

**(2003) 11 AHC CK 0191**

**Allahabad High Court**

**Case No:** Civil Miscellaneous Writ Petition No. 36614 of 2000

Smt. Ekta Pandey

APPELLANT

Vs

Vice Chancellor, Banaras Hindu  
University, Registrar  
(Administration), Banaras Hindu  
University and Senior  
Superintendent, S.S. Hospital,  
Banaras Hindu University

RESPONDENT

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**Date of Decision:** Nov. 18, 2003

**Citation:** (2004) 5 AWC 4689

**Hon'ble Judges:** R.B. Misra, J

**Bench:** Single Bench

**Advocate:** S.M.A. Kazmi, S.K. Pathak and Saqib Meezan, for the Appellant; V.K. Upadhyaya, S.C., for the Respondent

**Final Decision:** Allowed

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### **Judgement**

R.B. Misra, J.

In this writ petition a prayer has been made for issuance of a writ of certiorari for quashing impugned order dated 13.7.2000 (Annexure No. 5 to the writ petition whereby the petitioner was treated to have abandoned the service w.e.f. 18.4.2000 i.e. from the date of expiry of her leave.

1. Heard Sri S.M.A. Kazmi, learned counsel for the petitioner and Sri V.K. Upadhyaya, learned counsel for the respondents.

2. According to the petitioner she was appointed as Student Nurse and joined her duty on 16.9.1989, after passing the nursing examination in the month of September, 1992 and "Midwifery-Examination" in the month of December, 1999. She thereafter was appointed as a Staff Nurse on 5.3.1993 in Sir Sunderlal Hospital of Banaras Hindu University (in short called B.H.U.). She was subsequently

confirmed on 28.09.1996 in the grade of Rs. 1400-2600 w.e.f. 2.2.95. Her conduct and performance was found satisfactory. However, on 17.4.2000 all of a sudden she fell ill and proceeded on earned leave and also prayed for subsequent extension of leave. After recovering from illness, when the petitioner approached the respondent, along with fitness certificate of Medical Officer, instead of allowing her to resume duty the impugned order dated 13.7.2000 was passed which on perusal reveals that the petitioner was found absent from 17.4.2000 in an unauthorized manner without prior permission or sanctioned leave, whereas she was asked by the Assistant Registrar (Adm) of B.H.U. vide his letter dated 29.4.2000 asking her to resume duty within fortnight to cope up with the exigency of work, but she failed. She was also given stern warning by the Medical Superintendent of "Hospital" on 25.1.2000, to improve her conduct and be careful in future and not to proceed on leave without prior approval/sanction of leave otherwise disciplinary action might take place.

3. The matter of unauthorised absence of the petitioner was considered by the Disciplinary Committee of the Executive Council of B.H.U. in its meeting on 13.5.2000 and on the resolution of the Disciplinary Committee, the petitioner was treated to have abandoned the service under Ordinance 10.5 of the B.H.U.

4. Additional Ordinances Governing the terms and conditions of service of all the Employees of B.H.U. other than teachers as approved by the Executive Council E.C.R. 66 dated 25.7.1970 dealt in para 10 the termination of service reads as below :

"10 Termination of Service :

(1) The services of a temporary employee may be terminated by the Executive Council without assigning reasons :-

(i) during the period of probation following the first appointment at any time without notice; and

(ii) if the post is temporary, at any time by a notice of one month in writing given by the appointing authority to the employees, or, at any time without notice on payment of one month's pay.

(2) The services of a permanent employee may be terminated by a notice of three months or on payment of pay for such period as the notice falls short of three months, or, without notice, on payment of three months pay, if the post in which he was confirmed is abolished.

(3) An employee who is given notice of termination of service under Clause (2) may be granted, during the period of notice, such earned leave, as may be admissible to him, and, where the leave so admissible and granted is more than three months, his services shall be terminated on the expiry of such leave."

5. A letter dated 5<sup>th</sup>/10<sup>th</sup> September, 1990 was issued by the Registrar of B.H.U. to all the Directors of Institutes, the Deans of Faculties, the Heads of Deptts./Offices, the Principals of Colleges/Schools, the Admin. Wardens/Wardes of Hostels, B.H.U. which reads as below :

"BANARAS HINDU UNIVERSITY

OFFICE OF THE REGISTRAR  
(ADMINISTRATION)  
VARANASI-221005.

