

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

*Date of Decision: December 21, 2017*

+ **W.P.(C) 9011/2017 & C.M. 36862/2017 & C.M.38579/2017**

**CAMBRIDGE SENIOR SECONDARY SCHOOL & ANR.**

.....Petitioners

Through: Mr. Rajat Aneja & Ms. Nisha  
Sharma, Advocates

Versus

**DR ISLAM UDDIN & ORS**

.....Respondents

Through: Ms. Indrani Ghosh, Advocate for  
respondent No.1  
Mr. Arun K. Sharma, Advocate for respondents  
No.2 & 3

**CORAM:**

**HON'BLE MR. JUSTICE SUNIL GAUR**

**JUDGMENT**

**ORAL**

1. Impugned order of 12<sup>th</sup> September, 2017 (*Annexure P-18*) sets aside the order of 14<sup>th</sup> March, 2013 (*Annexure P-11colly*) vide which first respondent's employment as Post Graduate Teacher (PGT)- Physics stood terminated with immediate effect. As regards back wages, impugned order of 12<sup>th</sup> September, 2017 (*Annexure P-18*) directs that upon Representation by first respondent, back wages be computed in terms of Rule 121 of *Delhi School Education Act & Rules, 1973*.

2. The facts of this case are noticed in the opening paragraphs of the impugned order of 12<sup>th</sup> September, 2017 and so, needs no reproduction.

The case put forth by petitioner-School before the learned Delhi School Tribunal is that first respondent was appointed as PGT (Physics) vide Appointment Letter of 28<sup>th</sup> June, 1995. To join an assignment in Qassim University, Buradah, Kingdom of Saudi Arabia, he applied for three years' leave on 11<sup>th</sup> May, 2012 (*Annexure P-5*) and vide another application of even date, first respondent applied for leave for one year. Vide another letter of 19<sup>th</sup> July, 2012, first respondent sought lien for one year from 20<sup>th</sup> August, 2012 to 19<sup>th</sup> August, 2013 along with relieving certificate and experience certificate while informing that he had already joined his duties in Qassim University. The first respondent stopped attending the school w.e.f. 8<sup>th</sup> September, 2012 without being relieved from petitioner-School.

3. The leave application of first respondent was placed before the Management Committee, who upon examination of the facts decided not to approve the application for long leave and vide letter of 31<sup>st</sup> December, 2012 (*Annexure P-10*), the Principal of petitioner-School informed first respondent that since there was no provision / rule to grant leave on the ground stated in the application, therefore, his application was disallowed. The said letter of 31<sup>st</sup> December, 2012 (*Annexure P-10*) was sent to first respondent via e-mails of 21<sup>st</sup> January, 2013 and 14<sup>th</sup> March, 2013, which were not responded to. Thereafter, service of first respondent was terminated on 14<sup>th</sup> March, 2013.

4. Upon considering the facts of this case, reinstatement of first respondent has been directed vide impugned order by learned Delhi School Tribunal while holding as under:-

*“25. The above quoted proviso of Sub Rule (vii) of Rule 123*

*of Delhi School Education Act and Rules 1973 clearly indicates that an inquiry is must, to conclude that the absence from the duty was beyond the control of the teacher/ voluntarily/ intentional.*

*26. It is undisputed that Appellant was a confirmed employee. No Disciplinary Committee was constituted. No charge-sheet was issued to him. No inquiry was conducted against the Appellant, service of the Appellant was terminated without following the provisions of Delhi School Education Act & Rules, 1973.”*

5. Learned counsel for petitioner assails impugned order on the ground that in a case of abandonment, no inquiry is to be held and to submit so, he places reliance upon decisions of Supreme Court in *Aligarh Muslim University & ors. Vs. Mansoor Ali Khan* (2000) 7 SCC 529; *Syndicate Bank Vs. The General Secretary, Syndicate Bank Staff Association and Another* (2000) 5 SCC 65; *Vijay S. Sathaye Vs. Indian Airlines Ltd. & ors.* (2013) 10 SCC 25 and *G.T. Lad & Ors. Vs. Chemical & Fibres of India Ltd.* AIR 1979 SC 582.

