



CWP-8387-1999 (O&M) & -1-
CWP-11349-1999 (O&M)

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

224 (02 cases)

CWP-8387-1999 (O&M)
Date of Decision :01.05.2025

Punjab & Sind Bank

...Petitioner

Versus

**Presiding Officer, Central Govt. Industrial Tribunal-
cum-Labour Court, Chandigarh & another**

...Respondents

CWP-11349-1999 (O&M)

Charanjit Singh

...Petitioner

Versus

**Presiding Officer, Central Govt. Industrial Tribunal-
cum-Labour Court, Chandigarh & others**

...Respondents

CORAM: HON'BLE MR. JUSTICE HARSIMRAN SINGH SETHI

Present: Mr. I.P. Singh, Advocate for the petitioner-Bank in
CWP-8387-1999 & for respondent-Bank in CWP-11349-1999.

Mr. G.S. Bajwa, Advocate for petitioner in CWP-11349-1999
and for respondent No.2 in CWP-8387-1999 (through V.C.)

* * *

Harsimran Singh Sethi, J. (Oral)

1. In the present petitions, challenge is to the same impugned award dated 03.02.1999 (Annexure P/6) passed by the Presiding Officer, Central Govt. Industrial Tribunal-cum-Labour Court, Chandigarh by which, workman has been ordered to be reinstated in service with continuity but without back wages.



**CWP-8387-1999 (O&M) & -2-
CWP-11349-1999 (O&M)**

2. CWP-8387-1999, has been filed by the petitioner-bank challenging the reinstatement in service of the respondent No.2-workman whereas, CWP-11349-1999 has been filed by the workman on the ground that the benefit of back wages has been denied to him by the Tribunal while passing the impugned award dated 03.02.1999 (Annexure P/6).

3. Certain facts needs to be mentioned for the correct appreciation of the issue in hand.

4. It may be noticed that the workman, who was working as a Clerk-cum-Cashier went abroad on ex-India leave in May, 1990, which was valid up to 20.07.1990 but the workman did not return back to join his duty until 06.12.1990. On 06.12.1990, after joining, the workman remained absent from duty initially from 01.01.1991 to 15.01.1991 thereafter, from 21.01.1991 to 23.01.1991 than from 01.02.1991 to 04.02.1991 then, from 14.02.1991 to 28.02.1991 and then from 01.03.1991 to 06.03.1991 and did not perform duties starting from 08.01.1991 onwards.

5. Thereafter, the Bank started giving notices to the workman to join the duty back and even after final notice dated 24.09.1991, the workman failed to join back the duty and ultimately services of the workman were terminated w.e.f. 24.10.1991.

6. Against the said order of termination of services of the workman w.e.f. 24.10.1991, the workman approached the Labour Court.

7. The Labour Court after recording the facts and evidence came to the conclusion that as no enquiry was held against the workman before termination of his services and no retrenchment compensation was granted to him, termination of service of the workman by the bank was bad and



**CWP-8387-1999 (O&M) &
CWP-11349-1999 (O&M)**

-3-

therefore, a direction was given by the Labour Court that the workman will be reinstated in service with continuity but without back wages, which is under challenge in the present petitions.

8. Learned counsel for the bank argues that once, initially the workman remained absent by not joining the duty after availing ex-India leave for a period of 05 months and thereafter, again starting from 01.01.1991, he remained mostly absent from duty and then again absented himself from duty from 08.03.1991 and despite notices he did not join back the duty, it is a case of abandonment of job and therefore, treating the same as the case of termination of service by the Labour Court is incorrect.

9. Learned counsel for the bank further argues that in case of abandonment of job, no enquiry was required to be conducted hence, the finding recorded by the Labour Court that the workman's services were terminated without there being any disciplinary proceedings is contrary to the settled principle of law.

10. Learned counsel appearing for the workman argues that even if, the workman remained absent without authority or had gone abroad, the bank was required to hold a disciplinary proceedings after giving due opportunity to the workman and only after proving of the allegations by the bank, the action could have been taken against the workman and as no such procedure was followed by the bank in the present case, the Labour Court has rightly held that as the services of the workman were terminated without holding an enquiry, termination of services of workman was bad.

11. Learned counsel for the workman further argues that once, the termination of the workman was set aside by the Labour Court, the benefit



**CWP-8387-1999 (O&M) &
CWP-11349-1999 (O&M)**

-4-

of back wages also should have been allowed, which benefit has wrongly been denied by the Labour Court hence, the impugned award dated 03.02.1999 (Annexure P/6) should be modified to the extent that workman should also be held entitled for the grant of benefit of back wages.

12. I have heard learned counsel for the parties and have gone through the record with their able assistance.

13. From the facts which have been narrated hereinbefore, it is clear that the workman was not interested in performing the duty. In May, 1990, he took ex-India leave and went abroad and overstayed the said leave by period of five months so as to come back in December, 1990 and starting from 01.01.1991, the workman hardly worked and again absented himself starting from 08.03.1991 and despite various notices to join back the duty, he did not join back the duty.

