

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR**WPS No. 4202 of 2007**

Krishna Kumar Kosaria, S/o. Late Vishwanath Kosaria, aged about 57 years,
R/o. Behind Bilai Mata Mandir, Dhamtari, Chhattisgarh

---- Petitioner**Versus**

1. The State of Chhattisgarh, Through the Secretary, Department of Fisheries, Dau Kalyan Singh Bhawan, Raipur, Chhattisgarh
2. Assistant Director, Department of Fisheries, North Bastar, Kanker, Chhattisgarh

----Respondents

For Petitioner	:	Mr. Goutam Khetrapal, Advocate For
State	:	Mr. Anshuman Shrivastava, P.L.

Hon'ble Shri Justice P. Sam Koshy**Order on Board****16/11/2021**

1. Aggrieved by the order of termination Annexure P/2 dated 23.02.2007 the present writ petition has been filed. The petitioner has claimed for the relief of reinstatement with full back wages.
2. The brief facts relevant for the disposal of the present writ petition is that the petitioner herein was an employee of the Fisheries Department initially appointed in the class-IV cadre in the year 1972. However subsequently he was appointed in the class-III cadre w.e.f. 14.01.1982 onwards and was discharging the duties of an Assistant Grade-III. While working on the post of Assistant Grade-III as would be evident from the impugned order Annexure P/2, the petitioner appears to be in a regular habit of remaining unauthorizedly absent for long duration of time. The impugned order shows that the petitioner in the past had

been absent from duty from 01.08.1993 to 14.04.1997 i.e. for period of roughly 3 years and 8 months. Likewise, the petitioner again went on unauthorized absence for a period of 2 years and 2 months between 11.07.1997 to 10.09.1999. The petitioner hardly remained in service for another 3 months time and again he went on unauthorized absence from 01.02.2000 continuously and uninterruptedly till the impugned order was passed on 23.02.2007 i.e. for a period of more than 7 years.

3. Since the last unauthorized absence continued from 01.02.2000 till the impugned order was passed on 23.02.2007, the respondents terminated the services of the petitioner vide the impugned order under challenge in the present case. The impugned order has been assailed by the petitioner firstly on the ground that the action on the part of the respondents is bad in law for the reason that it has been done without conducting of a departmental enquiry and as such it is in violation of requirement under Article 311 second proviso.
4. Further, according to the counsel for the petitioner the respondents have also not been able to show any strong cogent reasons which prevented them from conducting the departmental enquiry or reasons for not holding of a departmental enquiry to prove the misconduct against the petitioner. In the absence of which the impugned order of termination from service is bad in law and deserves to be set-aside/quashed. The petitioner also has assailed the impugned order on the ground that the respondents ought to have considered the fact that the petitioner was suffering from some serious ailment which prevented him from attending the duties and the authorities ought to have considered this fact. Further contention of the petitioner was that the

respondent authorities ought to have also appreciated the fact that there was no willful or malafide intention on the part of the petitioner in remaining absent from duty, but it was under compulsion of ill-health, which prevented him from attending the duties and the moment he became fit, he approached the authorities supported with all relevant medical documents, which the authorities ought to have considered.

5. The counsel for the petitioner relied upon the decisions of the Hon'ble Supreme Court in the case of **“Ved Mitter Gill v. Union Territory Administration, Chandigarh & others” (2015) 8 SCC 86**, **“Chennai Metropolitan Water Supply and Sewerage Board & others v. T.T. Murali Babu” (2014) 4 SCC 108** and **“Krushnakant B. Parmar v. Union of India & another” (2012) 3 SCC 178**. The counsel for the petitioner further relied upon the two decisions rendered of this High Court in the case of **'Ajay Kumar Jatav v. Boarder Security Force' 2021 LawSuit (Chh) 407** and again the decision of the Division Bench in the case of **'Laxmikant Tiwari & others v. State of Chhattisgarh & others' 2016 LawSuit (Chh) 228**.
6. Per contra, the learned State counsel opposing the petition submits that it is a case where from the bare perusal of the impugned order itself it is evidently clear that the petitioner was an habitual absentee and that period of absence was also enormously long duration. Even otherwise also it shows that the petitioner was not interested in discharging the duties and every time the petitioner has remained absent, it was without any intimation and without any prior approval or sanction from the higher authorities in the Department. Thus, according to the State counsel there has been a glaring misconduct reflected on the plain

reading of the impugned order itself, which does not warrant any interference.

7. The State counsel further also contended that considering the last period of absence i.e. 01.02.2000 onwards till the date of impugned order was passed on 23.02.2007, the period being more than 7 years and under the service Rules governing the field, it clearly amounts to abandonment of service. That in the event of abandonment of service, there need not be any departmental enquiry conducted by the respondents and therefore according to the State counsel the judgment relied upon by the counsel for the petitioner would be distinguishable and would not be applicable in the facts of the present case.
8. The State counsel also referred to the past conduct of the petitioner, which cannot be lost sight of to show that the petitioner is guilty of the misconduct of remaining unauthorizedly absent for enormously long duration of time. The learned State counsel further referred to the annexures enclosed along with the writ petition to show that except for the fitness certificate in the form of medical certificate the petitioner has not supported his petition by justifiable cogent documents in respect of his alleged illness and the treatment that he was undergoing. Moreover, the State counsel further referring to these documents also contended that from the plain reading of the nature of illness also it shows that he was allegedly suffering from Arthritis, which is not so serious an illness, which could have prevented the petitioner to remain unauthorizedly absence for a period of more than 7 years. It was lastly contended by the State counsel that all these documents which the petitioner has enclosed along with the writ petition showing that he has given his

joining in between does not seem to have been ever submitted before the Department and it has been filed only for the purpose of taking advantage in the present writ petition and thus prayed for the dismissal of the writ petition.