No. R/GAD/IV-2/17478

Dated: September 5/10

The Directors of Institutes,  
The Deans of Faculties,  
The Heads of Deptts./Offices,  
The Principals of Colleges/Schools,  
The Admin. Wardens/Wards of Hostels,  
BANARAS HINDU UNIVERSITY.

Dear Sir/Madam,

The Executive counsel vide its Resolution No. 60, dated 28-29<sup>th</sup> May, 1990, has amended the existing Ordinance 10 governing service conditions of the University employees printed at page 96 of the BHU Calendar 1983 Part I, Vol. I, as under :-

10.5- Whenever a teaching/Non-teaching employee fails to return to the University within forty-five days of the expiry of leave duly granted to him, his services shall be deemed to have been abandoned by him from the date the leave expires.

Provided that the Executive Council on good cause being shown by the concerned employee may waive the abandonment on such terms as the council may decide.

Yours faithfully,

Sd/-

DY. REGISTRAR(ADMIN.)"

6. According to the petitioner the absence of the petitioner from duty, has erroneously been treated as abandonment. For treating an employee to come under the purview of abandonment, three things/ingredients are essential:-

a) the employee when has failed to return to the University within 45 days of the expiry of the leave duly granted to him/her.

b) the service of the employee shall be deemed to have been abandoned by him/her from the date the leave expires.

c) the leave is to be duly granted to him/her.

7. According to the petitioner for declaring the petitioner absence, no show cause or charge sheet was ever issued and the provisions of Ordinance are not applicable to the employee of the University, without under going and observing the procedure dealing the penalty to be imposed by disciplinary authority, provided in Additional Ordinance Governing the Terms and Conditions of Service of all the Employees of the University other than Teacher as Approved by the Executive Council E.C.R. 66 dated 25.7.1970.

8. According to the petitioner without affording any opportunity of hearing to her, by non-application of mind she was treated to have abandoned the service contrary to the spirit of the provision of Ordinance 10.5.

9. The counter affidavit has been filed and in paragraph 7 of the counter affidavit, it has been stated that during the period of her services, the petitioner was not regular and/or punctual in her duty and she was in habit of proceeding on leave frequently without prior permission. Some instances are referred as below :

- [illegible]

10. The petitioner was issued a warning letter No. SSH/FC-708/3985 dated 25.1.2000 to be careful and desist herself from proceeding on such long leave in future. A registered letter No. SSH/FC-708/63-64 dated 28/29.4.2000, a telegram No. 293 dated 12.5.2000 and subsequently a letter No. SSH/FC-708/2000/294 dated 13.5.2000 were issued with the information that her leave was not approved and she should join immediately, failing which disciplinary action would be taken, despite such indication she did not turn up.

11. In paragraph 10 of the counter affidavit, it has been indicated that after unauthorised absence from 18.4.2000, the petitioner sent an application dated 20.4.2000 for sanction of earned leave with effect from 19.4.2000 to 18.5.2000 for her ailment of Asthama. She did not submit any medical certificate in support of her ailment. Subsequently, the petitioner sent an application dated 19.5.2000 requesting to extend her leave further w.e.f. 19.5.2000 to 10.7.2000 for looking after her baby. She neither informed about her treatment nor submitted any prescription or medical certificate in this respect to the University. The petitioner never enclosed any medical certificate along with her letters dated 20.4.2000 and 19.5.2000.

According to paragraph 15 of the counter affidavit, the case of the petitioner was considered by the disciplinary authority in detail with full facts on merits. She was issued an office order No. SSH/FC.708/3985 dated 25.1.2000 with a warning to improve her working and conduct and not to proceed on leave in future without

prior permission. The petitioner was also issued a letter No. SSH/Fc.708/63 to 64 dated 28/29.4.2000 asking her to submit her explanation about her unauthorised absence continuously from 18.4.2000 but she did not reply to the same. The question of disciplinary proceeding did not arise in the case of the petitioner as the petitioner had abandoned her services and as such her case was under the Ordinance 10.5 of the B.H.U. Contender 1983 Petitioner I, Vol. I page 96.

12. The letter dated 25.1.2000 (Annexure No. 3 to the counter affidavit) provides as below:

"SIR SUNDERLAL HOSPITAL  
BANARAS HINDU UNIVERSITY

No. SSH/Fc-708/3985-3986

Dated: 25.1.2000

#### OFFICE ORDER

On perusal of the records, it has been found that Smt. Ekta Pandey, Staff Nurse proceeded on Rotation Leave from 2.6.99 to 20.6.99. She applied for sanction of Earned Leave w.e.f. 21.6.99 to 30.6.99 and subsequently requested for extension of Leave Without Pay from 1.7.99 to 31.3.2000. She was intimated vide this office letter No. SSH/Fc-708/932-934 dated 13.1.2000 to join her duties immediately. As per her letter dated 22.1.2000, she is hereby permitted to join her duties from 25<sup>th</sup> January, 2000 in the Paediatrics Surgery and report to Prof Chooramani Gopal and Sister Incharge, Paediatrics Surgery.