14. The question which arises in the present case is whether, the present case is of termination of service or abandonment of job by the workman. A workman, who does not perform his duties and remains absent without sanction from the competent authority and also goes abroad, cannot be treated to be in service so as to be treated as absent. The respondent No.2-workman's intention was not to perform the duty as he even left India for greener pastures in America. Hence, the present case is a case of abandonment of job and not of termination of service of the respondent No.2-workman especially, when despite various notices by the Bank, workman did not join back the duty, which notices have been received by the workman, which fact has been conceded by the workman in the evidence that he did not join the duty back.



CWP-8387-1999 (O&M) &
CWP-11349-1999 (O&M)

-5-

15. Now, question which arises is whether in case of abandonment of job by employee, the enquiry was required to be conducted or not.

16. The said question has been answered by the Hon'ble Supreme Court of India in *SLP (C) No.24220-24221-2007 titled as Vijay S. Sathaye vs. Indian Airlines Ltd. and others decided on 06.09.2013*, wherein, it has been held that where an employee has abandoned the job, there is no requirement to conduct the disciplinary proceeding and the order simplicitor can be passed by the authorities concerned. Relevant paragraph of the judgment is as under:

“9.It is a settled law that an employee cannot be termed as a slave, he has a right to abandon the service any time voluntarily by submitting his resignation and alternatively, not joining the duty and remaining absent for long. Absence from duty in the beginning may be a misconduct but when absence is for a very long period, it may amount to voluntarily 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 employer¹⁰. In *M/s. Jeewanlal (1929) Ltd., Calcutta v. Its Workmen*, AIR 1961 SC 1567, this Court held as under: “.....there would be the class of cases where long unauthorised absence may reasonably give rise to an inference that such service is intended to be abandoned by the employee.” 6 Page 7 (See also: *Shahoodul Haque v. The Registrar, Co-operative Societies, Bihar & Anr.*, AIR 1974 SC 1896). 11. For the purpose of termination, there has to be positive action on the part of the employer while abandonment of service is a consequence of unilateral action on behalf of the employee and the employer has no role in it. Such an act cannot be termed as ‘retrenchment’ from service. (See: *State of Haryana v. Om Prakash & Anr.*, (1998) 8 SCC 733). 12. In *Buckingham and Carnatic Co. Ltd. v. Venkatiiah & Anr.*, AIR 1964 SC 1272 while dealing with a similar case, this Court observed : “Abandonment or relinquishment of service is always a question of intention, and normally, such an intention cannot be attributed to an employee without adequate evidence in that behalf.” A similar view has been reiterated in *G.T. Lad & Ors. v. Chemicals and Fibres India Ltd.*, AIR 1979 SC 582. 7 Page 8. 13. In *Syndicate Bank v. General Secretary, Syndicate Bank Staff*



CWP-8387-1999 (O&M) &
CWP-11349-1999 (O&M)

-6-

Association & Anr., AIR 2000 SC 2198; and Aligarh Muslim University & Ors. v. Mansoor Ali Khan, AIR 2000 SC 2783, this 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 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. A similar view has been reiterated in V.C. Banaras Hindu University & Ors. v. Shrikant, AIR 2006 SC 2304; Chief Engineer (Construction) v. Keshava Rao (dead) by Lrs., (2005) 11 SCC 229; and Regional Manager, Bank of Baroda v. Anita Nandrajog, (2009) 9 SCC 462.”

17. The same view was reiterated again by the Hon’ble Supreme Court of in **Civil Appeal No.4588-2014 titled as State of M.P and others vs. B.S. Bhadoriya decided on 16.04.2014** wherein, by placing reliance on **Vijay S. Sathaye (supra)**, it was held that where the absence is of long period, the same amounts to voluntary abandonment of service and the bonds of the service come to an end automatically without requiring any order to be passed by the employer.

18. Further, a Co-ordinate Bench of this Court in RSA No. 3561 of 1987 titled as ***Prem Nath Vs. United India Insurance Company Limited and others***, decided on 06.01.2012 held that where an employee goes out of India without any valid permission by leaving the job and thereafter, comes back seeking permission to join on the ground that no disciplinary proceedings were held, the said request cannot be accepted and holding of an enquiry in such circumstances would be travesty of law. The judgment in ***Prem Nath's case (supra)*** is as under :-

“This appeal has been filed against the concurrent judgments of both the Courts below dismissing the suit of the appellant for declaration that the order dated 3.7.1979



CWP-8387-1999 (O&M) &
CWP-11349-1999 (O&M)

-7-

removing him from service was illegal.

