on to record that even accepting that the notice was issued to the party no.1 calling upon her to explain why she had remained absent from duty without intimation, there was nothing in the notice to indicate that she was directed to resume duties which was necessary in view of the Judgment in Gaurishanker (supra). In that view of the matter, the learned Judge held that the Respondent no.1 was in fact terminated from services which was without compliance of the requirements of the Act, illegal and unjust and in view thereof she held that the services of the Respondent no.1 were illegally terminated by the Petitioners in contravention of the provisions of the Industrial Disputes Act while ultimately ordering her reinstatement of service with full back wages and other consequential benefits.

24. The Respondent no.1 made a letter to the Deputy Labour Commissioner dated 20.05.2009 disclosing therein that the

Management of the Petitioners had terminated her services without any reason and justification and that when she visited the office on 12.05.2009, she had found the lock on the main door was changed and on inquiries with the Secretary telephonically, she had been told that the lock was changed and to come the next day for settlement and they had not made any statement over permitting her to enter the office and on that premise had prayed for reinstatement with full back wages. She had also lodged a complaint with the police spelling out in clear terms that the lock on the office door was changed and replaced by a new lock for which she had contacted the Secretary Shri R. J. Naik. She had confirmed that the lock had been changed and that he did not want to continue her services precipitating the termination of her services to the office of the Deputy Labour Commissioner. She also clarified in her complaint that she was being subjected to unnecessary threats by the said Naik and to return the keys without settling her accounts and that she should not be held liable for any loss of the office items. Although the Petitioners had filed a preliminary objection to her complaint dated 20.05.2009 made to the Deputy Labour Commissioner, they had taken a plea that the services of the complainant had not been terminated till date and that it was the Respondent no.1 who had remained in unauthorised absence and a false case was filed to cover up her illegal act. The Respondent no.1 had filed a counter reply to their preliminary objections in which she had maintained that her services were terminated by the Petitioners and no question arose of rejoining the same or the post was being kept open by the Petitioners. From the

material on record, therefore, it is nowhere borne out that the Petitioners had given any notice to the Respondent no.1 to resume duties. The learned Presiding Officer of the Tribunal had therefore on a proper appreciation and construction of the material at large had held that no such notice was issued to the Respondent no.1 assuming that she had abandoned her services and therefore she was terminated from services entitling her to an order of reinstatement with consequential full back wages.

25. The Judgment in **Sonal Garments, VFC Industries** and **Madhuri** (supra) are clearly distinguishable and that in **Gaurishanker** (supra) and **Kendriya Vidyalaya** (supra) would squarely apply to the case being the Judgment of the Division Bench and the Apex Court respectively. No fault can be found with the findings rendered by the learned Presiding Officer of the Industrial Tribunal which could be said to be in excess of jurisdiction as to justify interference in this Petition. It follows that the Respondent no.1 had amply demonstrated from the material on record that her services were terminated without any justification and materially it was not a case of abandonment of service by her as consistently carved on behalf of the Petitioners. The impugned Judgment does not warrant any interference and in view thereof, I pass the following :

ORDER

The Petition is dismissed with no orders as to costs.

NUTAN D. SARDESSAI J.