6. On the other hand learned counsel for first respondent supports the impugned order and draws attention of this Court to a decision of Supreme Court in *V.C. Banaras Hindu University & ors. Vs. Shrikant* (2006) 11 SCC 42 to submit that jurisdiction to pass the termination order was with the Executive Council and therefore, order passed by the Vice Chancellor was held to be without jurisdiction. It is urged that in the instant case also, the jurisdiction to pass the termination order is with the Management Committee of the school, whereas the Principal of petitioner-School has passed the Termination Order and so, the impugned Termination Order of 14<sup>th</sup> March, 2013 (*Annexure P-11*) deserves to be

set aside, as it is without jurisdiction.

7. Upon hearing and on perusal of impugned order, material on record and the decisions cited, I find that Supreme Court in *Vijay S. Sathaye (supra)*, has reiterated that absence from duty in the beginning is a misconduct but when absence is for a very long period, it may amount to voluntary 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. It has been clarified that if a person is absent beyond the prescribed period for which leave of any kind could be granted, then he/ she should be treated to have resigned or ceased to be in service. Supreme Court has empathetically clarified in *Vijay S. Sathaye (supra)* that in such a case, there is no need to hold an inquiry or to give any notice as it would be useless formality.

8. Supreme Court in *Syndicate Bank Staff Association (supra)* has gone to the extent of declaring that even if it is assumed that an inquiry was necessitated, still it is required to be seen whether there was any explanation for absence from duty. Supreme Court in *G.T. Lad (supra)* has made it clear that temporary absence is not ordinarily sufficient to constitute an abandonment of service but the intention to abandon may be inferred from the acts and conduct of the parties and inference of abandonment of service cannot be easily drawn unless from the length of absence and other warranting circumstances, it can be assumed that an employee intended to abandon the service.

9. What is the prejudice caused to first respondent by non-holding of inquiry is a vital aspect which is required to be considered in the instant case in view of Supreme Court's decision in *Aligarh Muslim University*

(*supra*), wherein while dealing the case of extension of leave, Supreme Court has declared that “*principal of prejudice*” has been consistently applied by the courts in several cases.

10. In the light of afore-noted legal position and upon scrutiny of the material on record, I find that first respondent had applied for three years’ leave from August, 2012 to August, 2015 vide application of 11<sup>th</sup> May, 2012 (*Annexure P-5*), as respondent had been appointed as Associate Professor in Qassim University, Buradah, Kingdom of Saudi Arabia. It is true that petitioner-School vide Communication of 11<sup>th</sup> May, 2012 (*Annexure P-6*) had informed the Qassim University that first respondent would be relieved from duty when he is required to take up his new assignment. But no prudent person can possibly treat petitioner-School’s Communication of 11<sup>th</sup> May, 2012 (*Annexure P-6*) to be implied grant of leave for a period of three years. It is being so said because first respondent on the same day i.e. on 11<sup>th</sup> May, 2012 had made another application for one year’s leave to petitioner-School and in that context petitioner-School’s Communication of (*Annexure P-6*) is to be seen and it cannot be taken to be a grant of leave for a period of three years.

11. It is a matter of record that first respondent had sought relieving as well as Experience Certificate vide application of 19<sup>th</sup> July, 2012 (*Annexure P-7*) and in this communication, first respondent had clearly mentioned the period of leave from 20<sup>th</sup> August, 2012 to 19<sup>th</sup> August, 2013.