In the light of the above, Smt. Ekta Pandey is hereby warned to be careful in future and should not take such long leave without prior approval and in case she repeats her conduct disciplinary action will be taken against her as per University rules.

Smt. Ekta Pandey,  
Staff Nurse,  
Sir Sunderlal Hospital,  
Banaras Hindu University.

MEDICAL SUPERINTENDENT

No. SSH/Fc-708/

of date

Copy forwarded to the (I) Dy. Registrar (Admin.) II, B.H.U. for information and necessary action.

2. The Incharge, Paediatrics Surgery, SSH, BHU.

Sd/-

MEDICAL SUPERINTENDENT

SIR SUNDERLAL HOSPITAL

BANARAS HINDU UNIVERSITY

No. SSH/Fc-708/4013-4014

Dated: 27.1.2000

Copy forwarded for information and necessary action to:

1. The Nursing Supdt. (H), SSH, BHU.
2. The Section Officer(Salary), SSH, BHU.

Sd/-  
ASSTT. REGISTRAR. "

13. The letter dated 28/29.4.2000 (Annexure CA-5 to the counter affidavit) reads as below :

"SIR SUNDER LAL HOSPITAL  
BANARAS HINDU UNIVERSITY.

REGISTERED

No. SSH/Fc-708/631064

Dated: 28/29.4

Smt. Ekta Pandey,  
C/o Mr. A.K. Pandey,  
Qr. No. IIIrd - 105,  
Anpara,  
SONEBHADRA,  
U.P. - 231 225.

Madam,

It has been reported that you are absenting from duty without application/information w.e.f. 19.4.2000. In the past also you did the same thing. Thus you are in the habit of absenting yourself from duty without information/application and you have not improved yourself in spite of warning issued vide this office order dated 25.1.2000.

You are, therefore, advised to resume your duties forthwith. Further you are hereby asked to explain your absence without permission.

Yours faithfully,  
Asstt. Registrar.

No. SSH/Fc-708/

of date

Copy forwarded to the Nursing Supdt. (H), SSH, BHU for information.

Sd/-

ASSTT. REGISTRAR  
Assistant Registrar (Admin.)  
Sir Sunderlal Hospital,  
Banaras Hindu University."

14. Paragraph 16 of the counter affidavit reads as below:-

"The petitioner was informed vide office letters dated 28 29.4.2000 dated 13.5.2000 followed by telegram that her request for extension of earned leave has not been

accepted and was asked to resume her duty immediately failing which disciplinary action would be initiated against her as per University Rules. But the petitioner did not turn up to join her duties and her services were treated to have been abandoned as per University Rules."

15. The text and context of the entire provisions must be looked into while interpreting any of the provision of the Statute. The Court must look to the object, which the Statute seeks to achieve while interpreting the provision of the Act/Rules/Regulations. A purposive approach for interpreting the provision is necessary.

16. It is also settled principle of interpretation of law that any interpretation which leads to hardship and complication, should be avoided. In [State of Rajasthan and others Vs. Kishan Singh](#), the Supreme Court has held that "the mechanical approach to construction is altogether out of play with the modern positive approach i.e. to effectuate the object and purpose of the Act."

17. In [Colour-Chem Limited Vs. A.L. Alaspurkar and Others](#), the Supreme Court has held that the provisions of welfare legislation should be construed in a way to give benefit to the persons for whose benefit the "Rules" have been enacted and the Court must examine the policy and object of the "Act" and must advance the cause of enactment.