Both the Courts below found that the appellant left the country without obtaining no objection certificate; without getting his leave sanctioned; without leaving any forwarding address, and by making a false statement that he was going to United Kingdom while in fact he was going to Saudi Arabia. Both the Courts below found on fact that the appellant kept on receiving communications to join back but he did not bother to reply. Both the Courts below also found as a fact that the medical certificates sent by the appellant covered only the first one year of his five years' absence. Both the Courts below ultimately relied upon rule 30(iv) of the General Insurance (Conduct, Discipline and Appeal) Rules, 1975 which is to the following effect :-

“ Where an employee has abandoned his post, the competent authority may consider the circumstances of the case and pass such orders thereon as it deems fit.

Explanation :

For the purpose of this rule, an employee shall be deemed to have abandoned his post if he absents himself from duty without leave or overstays his leave for a continuous period of 90 days without any intimation therefor in writing.”

Both the Courts below distinguished the judgment reported as Deokinandan Prasad v. State of Bihar & others, AIR 1971 SC 1409.

Counsel for the appellant has proposed the following questions of law :-

“ (i) Whether the appellant could be dismissed from service under Rule 30(iv) of General Insurance (Conduct, Discipline and Appeal) Rules, 1975 without holding an enquiry ?

(ii) When under Rule 4 of the said Rules, abandonment



CWP-8387-1999 (O&M) &
CWP-11349-1999 (O&M)

-8-

of service is mis-conduct, whether in such circumstances, it was incumbent upon the punishing authority to hold departmental enquiry for the said misconduct ?

(iii) Whether medical certificate of the appellant which had been duly exhibited could be ignored from consideration merely on the ground that the doctor from Saudi Arabia had not been produced ?

(iv) When the impugned order is void, whether the same can be held to be barred by limitation ?”

Question No. (iii) does not arise since in any case, as mentioned above, medical certificates were only for a period of one year. Questions No.(i), (ii) and (iv) can all be covered under question No. (i). In my considered opinion, question No. (i) has also to be decided against the appellant in the present facts of this case, since it has been established on record that the respondents wrote various letters to the appellant (after tracing out his address in Saudi Arabia) to join back as his leave was not sanctioned but he did not join back. A perusal of Ex.P11, which was a letter written by the appellant, itself reveals that he had been receiving all the letters sent by the respondents. The letter terminating his service dated 3.7.1979 was also sent to his address in Saudi Arabia and in response thereto he filed the instant suit on 23.12.1983 with the bald averment that he had no knowledge of the letter removing him from service. In these circumstances, the suit filed by the appellant was clearly barred by limitation. To hold that such a recalcitrant employee who was repeatedly ignoring the notices to join could come back after half a decade and file a suit after the period of limitation and would be entitled to an inquiry would be a travesty of law. Consequently, this appeal is dismissed.”



CWP-8387-1999 (O&M) &
CWP-11349-1999 (O&M)

-9-

19. A similar view was also taken by this Court while passing order in *RSA-1274-2013 titled as, State Bank of Patiala and others vs. Bhagwan Dass Ahuja, decided on 08.05.2023* wherein also, this Court held that when there is a abandonment of job by an employee, no disciplinary proceedings are required to be conducted before terminating the services of such an employee. The said judgment has already been upheld by Hon'ble Supreme Court of India in *SLP (C)19314-19315-2023, decided on 06.09.2023.*

20. Keeping in view the settled principle of law noticed hereinbefore, it becomes clear that the case of the petitioner-bank is covered by the law, which has been noticed hereinbefore. Keeping in view the fact that workman initially left the country and remained in America and thereafter, came back but again absented himself from duty and from 08.03.1991, he did not perform the duty despite receiving noticed to join back duty, which shows that the workman was not interested in performing the duties and rather has abandoned the job till an order terminating the services of the workman was passed by the bank. Hence, the finding record by the Labour Court that even where the workman has abandoned the job, the said act was required to be proved by holding disciplinary proceedings is contrary to the settled principle of law noticed hereinbefore hence, the same cannot be upheld being perverse to the settled principle of law.

21. Keeping in view the totality of the circumstances, impugned award dated 03.02.1999 (Annexure P/6) passed by the Presiding Officer, Central Govt. Industrial Tribunal-cum-Labour Court, Chandigarh directing the reinstatement in service of workman is set aside.

22. Keeping in view the fact that impugned award dated



**CWP-8387-1999 (O&M) & -10-
CWP-11349-1999 (O&M)**

03.02.1999 (Annexure P/6) passed by the Presiding Officer, Central Govt. Industrial Tribunal-cum-Labour Court, Chandigarh has been set aside by this Court, CWP-11349-1999 filed by the workman for the grant of benefit of back wages is dismissed. Consequently, CWP-8387-1999 filed by the bank stands allowed.

23. Civil miscellaneous application pending if any is also disposed of.

24. A photocopy of this order be placed on the file of connected case.

May 01, 2025
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(HARSIMRAN SINGH SETHI)
JUDGE

Whether speaking/reasoned : Yes

Whether reportable : No