12. So far as the jurisdictional aspect is concerned, I find that counsel for first respondent is not right in submitting that dismissal order has been passed by the Principal of petitioner-School. It is quite evident from the

Minutes of Meeting of 20<sup>th</sup> October, 2012 of petitioner's Management Committee that first respondent's application for one year's leave was considered by the Management Committee of petitioner- School and it was noted in proceedings of Management Committee that since respondent had taken up the new assignment in Qassim University, Saudi Arabia, therefore, his application for long leave could not be acceded to and it was directed that first respondent's service stood terminated. Thereafter, only petitioner's School Principal vide e-mail of 31<sup>st</sup> December, 2013 (*Annexure P-10*) had conveyed to first respondent that leave of three years, as sought by first respondent, cannot be acceded to, as there is no provision / rule to grant it and respondent was advised to resign from service. Thereafter, vide e-mail of 21<sup>st</sup> January, 2013 (*Annexure P-11*), Principal of petitioner –School had intimated first respondent that since no response of earlier Communication of 31<sup>st</sup> December, 2013 (*Annexure P-10*) has been received, therefore, his service stood terminated w.e.f. 14<sup>th</sup> March, 2013. It is the case of first respondent that the aforesaid communication of 21<sup>st</sup> January, 2013 (*Annexure P-11*) was not received by him. Even if it is so, still first respondent was required to report back on duty after availing leave of one year i.e. in September, 2013. There is nothing on record to show that first respondent had reported back on duty in September, 2013.

13. During the course of hearing, learned counsel for first respondent had drawn the attention of this Court to the Certificate of 21<sup>st</sup> November, 2011 issued by the Principal of petitioner-School whereby *No Objection* to his application for job was conveyed and in Certificate of 27<sup>th</sup> August, 2012, it was stated that first respondent was a regular faculty member of

the school. It was pointed out by counsel for petitioner-School that these two certificates are not on record and in any case, these certificates have no bearing on the subject matter of this petition. In view thereof, reliance placed upon Supreme Court's decision in *V.C. Banaras Hindu University (supra)* is of no avail.

14. In view of the afore-going narration, this Court is of the considered view that even if first respondent was not made aware of the Termination Order, still it was incumbent upon him to have reported back on duty after availing leave of one year i.e. in September, 2013. Rather, first respondent had sought extension of leave even in the year 2015. It is a matter of record that first respondent neither reported back on duty nor had sought extension of leave in September, 2013 and so, his application of 22<sup>nd</sup> April, 2015 (*Annexure P-14*) seeking further extension of leave for one year from August, 2015 to August, 2016 is neither here nor there. Otherwise also, in this leave application (*Annexure P-14*), it has been stated by respondent that due to unavoidable circumstances, he is unable to join the duties. First respondent has not disclosed as to what were those unavoidable circumstances.

15. In the above background, holding of an inquiry would have been futile, as conduct of first respondent post "*Termination Order*" makes it abundantly clear that he had no intention to join back on duty after availing leave of one year. There is nothing on record to show that first respondent was granted leave for a period of three years. It is also not the case of first respondent that he had at any point of time sought the adjustment of period of absence from duty against leave of any kind due to him.

16. The facts and circumstances of this case persuade this Court to apply the “*principal of prejudice*” and upon doing so, I find that no prejudice is caused to first respondent on account of non-holding of inquiry, as conduct of first respondent post termination speaks for itself. Instant case is not of temporary absence but is of long absence and that too, unauthorized. The logical inference which can be drawn is that first respondent had actually abandoned the service. So, recourse to Rule 121 of *Delhi School Education Act & Rules, 1973* would have been an empty formality. Learned Tribunal has grossly erred in directing petitioner-School to have recourse to Rule 121 of *Delhi School Education Act & Rules, 1973* i.e. to hold a departmental inquiry in the instant case, because even if conduct of first respondent prior to termination of his service is ignored, still the post termination conduct of first respondent persuades this Court to hold that first respondent had actually abandoned the service.

17. In light of the aforesaid, impugned order of 12<sup>th</sup> September, 2017 (*Annexure P-18*) is rendered unsustainable and is hereby quashed while restoring order of 14<sup>th</sup> March, 2013.

18. This petition and applications are accordingly disposed of.

**(SUNIL GAUR)**  
**(JUDGE)**

**DECEMBER 21, 2017**

s/r