18. In [Durga Oil Company and Another Vs. State of U.P. and Others](#), the Supreme Court has held that while interpreting the provisions of a Statute of Rules, the purposive interpretation should always be borne in mind. Similar view has been taken by the Supreme Court in *Forest Range Officer v. P. Mohd. Ali* 1993 (Suppl.) 3 SCC 627 . In [The Municipal Corporation of Greater Bombay and others Vs. The Indian Oil Corporation Ltd.](#), the Supreme Court has observed as under :-

"The language of a statutory provision is not static vehicle of ideas and concepts and as ideas and concepts change, as they are bound to do in any country like ours with the establishment of a democratic structure based on egalitarian values and aggressive developmental strategies, so must the meaning and content of the statutory provision undergo a change. It is elementary that law does not operate in a vacuum. It is not an antique to be taken down, dusted, admired and put back on the shelf, but rather it is a powerful instrument fashioned by society for the purpose of adjusting conflicts and tensions, which arise by reason of clash between conflicting interest. It is, therefore, intended to serve a social purpose and it cannot be interpreted without taking into account the social, economic and political setting in which it is intended to operate."

19. In [S.P. Jain Vs. Krishna Mohan Gupta and Others](#), the Supreme Court had held that law should take a pragmatic view of the matter and response to the purpose for which it was made and also take cognisance of the current capabilities and life-style of the community. It is well settled that the purpose of law provides a road guide to

the interpretation of meaning of the "Act". The legislative futility is to be ruled-out so long as the legislative policy permits.

20. In [The Daily Partap Vs. The Regional Provident Fund Commissioner, Punjab, Haryana, Himachal Pradesh and Union Territory, Chandigarh](#), the Supreme Court held that the Court must always keep in view the beneficial and social welfare aspect of the Statute. Same view has been taken by the Apex Court in [Dinkar Anna Patil and Others Vs. State of Maharashtra and Others](#), [Regional Provident Fund Commissioner Vs. S.D. College, Hoshiarpur and others](#), and [Bharat Petroleum Corporation Ltd. Vs. Maharashtra General. Kamgar Union and Ors](#), . In [Vaijanath and Others Vs. Guramma and Another](#), the Supreme Court held that remedial Act should be given beneficial interpretation.

21. In [Employees State Insurance Corporation Vs. M/s. M.M. Suri and Associates \(P\) Ltd.](#), however the Supreme Court has held that even if the statute is beneficial, the Courts should not stretch it too far. The Supreme Court relied upon its earlier judgments in [Regional Director, Employees" State Insurance Corporation, Trichur Vs. Ramanuja Match Industries](#), has observed as under :-

"Counsel for the appellant emphasised on the feature that the statute is a beneficial one and the Court should not interpret a provision occurring therein in such a way that the benefit would be withheld from the employees. We do not doubt that the beneficial legislation should have liberal construction with a view to implement the legislative intent but where such beneficial legislation has a scheme of its own, there is no warrant for the Court to travel beyond the scheme and extend the scope of the statute on the pretext of extending the statutory benefit to those who are not covered by the scheme."

22. I have perused the documents on the record and find that undoubtedly, the petitioner was on leave in the year 1997, 1998, 1999 and 2000 for a considerable period. The petitioner had however submitted applications for extension and sanction of leave from time to time. However, the letter dated 28/29.4.2000 (Annexure CA-5 to counter affidavit) was acknowledged by the respondents indicating that she was in the habit of absenting from her duty in past without information, application or without sanctioned leave and despite warning she did not improve. She was, therefore, advised to resume her duty forthwith and was expected to explain her absence and when she came back to resume her duty within 45 days, she was declared abandoning her duties. If such notice of show cause was given to her then the conduct of the petitioner could not have been brought under the purview of the Ordinance, Clause 10.5 of the B.H.U. as referred in the letter dated 5th September, 1990 for declaring her abandoning her duties. The absence in question of the petitioner cannot be brought under the purview of the Ordinance for declaring her abandoning her service, work and duty as two essential ingredients as indicated above are absent as the petitioner neither proceeded on sanctioned leave, nor she failed to come back and joined her duty within 45 days of



expiry of leave duly granted to her.

23. In the facts and circumstances of the case and in view of the observations made above present writ petition is allowed and the decision regarding declaring the petitioner to have abandoned service by the impugned order 13.7.2000, being not legally sustainable, is, therefore, set aside. The petitioner is to be reinstated in service with all consequential benefits. However, the petitioner is entitled to the salary for the period she had discharged the duty. Her absence from her duty may be considered for granting due and legally entitled leave to her including medical, earn, restricted casual leave, if leave is not permissible, her leave might be taken leave without pay. After reinstatement into service, she would be entitled to the seniority as a credit in the service. However, the conduct of the petitioner, which was considered by declaring her to leave abandoned service may be a background to be utilized for taking a disciplinary action in future.

The writ petition is allowed in view of above observations. However, the competent authority is at liberty to take appropriate disciplinary action, if so advised, in accordance to the law.