9. Having heard the contentions put forth on either side and on perusal of record, the admitted factual matrix of the case from the pleadings which is available on record goes to show that the impugned order was passed on account of the petitioner remaining unauthorizedly absent from 01.02.2000 to 23.02.2007 i.e. till the date the impugned order Annexure P/2 was passed. During the said period, there is no cogent material to show that the the petitioner had ever made any request for grant of leave to the Department. There is also no ample document to show on record that the petitioner had in between made any effort for joining his duties.
10. At this juncture this Court also would like to take note of the past record of the petitioner which is also reflected in the impugned order itself and which has not been rebutted by the petitioner claiming it to be incorrect. It shows that in the immediate past also the petitioner was continuously absent for a period of more than 2 years between 11.07.1997 to 10.09.1999 and further again for a period of 3 years and 8 months between 01.08.1993 to 14.04.1997. If we look into the entire period, it would clearly reflect that from August, 1993 onwards till February, 2007 i.e. the date on which the impugned order was passed, the petitioner in between seems to have worked only for 3 months between April to July, 1997 and again for a period of just 4 months between September, 1999 to January, 2000 and for the remaining entire period from 1993 to 2007,

the petitioner has remained unauthorizedly absent. This act on the part of the petitioner speaks volume of his conduct and in the given factual backdrop of the case if the authorities concerned have terminated the services of the petitioner, the question now is whether the said action on the part of the petitioner can be held to be bad in law and illegal in the light of the contentions raised by the petitioner in the preceding paragraphs.

11. Another fact which needs to be appreciated at this juncture is that the documents enclosed by the Petitioner in respect of his reason for remaining unauthorizedly absent is that of ill-health. At the same time, when we look into the documents enclosed as Medical Certificate, it would clearly give an impression that the entire Medical Certificate seems to have got prepared on the very same day and it has been signed by the same Authority and with the same pen, which itself creates a great element of doubt so far as the genuineness of the Certificate and also creates an great amount of doubt so far as the health condition of the Petitioner is concerned.
12. The second fact which again to be noted from the perusal of the Medical Certificate, it would again show that the Medical Certificate do not show the Petitioner to be suffering from some serious ailment which has put him in a condition that he is not in a position to go to the office and work. The nature of ailment referred to only that of Arthritis. Nowhere has it reflected that he was confined to bed or was hospitalized or was unable to move. This factor also goes against the Petitioner. The Medical Certificate produced by the Petitioner also is not

in respect of the complete period of his absence, but, on the contrary, is of a period intermittent in between.

13. As has been discussed in the preceding paragraphs, between the period from 1993 to 2007 i.e. for a period of around 14-15 years, the Petitioner in all has worked for 7 months alone and that too in a gap of two intervals and for the rest of the period of around 14 years he remained unauthorizedly absent. This huge period of unauthorized absence is nothing but a voluntary abandonment of service and under the Service Rules governing the field any person who remains unauthorizedly absent for a considerable long period of time or more than 5 years without any prior sanction and permission from the superior Authorities, the name of such employee would get automatically struck off from the rolls of the establishment.
14. In the case of **“Vijay S. Sathaye Vs. Indian Airlines Limited & Others” [2013 (10) SCC 253]**, the Hon'ble Supreme Court in very categorical terms has held that, an employee has a right to abandon the service at any time voluntarily by submitting his resignation and alternatively, not joining the duty and remaining absent for long. The Hon'ble Supreme Court further went to held that, absence from duty in the beginning may amount to a misconduct but when the absence is for a very long period, it may amount to voluntarily abandonment of service. Under the latter circumstances, the bonds of service come to an end automatically without requiring any order to be passed by the employer.
15. The ground of the Petitioner that no departmental enquiry was conducted which was a mandatory requirement and that it is in

contravention to Section 2(11) of the Constitution of India, is not sustainable for the reason that it is not a case of unauthorized absence for a short duration of time, but it is a case where the absence is for a period exceeding a decade almost 14 years. This would clearly show that there was a unilateral action on the part of the employee himself while abandoning his service and as a consequence the employer as such has no role to play as the action on the part of the Petitioner clearly depicts abandonment of service.

16. The aforesaid view of the Hon'ble Supreme Court in the case of Vijay S. Sathaye (supra) was earlier also laid down by the Hon'ble Supreme Court in the cases of **“G.T. Lad Vs. Chemical and Fibres of India Ltd.” [1979 (1) SCC 590]**, **“Syndicate Bank Vs. Staff Association” [2000 (5) SCC 65]**, **“Aligarh Muslim University Vs. Mansoor Ali Khan” [2000 (7) SCC 529]** where in all these cases the Hon'ble Supreme Court has clearly 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 ceases to be in service. In such a case, there is no need to hold an enquiry or to give any notice as it would amount to useless formalities.
17. The High Court of Patna in the case of **“Renu Singh Vs. The Government of State of Bihar & Others”** decided on April, 3rd 2015 in Civil Writ Jurisdiction Case No.4380 of 2015, in somewhat a similar set of facts had held that, the conduct of the petitioner comes in the way of giving her any kind of relief because for all practical purposes, it would amount to voluntary abandonment of service by the petitioner and she has failed to assert her right at an appropriate time. Such stale kind of

belated claims after a decade and half are not required to be entertained and the writ petition accordingly dismissed.

18. Given the aforesaid facts and circumstances of the case, this Court is of the firm view that the judgments which have been relied upon by the learned Counsel for Petitioner would not be attracted in the facts of the present case and they are all distinguishable on its facts itself. Petitioner therefore is not entitled for any relief as has been sought for.7. Writ Petition thus deserves to be and is accordingly dismissed.

Sd/-
(P. Sam Koshy)
Judge